

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JACKIE KIDD and U.S. POSTAL SERVICE,  
POST OFFICE, Incline Village, NV

*Docket No. 02-213; Submitted on the Record;  
Issued June 3, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has more than a five percent impairment of her left upper extremity for which she received a schedule award.

On December 26, 2000 appellant, then a 48-year-old rural mail carrier filed a traumatic injury claim alleging that on December 23, 2000 she slipped and fell while delivering mail and injured her left elbow. The Office of Workers' Compensation Programs accepted appellant's claim for left elbow fracture and authorized medical treatment. Appellant immediately stopped work following the injury and was cleared for limited-duty clerical work beginning January 30, 2001.

Dr. Samuel Capra, a Board-certified orthopedic surgeon treated appellant for her left elbow fracture. In a medical report dated December 23, 2000, he stated that his orthopedic evaluation and imaging studies revealed an olecranon fracture of appellant's left elbow. In a May 29, 2001 report, Dr. Capra stated that appellant had full flexion at the elbow, that she was limited at 160 degrees of extension and full pronation and supination. He further stated that appellant was tender at the triceps insertion on the olecranon rather than at the actual nonunion site and mildly tender at the medial epicondyle. Dr. Capra indicated that appellant had a mild valgus deformity at the elbow, which might be secondary to lack of full extension versus the unaffected elbow. He stated that pinch and grip were 4/5 along with triceps strength. Dr. Capra stated that appellant's condition was permanent and stationary and that she could not perform pushing type activities greater than two pounds, no repetitive extension activities of the left arm and no lifting and bicep flexion activities greater than five pounds. He concluded that appellant did have a permanent and partial disability.

On June 29, 2001 the Office referred appellant to a specialist to determine the extent of her permanent impairment due to her work injury.

In a report dated July 19, 2001, Dr. M.P. Reddy, Board-certified in physical and rehabilitative medicine, considered appellant's history of injury, performed a physical

examination and reviewed diagnostic tests. He found that flexion of both the right and left elbow was 150 degrees, extension of the right elbow was 0 degrees and extension of the left was -20 degrees. Forearm pronation of the left elbow was 80 degrees and of the left elbow 70 degrees. Supination of both the right and left elbow was 80 degrees. Dr. Reddy concluded that appellant sustained a fracture of the left elbow from her work-related injury on December 23, 2000 and as a result had 20 degrees of flexion contracture of the left elbow and a 10-degree limitation of the left forearm. He indicated that appellant had no neurological deficits or muscle weakness or atrophy in the left upper extremity, however, that she had preexisting chronic rheumatoid arthritis and some traumatic arthritis as a result of the injury. Dr. Reddy stated appellant's work-related left elbow condition was permanent and stationary and that his examination was in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>1</sup>

On August 7, 2001 the Office medical adviser used the figures Dr. Reddy obtained for the range of appellant's elbow motion and degree of pain and applied the A.M.A., *Guides* (5<sup>th</sup> ed. 2001). She found that, for the elbow, loss of extension resulted in a two percent impairment and loss of flexion resulted in no impairment, according to Table 16-34 on page 472 of the A.M.A., *Guides*. The Office medical adviser determined that appellant had one percent impairment for loss of pronation and no impairment for loss of supination, according to Table 16-37 on page 474. She also found that appellant's level of pain symptoms reached a Grade 4 or 25 percent, according to Table 16-10 on page 482. The Office medical adviser then determined that maximum impairment based on the ulnar nerve was 7 percent according to Table 16-15 on page 492, thus, she determined that 25 by 7 percent equaled a 2 percent impairment due to sensory deficit or pain. The Office medical adviser further determined that appellant had no impairment due to loss of strength. The Office medical adviser concluded that appellant had a total of five percent permanent impairment of the left upper extremity and that the date of maximal improvement was July 19, 2001.

On August 10, 2001 the Office issued appellant a schedule award for five percent permanent loss of the left upper extremity for the period July 19 to November 5, 2001.

The Board finds that appellant has not established that she is entitled to more than the impairment rating for which she received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be

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<sup>1</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, the Office medical adviser properly determined the extent of appellant's upper extremity impairment using the A.M.A., *Guides* (5<sup>th</sup> ed. 2001). Based on the figures she obtained from Dr. Reddy, she properly determined that appellant had a five percent impairment to her left upper extremity. The percentage of impairment she obtained for each degree of range of motion, pronation and supination were consistent with Figures 16-34, and 16-37 on pages 472, 474, and the percentage of pain impairment was consistent with pages 482, 492. The Office medical adviser's opinion is clear and precise.

On appeal appellant argued that she is entitled to a greater impairment rating because, according to Dr. Capra's evaluation, she is severely limited from performing regular work duties. Following Dr. Capra's determination that appellant had a partial permanent disability, the Office referred appellant to a specialist to make a determination of impairment in accordance with the A.M.A., *Guides*. Dr. Capra's opinion is not probative because he did not assess any impairment rating to appellant's elbow. Inasmuch as the August 7, 2001 medical adviser's opinion properly conformed with the A.M.A., *Guides*, her opinion constitutes the weight of the evidence.<sup>4</sup> Appellant has not shown that she is entitled to more than a 5 percent impairment of the left upper extremity.

The August 10, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
June 3, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> See *Richard F. Kastan*, 48 ECAB 651, 653 (1997).