

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANITA K. QUINN and U.S. POSTAL SERVICE,
POST OFFICE, Silverdale, WA

*Docket No. 03-422; Submitted on the Record;
Issued April 10, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has greater than a 10 percent permanent impairment of the left upper extremity and more than an 8 percent permanent impairment of the right upper extremity, for which she received a schedule award.

On August 8, 1994 the Office of Workers' Compensation Programs granted appellant a schedule award for a seven percent permanent impairment of the left upper extremity and a five percent permanent impairment of the right upper extremity. On December 23, 1997 appellant received an amended schedule award for a total left upper extremity impairment of 10 percent and a right upper extremity impairment of 8 percent.

On September 13, 2002 appellant filed a claim (Form CA-7) for an additional schedule award. By decision dated October 30, 2002, the Office denied appellant's claim. The Office explained that the prior awards exceed the most recent impairment rating prepared by appellant's physician, Dr. Guy H. Earle, a Board-certified family practitioner.

On November 16, 2002 appellant requested reconsideration and she submitted additional medical evidence. By decision dated November 26, 2002, the Office denied modification of the October 30, 2002 decision.

The Board finds that appellant failed to establish that she has more than a 15 percent permanent impairment of the left and right lower extremities.

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.¹ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results

¹ 5 U.S.C. § 8107.

and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.² Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides*, fifth edition (2001).³

In a report dated September 13, 2002, Dr. Earle calculated a 12 percent permanent impairment of the left upper extremity and a 13 percent permanent impairment of the right upper extremity due to loss of range of motion and loss of strength. Dr. Earle utilized the A.M.A., *Guides*, fifth edition (2001).

The Office medical adviser reviewed the record, including Dr. Earle's recent findings, and in a report dated October 6, 2002, found that appellant had only a five percent permanent impairment of the left upper extremity and a six percent impairment of the right upper extremity. The Office medical adviser agreed with Dr. Earle's rating as it pertained to appellant's impairment due to loss of range of motion. However, the Office medical adviser disagreed with Dr. Earle's nine percent impairment rating due to weakness in external rotation involving the axillary nerve. The Office medical adviser stated that the record did not support a finding of weakness due to a peripheral nerve disorder. He explained that Table 16-35 at page 510 of the A.M.A., *Guides* represented a more appropriate method of determining appellant's impairment due to weakness. Relying on Dr. Earle's rating of Grade 4 strength, the Office medical adviser determined that appellant's strength deficit in external rotation represented a two percent bilateral upper extremity impairment.

On October 11, 2002 the Office forwarded its medical adviser's report to Dr. Earle for comment. By letter dated October 15, 2002, Dr. Earle expressed his agreement with the Office medical adviser's October 6, 2002 impairment rating. In a November 5, 2002 letter to appellant, Dr. Earle explained that the change in his rating was due to his mistake in using the table for strength loss due to nerve damage. Dr. Earle also outlined some of the differences between the fourth and fifth editions of the A.M.A., *Guides* and explained how those changes effected his most recent impairment rating.

Appellant contends that her permanent impairment should be rated in accordance with the fourth edition of the A.M.A., *Guides* rather than the fifth edition utilized by Dr. Earle and the Office medical adviser. Although appellant's two prior schedule awards were calculated in accordance with the fourth edition of the A.M.A., *Guides*, the fifth edition of the A.M.A., *Guides* is applicable to awards made on or after February 1, 2001. As appellant filed her claim for an additional schedule award on September 13, 2002, the Office properly reviewed her claim in accordance with the A.M.A., *Guides*, fifth edition (2001).⁴

² 20 C.F.R. § 10.404 (1999).

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

⁴ *Id.*

Dr. Earle and the Office medical adviser ultimately agreed regarding the extent of appellant's bilateral upper extremity impairment. Accordingly, appellant has failed to provide any probative medical evidence that she has greater than a 10 percent permanent impairment of the left upper extremity and more than an 8 percent permanent impairment of the right upper extremity.

The November 26, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 10, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member