

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTHA TORRES and U.S. POSTAL SERVICE,
POST OFFICE, Mission Hills, CA

*Docket No. 02-1098; Submitted on the Record;
Issued September 10, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has more than an 11 percent permanent impairment to each arm; and (2) whether the Office of Workers' Compensation Programs properly determined appellant's compensation rate.

The Office accepted that appellant sustained bilateral carpal tunnel syndrome causally related to her duties as a casual clerk. By decision dated November 1, 2001, the Office issued a schedule award for 11 percent permanent impairment to the left arm, and 11 percent for the right arm. The period of the award was June 30, 2000 through October 23, 2001; the weekly pay rate was reported as \$207.69, with a weekly compensation rate of \$155.77.

The Board finds that appellant has not established more than an 11 percent permanent impairment to each arm.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

As of February 1, 2001, schedule awards must be based on the fifth edition of the A.M.A., *Guides*.³ Appellant had submitted an October 25, 2000 report from an attending physician, Dr. Jacob Tauber, an orthopedic surgeon, but his statements as to the degree of permanent impairment were based on the fourth edition of the A.M.A., *Guides*. The Office referred appellant to Dr. H. Harlan Bleeker, an orthopedic surgeon. In a report dated June 22, 2001, Dr. Bleeker provided a history and results on examination. He noted that appellant had wrist discomfort and a loss of grip strength. In a report dated September 23, 2001, an Office medical adviser reviewed Dr. Bleeker's report and calculated the degree of permanent impairment based on the fifth edition of the A.M.A., *Guides*. The medical adviser identified the median nerve, which under Table 16-15 has a maximum of 45 percent impairment for combined motor and sensory deficits.⁴ Grading the impairment at 25 percent of the maximum, in accord with Tables 16-10 (sensory deficit or pain) and 16-11 (motor deficits),⁵ the medical adviser concluded that appellant had an 11 percent impairment to each arm.

The Board finds that the medical adviser provided a reasoned opinion as to the degree of permanent impairment under the fifth edition of the A.M.A., *Guides*. The record does not contain any other probative medical evidence with respect to permanent impairment under the fifth edition, and therefore the Board finds the weight of the medical evidence does not establish more than an 11 percent impairment to each arm.

The Board further finds that the case is not in posture for decision on the issue of rate of pay.

On appeal, appellant's primary allegation of error with respect to the November 1, 2001 decision is that the pay rate of \$207.69 was incorrect. In this regard, the record does not contain any evidence, prior to the November 1, 2001 decision, as to how the pay rate for compensation purposes was calculated. On remand, the Office should secure relevant information regarding appellant's wages and issue an appropriate decision that explains how appellant's pay rate was determined, with specific reference to the provisions of 5 U.S.C. § 8114.

³ FECA Bulletin No. 01-05 (January 29, 2001).

⁴ A.M.A., *Guides*, 492, Table 16-15.

⁵ *Id.* at 482, Table 16-10, and 484, Table 16-11.

The decision of the Office of Workers' Compensation Programs dated November 1, 2001 is affirmed with respect to the degree of permanent impairment; it is set aside and remanded for further proceedings with respect to the pay rate issue.

Dated, Washington, DC
September 10, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member