

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURA E. DREW-BUSKERS and DEPARTMENT OF COMMERCE,
Washington, DC

*Docket No. 02-674; Submitted on the Record;
Issued April 23, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

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

On February 23, 1981 appellant, then a 31-year-old employee relations specialist, sustained an employment-related C7-T1 disc herniation for which she underwent surgery on May 6, 1991.¹ By letter dated July 9, 1997, the Office also accepted that appellant sustained neck and shoulder pain and left arm dysesthesia. On February 26, 2001 appellant filed a schedule award claim. By letter dated March 23, 2001, the Office requested that appellant have her physician evaluate her left upper extremity impairment and provided a chart for range-of-motion measurements for the doctor to complete.

Dr. Abraham A. Cherrick, appellant's treating Board-certified physiatrist, provided a report dated June 25, 2001 and in reports dated October 1 and 10, 2001, an Office medical adviser reviewed Dr. Cherrick's findings. In a decision dated October 22, 2001, appellant was granted a schedule award for a 3 percent permanent impairment of the left upper extremity, for a total of 9.36 weeks of compensation, to run from May 16 to July 10, 1993. The instant appeal follows.

The Board finds that this case is not in posture for decision.

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees

¹ The Office of Workers' Compensation Programs has also accepted that appellant sustained an employment-related aggravation of respiratory allergies, resolved, allergic rhinitis, eustachian tube blockage, aggravation of temporomandibular joint pain and subluxation of cervical rib with herniation at C7-T1.

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.404 (1999).

sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. The Act, however, 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*⁴ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

The relevant medical evidence in the instant case includes Dr. Cherrick's report dated June 25, 2001 in which he advised that he had evaluated appellant for impairments related to a rotator cuff injury to her shoulder, as well as the effects of ulnar neuropathy and C5-6 radiculopathy. He further noted findings of pain, numbness and tingling in the ulnar distribution of the hand, weakness in the shoulder girdle, difficulty with abduction movements of the shoulder and spasm in the upper trapezius. Dr. Cherrick advised that he utilized the fourth edition of the A.M.A., *Guides* and concluded that appellant's total upper extremity impairment was 27 percent.

An Office medical adviser then reviewed Dr. Cherrick's report and applied the relevant portion of the fifth edition of the A.M.A., *Guides*. In a report dated October 10, 2001, the Office medical adviser stated that appellant's date of maximum medical improvement was May 6, 1998 and that she was entitled to an impairment rating for C8 nerve root compression on the left. Utilizing Table 15-15, he found that appellant's deficit was rated at grade three which constituted a 60 percent loss, and that, under Table 15-17, her C8 sensory loss entitled her to a 5 percent rating. He then multiplied the 60 percent deficit under Table 15-15 by the 5 percent loss under Table 15-17 and found that appellant was entitled to a 3 percent permanent impairment of the left upper extremity.

The Board initially notes that, although the A.M.A., *Guides* include guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under the Act for injury to the spine.⁶ In 1960, amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, as the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.⁷

Section 15.12 of the fifth edition of the A.M.A., *Guides* describes the method to be used for evaluation of impairment due to sensory and motor loss of the extremities as follows. The nerves involved are to be first identified. Then, under Tables 15-15 and 15-16, the extent of any

⁴ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁵ *Ronald R. Kraynak*, 53 ECAB ____ (Docket No. 00-1541, issued October 2, 2001).

⁶ *James E. Mills*, 43 ECAB 215 (1991).

⁷ See *George E. Williams*, 44 ECAB 530 (1993).

sensory and/or motor loss due to nerve impairment is to be determined, to be followed by determination of maximum impairment due to nerve dysfunction in Table 15-17 for the upper extremity and Table 15-18 for the lower extremity. The severity of the sensory or motor deficit is to be multiplied by the maximum value of the relevant nerve.⁸

It is appellant's burden to submit sufficient evidence to establish her entitlement to a schedule award.⁹ In specifying that she had a 27 percent left upper extremity impairment, Dr. Cherrick provided impairment ratings for ulnar neuropathy, C6 radiculopathy and rotator cuff impairment. The record indicates that the Office accepted that appellant sustained employment-related C7-T1 disc herniation and neck and shoulder pain and left arm dysesthesia. Appellant would, therefore not be entitled to a schedule award for C6 radiculopathy and rotator cuff impairment. Furthermore, the Board notes that Dr. Cherrick rated appellant's left upper extremity impairment under the fourth edition of the A.M.A., *Guides*, rather than the fifth edition as instructed in the Office's March 23, 2001 letter.

The Office medical adviser applied the relevant standards of the fifth edition of the A.M.A., *Guides* to Dr. Cherrick's analysis and advised that appellant was entitled to a schedule award for C8 nerve root compression.¹⁰ He then rated appellant at the maximum of 60 percent for Grade 3 sensory loss under Table 15-15¹¹ and followed the instructions found in section 15.12 of the A.M.A., *Guides* and multiplied the 60 percent by 5 percent, the maximum percentage allowed for C8 impairment under Table 15-17,¹² and concluded that appellant had a 3 percent left upper extremity impairment. The Office therefore properly granted a schedule award for a three percent impairment of the left arm.

The Board, however, notes that, in a report dated October 1, 2001, the Office medical adviser advised that updated electromyography needed to be obtained to better evaluate appellant's left upper extremity condition. The Office medical adviser also asked the Office to better delineate appellant's accepted conditions. When requesting a supplementary report from the Office medical adviser, the Office merely indicated that appellant had an accepted disc herniation at C7-T1 and a resolved respiratory condition. The Office medical adviser then submitted the report dated October 10, 2001 that provided the basis for the October 22, 2001 decision. The record, however, indicates that the Office has also accepted that appellant sustained employment-related neck and shoulder pain and left arm dysesthesia.¹³ The case

⁸ A.M.A., *Guides*, *supra* note 4 at 423.

⁹ See *Annette M. Dent*, 44 ECAB 403 (1993).

¹⁰ A.M.A., *Guides*, *supra* note 4 at 376, Figure 15-2.

¹¹ *Id.* at 424.

¹² *Id.* at 423-24.

¹³ The Board notes that the fifth edition of the A.M.A., *Guides* provides that "the impairment ratings in the body system organ chapters make allowance for any accompanying pain." A.M.A., *Guides*, page 20, Chapter 2.5e. Chapter 18 of the fifth edition of the A.M.A., *Guides*, which provides for the assessment of chronic pain, states that "examiner should not use this chapter to rate pain-related impairment for any condition that can be adequately rated on the basis of body and organ impairment rating systems given in other chapters of the A.M.A., *Guides*. A.M.A., *Guides*, at page 571, Chapter 18.3b.

should therefore be remanded to the Office to determine if appellant is entitled to an increased schedule award for these conditions.¹⁴

The decision of the Office of Workers' Compensation Programs dated October 22, 2001 is hereby vacated and the case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, DC
April 23, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ The Board further notes that a claimant may seek an increased schedule award, if the evidence establishes that progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).