

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LESLIE A. OLSEN and U.S. POSTAL SERVICE,
POST OFFICE, Hobart, IN

*Docket No. 03-593; Submitted on the Record;
Issued April 17, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

Appellant's claim filed on March 21, 2000 was accepted for bilateral carpal tunnel syndrome, based on the report of Dr. Michael C. Leland, a Board-certified orthopedic surgeon. The Office of Workers' Compensation Programs authorized an electromyography (EMG) and surgical release surgery on appellant's right hand.

Appellant underwent surgery on January 31, 2001 and filed a recurrence of disability claim on February 11, 2001 but returned to work on April 4, 2001 and to full duty on April 30, 2001 after being released by her treating physician, Dr. Charles T. Luecker, a Board-certified orthopedic surgeon.

On July 27, 2001 the Office asked Dr. Luecker to provide an opinion on the permanent impairment to appellant's upper extremities caused by the accepted condition. Dr. Luecker responded that appellant had sustained no permanent impairment to her right upper extremity. In a letter dated September 11, 2001, appellant disputed Dr. Luecker's assessment, noting that when she saw him in April 2001 he told her that it would be an additional six weeks until she was fully healed. Appellant added that she still had pain every day and that her right wrist was considerably weaker.

On May 8, 2002 Dr. Luecker examined appellant, noting her difficulty with weight-bearing activities as well as weakness and continued sensitivity about the incision in her right wrist. He found a 20 percent loss of strength and stated that he would reassess her status regarding permanent partial impairment. On May 12, 2001 appellant applied for a schedule award.

On May 28, 2002 Dr. Luecker reported a two percent impairment rating for appellant's right upper extremity.¹ On June 2, 2002 Dr. Luecker completed an Office form, stating that the date of maximum medical improvement was June 2, 2002 and that appellant had a 10 percent impairment of the right upper extremity due to loss of function and a 20 percent impairment due to pain. The Office medical adviser reviewed Dr. Luecker's reports and determined that appellant had a six percent impairment of the right upper extremity due to weakness. The date of maximum medical improvement was April 2001.

On July 26, 2002 the Office issued a schedule award for a four percent impairment of appellant's left lower extremity, running from April 30 to September 8, 2001 for a total of \$10,066.68. On August 6, 2002 the Office informed appellant that the July 26, 2002 award contained two errors -- four percent and left lower extremity -- but that the amount of the award was correct for a six percent impairment of her right upper extremity.

Appellant requested reconsideration and submitted further medical evidence from Dr. Luecker, who found a 10 percent decrease in strength and a 20 percent impairment due to pain for a combined rating of 28 percent for appellant's right upper extremity, based on measurements with the Jamar dynamometer.²

The Office medical adviser reviewed Dr. Luecker's measurements and found a 2.3 percent impairment of appellant's right upper extremity, with maximum medical improvement in January 2002.

On December 20, 2002 the Office vacated its July 26, 2002 decision and issued a schedule award for a three percent impairment of appellant's upper right extremity, running from June 6 to August 10, 2002. The Office noted that the amount of the award -- \$5,309.46 -- was less than the award previously issued and that the Office would calculate the overpayment in a separate decision.

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

Section 8107 of the Federal Employees' Compensation Act³ 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.⁴ 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 and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁵ The

¹ Dr. Luecker referenced page 495 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, noting appellant's current symptoms and his physical strength findings.

² Dr. Luecker referred to Tables 16-11 on page 484 and 16-15 on page 492, but provided no grade of power loss and did not identify motor or sensory deficits.

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8107.

⁵ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

Act's implementing regulation has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule award losses.⁶

The fifth edition of the A.M.A., *Guides* became effective February 1, 2001. FECA Bulletin No. 01-05 (issued January 29, 2001) provides that any initial schedule award decision issued on or after February 1, 2001 will be based on the fifth edition of the A.M.A., *Guides*, even if the amount of the award was calculated prior to that date. Any schedule award decision on or after February 1, 2001, resulting from a reconsideration or hearing requested prior to that date, in which additional medical evidence is submitted, will be recalculated using the fifth edition.

In this case, the Office based its July 26, 2002 schedule award on the review of the Office medical adviser who stated that appellant's primary complaint was weakness and that she had a 20 percent loss of strength, according to Dr. Luecker's May 8, 2002 note. Using Table 16-34 on page 509 of the fifth edition of the A.M.A., *Guides*, the Office medical adviser initially calculated a six percent impairment.

Presented with Dr. Luecker's June 6, 2002 note and the September 25, 2002 addendum showing specific measurements, the Office medical adviser stated in a November 26, 2002 memorandum that he had "made a mistake" in calculating the six percent impairment rating. The Office medical adviser stated that he had incorrectly used strength impairment in rating appellant after her carpal tunnel surgical release. He noted that page 508 of the A.M.A., *Guides* states that motor weakness related to nerve injury must be based on section 16.5 and page 495 defines how to rate impairment after such release.

The Office medical adviser found a one percent residual neurological deficit and, using Table 16-11, rated appellant at four-fifths based on strength. He calculated a 2.5 percent impairment, using 25 percent of the maximum value 10 found in Table 16-15 for neurological weakness. The Office then rounded this figure to three percent.

However, the Office medical adviser did not explain how he obtained a one percent neurological deficit or a four-fifths rating of strength. Page 495 states that after an optimal recovery time following surgical decompression of carpal tunnel syndrome, three scenarios are possible: if positive clinical findings of median nerve dysfunction are present, impairment is rated according to sensory or motor deficits; with normal sensibility and opposition strength or abnormal sensory or motor latencies or abnormal EMG testing, an impairment rating not to exceed five percent may be justified; finally, with normal sensibility, opposition strength and nerve conduction studies, there is no objective basis for an impairment rating.⁷

Proceedings under the Act are not adversarial in nature; nor is the Office a disinterested arbiter. The Office shares responsibility in the development of the evidence to see that justice is done.⁸

⁶ 20 C.F.R. § 10.404 (1999).

⁷ A.M.A., *Guides* at 495.

⁸ *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

In this case, the evidentiary basis for the Office medical adviser determination of appellant's impairment rating is not fully addressed nor did he discuss Dr. Luecker's 28 percent rating, based on pain and strength measurements. Accordingly, the Board will set aside the Office's December 20, 2002 decision and remand this case for the Office to prepare a statement of accepted facts and refer appellant and the medical records to an appropriate specialist to determine the date of maximum medical improvement⁹ and extent of impairment of her upper right extremity.¹⁰

The December 20, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
April 17, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁹ Initially the Office medical adviser found the date of maximum medical improvement to be April 2001 when appellant returned to work. He later set this date as January 2002. Dr. Luecker found the date to be June 2, 2002.

¹⁰ *Marco A. Padilla*, 51 ECAB 202, 208 n.15 (1999) (stating that, although a claimant has the burden of establishing his entitlement to compensation, the Office should assist in this process in particular circumstances).