

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DIANE E. SMITH and U.S. POSTAL SERVICE,  
POST OFFICE, Ames, IA

*Docket No. 01-2004; Submitted on the Record;  
Issued March 22, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has established that she developed arthritis of the right wrist causally related to her employment; and (2) whether appellant has more than a four percent impairment of her right wrist, for which she received a schedule award.

On December 2, 1997 appellant, then a 45-year-old clerk, filed an occupational disease claim (Form CA-2), alleging that she developed right wrist tendinitis and distal radicular joint arthrosis as a result of her employment duties.

In a decision dated February 9, 1999, an Office of Workers' Compensation Programs hearing representative determined that appellant's claim was better characterized as one for a traumatic injury and accepted the claim for mild tendinitis and right wrist strain.<sup>1</sup> The Office did not accept appellant's claim for employment-related arthrosis.

On April 29, 1999 appellant filed a claim (Form CA-7), for a schedule award for her right upper extremity. In support of her claim, she submitted a medical report from her treating physician stating that appellant has employment-related arthritis of the right wrist resulting in an 18 percent permanent impairment. On May 23, 1999 at the request of the Office, an Office medical adviser reviewed appellant's medical records and noted that as the Office had not accepted any arthritic conditions of appellant's right wrist, any impairment associated with arthritis would not be compensable. In addition, the Office medical adviser determined that appellant had no impairment associated with her accepted wrist conditions.

In a decision dated September 22, 1999, the Office denied appellant's claim for a schedule award. Appellant requested an oral hearing and in a decision dated February 14, 2000, an Office hearing representative set aside the Office's September 22, 1999 decision and

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<sup>1</sup> The Office initially denied appellant's claim by decision dated February 27, 1998. She requested a review of the written record and submitted additional evidence in support of her claim.

remanded the case due to a conflict in the medical opinion evidence between appellant's treating physician and the Office medical adviser on the issue of whether appellant was entitled to a schedule award for her accepted right wrist conditions.

By letter dated March 7, 2000, the Office referred appellant, along with medical records, a statement of accepted facts and a list of specific questions to Dr. Douglas M. Cooper, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated March 28, 2000, after a thorough physical examination of appellant and review of the record, Dr. Cooper noted that appellant had mild diffuse tenderness over the dorsal radial aspect of the right wrist and had pronation to 80 degrees, supination of 5 degrees, active flexion and extension of 60 degrees each, radial deviation of 15 degrees and ulnar deviation of 30 degrees. He stated that he believed that appellant had sustained a sprain of the right wrist with some soft tissue involvement of the distal radial joint, resulting in restricted supination and concluded that appellant had a five percent permanent impairment of her right upper extremity due to this condition.

The Office medical adviser reviewed Dr. Cooper's findings in an April 9, 2000 report. He applied Dr. Cooper's findings and measurements to the applicable tables in the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* and determined that appellant had a four percent impairment of her right upper extremity due to her accepted conditions.

By decision dated April 18, 2000, the Office issued a schedule award for four percent permanent impairment of the right upper extremity.

In a letter dated May 15, 2000, the Office asked Dr. Cooper to provide an opinion as to whether there was any objective evidence supporting a diagnosis of right wrist arthritis or arthrosis and, if so, whether this condition was employment related.

In a supplemental report dated May 25, 2000, Dr. Cooper stated that, as a review of all appellant's x-rays revealed no evidence of arthritis, there was no objective evidence to support a diagnosis of arthritis or arthrosis.

In a decision dated June 23, 2000, the Office denied appellant's claim for employment-related arthrosis or arthritis of the right wrist.

At appellant's request, the schedule award and arthrosis issues were consolidated and a review of the written record was conducted by an Office hearing representative.

In a decision dated April 10, 2001, an Office hearing representative affirmed the Office's April 18, 2000 decision finding entitlement to a schedule award for a four percent permanent impairment of the right wrist and June 23, 2000 decision denying appellant's claim for employment-related arthrosis of the right wrist.

The Board initially finds that appellant has not established that she has more than a four percent permanent impairment of the right wrist, for which she has already received a schedule award.

The schedule award provision 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 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.

Section 8123(a) of the Act provides that if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>4</sup>

In the present case, the Office found that a conflict in medical opinion existed between appellant's treating physician, Dr. James A. Friederich, a Board-certified orthopedic surgeon, who found that appellant had an 18 percent permanent impairment of the right wrist and the Office medical adviser, who determined that appellant had no employment-related impairment of the right wrist and properly referred appellant to Dr. Cooper for an impartial medical examination.

