

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY L. EPPERSON and DEPARTMENT OF THE NAVY,
HUMAN RESOURCES OFFICE, Norfolk, VA

*Docket No. 00-1546; Submitted on the Record;
Issued January 25, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 10 percent permanent impairment of her right upper extremity and a 12 percent impairment of her left upper extremity, for which she has received schedule awards.

The Office of Workers' Compensation Programs accepted that on December 11, 1997 appellant, then a 36-year-old supply clerk, sustained bilateral carpal tunnel syndrome in the performance of her duties.

A carpal tunnel release on the right was performed on May 22, 1998 and a carpal tunnel release on the left was performed on December 22, 1998. Appellant did well postoperatively.

Dr. Ernesto Luciano-Perez, a Board-certified orthopedic surgeon and appellant's treating physician, indicated that the date of maximum medical improvement was July 27, 1999 and found a 2 percent permanent impairment of the left hand due to decreased strength and a 10 percent permanent impairment due to sensory deficit, pain or discomfort.

On August 10, 1999 Dr. Luciano-Perez indicated that the date of maximum medical improvement was May 28, 1999 and found a 2 percent right upper extremity permanent impairment due to decreased strength and a 10 percent right upper extremity permanent impairment due to sensory deficit, pain or discomfort.

However, by report dated August 31, 1999, Dr. Luciano-Perez noted that appellant was being treated for left carpal tunnel syndrome, noted that her grip strength was an average of 22 kilograms when the expected grip strength would be 28 kilograms and opined that in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* she had a 10 percent permanent impairment of her left upper extremity due to loss of strength.

On September 30, 1999 the Office medical adviser referred to the findings of Dr. Luciano-Perez in his August 10 and 31, 1999 reports and noted that appellant's date of maximum medical improvement for her right upper extremity was May 28, 1999, but that the date of maximum medical improvement for her left upper extremity could not be determined. In accordance with the A.M.A., *Guides*, Table 64, page 57, he found a 10 percent permanent impairment of her right upper extremity due to median nerve entrapment at the wrist.

On October 7, 1999 the Office granted appellant a schedule award for a 10 percent permanent impairment of her right upper extremity. The award ran from May 28, 1999 to January 1, 2000 for a total of 31.20 weeks of compensation.

On January 11, 2000 Dr. Luciano-Perez reiterated his July 27, 1999 opinion that appellant had a 2 percent permanent impairment of the left hand due to decreased strength and a 10 percent permanent impairment of the left hand due to sensory deficit, pain or discomfort.

On March 3, 2000 an Office medical adviser opined that, considering Table 16, page 57 and Table 34, page 65 and Dr. Luciano-Perez's most recent report, appellant had a 12 percent permanent impairment of her left upper extremity.

On March 14, 2000 the Office granted appellant a schedule award for a 12 percent permanent impairment of her left upper extremity, running from January 2 to September 21, 2000 for a total of 37.44 weeks of compensation.

The Board finds that appellant has no more than a 10 percent permanent impairment of her right upper extremity and a 12 percent impairment of her left upper extremity.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.404 of the implementing federal regulation,² schedule awards are payable for the permanent impairment of specified bodily members, function or organs. Section 10.404 directs that the Office will evaluate "the degree of impairment to schedule members, organs and functions as defined in 5 U.S.C. § 8107 according to the standards set forth in the specified (by [the Office]) edition of the A.M.A., *Guides*."

The A.M.A., *Guides* standards for evaluating the impairment of extremities are based primarily on loss of range of motion.³ However, all factors that prevent a limb from functioning normally, including pain or discomfort, should be considered, together with loss of motion, in evaluating the degree of permanent impairment.⁴ The A.M.A., *Guides* provides grading schemes

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ See *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

⁴ See *Paul A. Toms*, 28 ECAB 403 (1987).

and procedures for determining the impairment of an upper extremity due to loss of strength as well as due to pain, discomfort or loss of sensation.⁵

Dr. Luciano-Perez found different values for permanent impairment of appellant's left upper extremity: 12 percent on July 27, 1999, 10 percent on August 31, 1999 and 12 percent on January 11, 2000. However, the Office medical adviser relied on Dr. Luciano-Perez's overall findings; and determined, using the appropriate A.M.A., *Guides* tables, that appellant had permanent impairments of 10 percent on the right and 12 percent on the left. Inasmuch as the Office medical adviser made determinations which were not internally inconsistent, his findings constitute the weight of the medical opinion evidence and establish that appellant had no more than a 12 percent permanent impairment of the left upper extremity and a 10 percent impairment of the right upper extremity.

The May 14, 2000 and October 7, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
January 25, 2002

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁵ A.M.A., *Guides*, Chapter 3, Tables 11 through 16, pp. 48-57 (4th ed. 1993).