

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSEMARIE T. THOMPSON and U.S. POSTAL SERVICE,
POST OFFICE, Pittsburgh, PA

*Docket No. 02-1774; Submitted on the Record;
Issued April 23, 2003*

DECISION and ORDER

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

The issue is whether appellant has established that she sustained greater than a 10 percent impairment of the left arm, for which she received a schedule award.

This is appellant's second appeal before the Board. In the prior appeal, the Board issued a decision on March 4, 2002, which found that the Office of Workers' Compensation Programs improperly denied appellant's request for reconsideration of a schedule award decision as untimely.¹ The Board found that the request for reconsideration postmarked May 15, 2000 was timely because the one-year date for filing a request for reconsideration, May 14, 2000, fell on a Sunday. The Board, therefore, remanded the case to the Office for proper exercise of its discretionary authority under 5 U.S.C. § 8128(a) and to determine whether the evidence submitted on reconsideration met one of the standards required to warrant a merit review. The facts and circumstances of the case are set out in the Board's prior decision and are hereby incorporated by reference.

Appellant submitted a March 10, 2000 narrative report from Dr. Glenn Buterbaugh, a Board-certified orthopedic surgeon, with her May 15, 2000 request for reconsideration. In his report, Dr. Buterbaugh indicated that his belief that the functional capacity evaluation performed on appellant on November 30, 1998 was valid and appropriately outlined appellant's functional capabilities. He indicated that, although there was a portion of the validity criteria that appellant did not pass, the overall test results were considered valid. Dr. Buterbaugh indicated that it was not uncommon for many patients to fail one or two of the criteria but when the final report is given, a judgment is made based on the number of passed criteria versus failed criteria. He

¹ Docket No. 00-2719. The Office accepted that appellant sustained a contusion of the right hand and left carpal tunnel syndrome causally related to employment factors. On January 29, 1992 the Office issued a schedule award for 25 percent permanent impairment of the right arm. On July 23, 1997 the Office issued a schedule award for 10 percent impairment of the left arm. Appellant requested reconsideration of the July 23, 1997 decision and modification of that decision was denied on June 17, 1998 and May 14, 1999.

concluded that his impairment ratings found in previous reports of record were consistent with what he recommended.

In a report dated May 21, 1997, Dr. Buterbaugh concluded that appellant had a 30 percent impairment on the left arm with limited range of motion including palmar, flexion, dorisflexion and radial and ulnar deviation. He indicated that the range of motion studies, to which he referred as well as appellant's pain and discomfort, was outlined in the functional capacity evaluation dated May 21, 1997. On July 15, 1997 an Office medical adviser indicated that Dr. Buterbaugh's opinion of 30 percent of the left arm was not supported by the May 21, 1997 functional capacity evaluation, which showed no muscle atrophy, validity criteria failure on strength tests and magnification of pain systems. The Office medical adviser did indicate that there was some sensory loss and pain to support mild impairment from median nerve entrapment at the wrist. The Office medical adviser reported that Table 16 on page 57 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) fourth edition indicated 10 percent of the left arm and 10 percent of the right arm. The Office medical adviser further noted that, since 25 percent had already been awarded, no additional award applied.

In an April 1, 1998 report, Dr. Buterbaugh opined that appellant had a 30 percent impairment of the left arm based on her de Quervain's tenosynovitis, carpal tunnel syndrome and carpometacarpal arthritis. He further indicated that the impairment rating was based on pain associated with these anatomic problems and functional limitations and mild limitations in range of motion. On June 1, 1998 an Office medical adviser reviewed Dr. Buterbaugh's report and noted the only distinction in his conclusion and found in the earlier report that he attributed the impairment to pain. The Office medical adviser noted that, following each of appellant's requests for reconsideration, Dr. Buterbaugh failed to correlate his findings with the A.M.A., *Guides* or explain how he determined the percentage of impairment in accordance with the A.M.A., *Guides*.

By merit decision dated March 22, 2002, the Office denied modification of the prior decision on the grounds that the evidence failed to establish that appellant sustained any additional impairment to her left arm. The Office, however, authorized continued medical treatment.

The Board finds that appellant has not established greater than a 10 percent impairment to her left arm, for which she previously received a schedule award.

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 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

² 5 U.S.C. § 8107.

³ 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, Dr. Buterbaugh reported that appellant had an impairment rating of 30 percent for the left arm based upon functional capacity evaluations performed at his direction on May 21, 1997 and November 30, 1998. Although the record reflects that Dr. Buterbaugh received the proper forms to perform a schedule award evaluation, including a copy of the fourth edition of the A.M.A., *Guides*, he did not in any of his reports correlate his findings with the A.M.A., *Guides*, or explain how he arrived at his figures.⁴ Because Dr. Buterbaugh's reports of record, including the March 10, 2000 report submitted on reconsideration do not provide any explanation in support of his 30 percent permanent impairment rating for the left arm they are of diminished probative value.⁵

The Office medical adviser reviewed the functional capacity evaluations utilized by Dr. Buterbaugh and noted that the November 30, 1998 evaluation described complaints as intermittent numbness and parathesis with no atrophy, deformity or edema of the hands. The Office medical adviser noted that there was some sensory loss and pain to support mild impairment from median nerve entrapment at the wrist. The Office medical adviser correctly pointed out that appellant had no change in impairment of the 10 percent previously awarded based on entrapment of the median nerve at the wrist according to Table 16, page 57 of the A.M.A., *Guides*. Table 16 of page 57 of the A.M.A., *Guides* gives values for percentages of impairment to the upper extremity of 10, 20 and 40 percent for mild, moderate or severe entrapment at the median nerve of the wrist. Dr. Buterbaugh did not provide any explanation as to how he determined appellant's impairment of 30 percent of the left arm given the actual values of impairment of 10, 20 and 40 percent at the median nerve of the wrist as provided in Table 16 on page 57.

In a decision dated May 14, 1999, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that the evidence appellant submitted was insufficient to support her contention that she suffered greater than a 10 percent loss of use of her left arm, for which she received a schedule award and the Board concurs. The Office denied modification based on the evaluation of the Office medical adviser who reviewed the findings of Dr. Buterbaugh and provided his impairment ratings of appellant's left arm in accordance with the A.M.A., *Guides*. The Office medical adviser properly used the A.M.A., *Guides* to conclude that appellant had no more than a 10 percent permanent impairment for entrapment neuropathy, or a total of 10 percent permanent impairment of the left arm, for which she previously received a schedule award.

As noted by the Office on March 22, 2002, appellant's timely reconsideration request did not contain sufficient evidence to warrant modification of the prior decision. As shown above, the evidence of record failed to establish that appellant sustained any additional impairment of the left arm.

⁴ The Board notes that the fifth edition of the A.M.A., *Guides* became effective February 1, 2001; see FECA Bulletin No. 01-05 (issued January 29, 2001).

⁵ See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

The March 22, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 23, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member