When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>5</sup>

Dr. Cooper, the impartial medical examiner, noted that appellant had mild diffuse tenderness over the dorsal radial aspect of the right wrist and had pronation to 80 degrees, supination of 5 degrees, active flexion and extension of 60 degrees each, radial deviation of 15 degrees and ulnar deviation of 30 degrees. While Dr. Cooper concluded that appellant had a five percent permanent impairment of her right upper extremity due to her accepted right wrist conditions, he did not explain how his determination was made with specific references to the applicable portions of the A.M.A., *Guides*. It is well settled that, when a physician's report gives an estimate of permanent impairment but does not fully correlate that estimate with the A.M.A., *Guides*, the Office may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.<sup>6</sup> Because Dr. Cooper did not reference specific portions of the A.M.A., *Guides* and the Office properly had the Office medical adviser review his medical findings and apply those findings to the proper edition of the A.M.A., *Guides*. The Office medical adviser concluded that, pursuant to Figure 35, page 41 of the A.M.A., *Guides*,

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<sup>2</sup> 5 U.S.C. § 8107.

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

<sup>4</sup> 5 U.S.C. § 8123(a); *see also* *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>5</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

<sup>6</sup> *See Charles Dionne*, 38 ECAB 306 (1986).

supination of 5 degrees, as determined by Dr. Cooper, equated to 3 percent upper extremity impairment. In addition, the Office medical adviser found that, pursuant to Figures 26 and 29 on pages 36 and 38 of the A.M.A., *Guides*, respectively, flexion and extension of the wrist to 60 degrees and ulnar deviation to 30 degrees, equates to a 0 percent impairment, but that radial deviation to 15 degrees equates to a 1 percent impairment. Properly utilizing the Combined Values Chart on page 322 of the A.M.A., *Guides*, the Office medical adviser concluded that appellant had a four percent permanent impairment of the right upper extremity.

As Dr. Cooper's medical report is rationalized and based on an accurate factual and medical background, the Board finds that his findings constitute the weight of the medical opinion evidence in this case. In addition, the Board has reviewed the calculations of the Office medical adviser and finds that he properly calculated appellant's impairment using the findings of Dr. Cooper and the applicable sections of the A.M.A., *Guides* and properly concluded that appellant had a four percent impairment of her right upper extremity due to her accepted conditions. Therefore, the Office properly determined that appellant was not entitled to more than a four percent permanent impairment of the right upper extremity for which she has already received a schedule award.

The Board further finds that this case is not in posture for a decision with respect to the issue of whether appellant has arthritis of the wrist and, if so, whether it is causally related to her employment duties or to her accepted medical conditions.

In his medical reports of record, appellant's treating Board-certified orthopedic surgeon, Dr. Friederich, consistently diagnosed post-traumatic distal radial ulnar joint arthrosis, as demonstrated on x-rays taken in 1997, 1998 and 2000 to exist, causally related to appellant's employment injuries.<sup>7</sup> In his most recent report of record, dated August 2, 2000, Dr. Friederich explained that the small osteophyte he identified at the distal radial ulnar junction was not always evident based on the rotation of the forearm, but was definitely present and consistent with post-traumatic arthrosis. In contrast, in a medical report dated May 25, 2000, Dr. Cooper, also a Board-certified orthopedic surgeon, stated that he had reviewed all three sets of x-rays and found no evidence of arthritis or arthrosis and, therefore, found no evidence of the disease to exist.

The Board notes that, prior to appellant's referral to Dr. Cooper, Dr. Friederich's opinion as to the existence of arthrosis and its relationship to appellant's employment remained uncontradicted and there was no conflict in medical opinion with respect to this issue. Therefore, although Dr. Cooper was an impartial medical specialist with respect to the issue of appellant's entitlement to a schedule award, he is considered a second opinion referral physician with respect to the issue of arthritis.<sup>8</sup>

Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee,

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<sup>7</sup> The Board notes that the 1997 and 1998 films were also read by radiologists. The radiologist interpreting the 1997 films found them normal, but the radiologist reading the 1998 films found evidence of mild degenerative changes at the first carpometacarpal junction.

<sup>8</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

the Secretary shall appoint a third physician who shall make an examination.”<sup>1</sup> When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.<sup>9</sup>

The Board finds that there is a conflict in the medical evidence between appellant’s treating physician, Dr. Friederich and the Office referral physician, Dr. Cooper, on the issue of whether appellant developed arthritis or arthrosis of the right wrist causally related to her accepted employment injuries or to factors of her federal employment. Consequently, the case must be referred to an impartial medical specialist to resolve the conflict in the medical opinion evidence. On remand, the Office should refer appellant, along with the case file and the statement of accepted facts, to an appropriate specialist for an impartial medical evaluation and report including a rationalized opinion on whether appellant developed arthritis or arthrosis of the right wrist causally related to her employment. After such further development as the Office deems necessary, the Office should issue a *de novo* decision regarding appellant’s claim.

The April 10, 2001 decisions of the Office of Workers’ Compensation Programs is hereby affirmed in part and set aside in part and the case is remanded for further consideration consistent with this decision.

Dated, Washington, DC  
March 22, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>9</sup> *William C. Bush*, 40 ECAB 1064, 1975 (1989).