

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT R. RUSIN and U.S. POSTAL SERVICE,  
POST OFFICE, Las Vegas, NV

*Docket No. 03-1386; Submitted on the Record;  
Issued August 25, 2003*

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DECISION and ORDER

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

The issue is whether appellant has more than a five percent permanent impairment of both the left and right upper extremities, for which he received a schedule award.

On January 8, 2002 appellant, then a 53-year-old letter carrier, filed an occupational disease claim for bilateral carpal tunnel syndrome. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome. Additionally, the Office authorized bilateral carpal tunnel releases, which appellant underwent on June 5 and July 17, 2002.

On November 19, 2002 appellant filed a claim for a schedule award. The Office referred appellant to Dr. Jerrold M. Sherman, a Board-certified orthopedic surgeon, for an impairment rating. In a report dated January 14, 2003, Dr. Sherman diagnosed status post bilateral carpal tunnel release without neurologic deficit. Appellant's chief complaint was some weakness of grip in both hands. On physical examination of both wrists and hands, Dr. Sherman reported a 100 percent normal, pain-free range of motion of the wrist, hand and fingers. He further stated that appellant's claim of weakness in both hands was to be accepted in that there is routinely a 25 percent grip strength loss after surgery. Dr. Sherman further noted that a 25 percent grip strength loss is reasonable when appellant's strength is measured and his body habitus is taken into account. He also stated that appellant reached maximum medical improvement in September 2002. The Office later referred the case file to its medical adviser, who determined that appellant had a five percent permanent impairment of both his left and right upper extremities.

By decision dated April 10, 2003, the Office granted appellant a schedule award for a five percent permanent impairment of the left and right upper extremities. The award covered a period of 31.2 weeks.

The Board finds that appellant failed to establish that he has more than a five percent permanent impairment of the left and right upper 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.<sup>1</sup> 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 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.<sup>2</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>3</sup>

Although Dr. Sherman reported a 25 percent loss of grip strength bilaterally, he did not provide a specific impairment rating under the A.M.A., *Guides* (5<sup>th</sup> ed. 2001). In a report dated March 9, 2003, the Office medical adviser reviewed Dr. Sherman's January 14, 2003 findings and determined that appellant had no impairment due to loss of range of motion. However, the Office medical adviser found an impairment due to loss of strength and/or impairment due to sensory deficit or pain. Utilizing Tables 16-10 and 16-11 at pages 482 and 484, respectively, she explained that the level of impairment was Grade 4 and 4, which equated to 10 percent. The Office medical adviser further explained that, in accordance with Table 16-15, at page 492, the maximum combined impairment based on the median nerve was 45 percent. The 10 percent impairment when multiplied by the 45 percent impairment equaled a 5 percent impairment bilaterally. The Board finds that the Office medical adviser properly determined appellant's impairment due to carpal tunnel syndrome in accordance with Chapter 16.5d of the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>4</sup> Accordingly, appellant has failed to establish that he has more than a five percent permanent impairment of his left and right upper extremities.

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> FECA Bulletin No. 01-05 (issued January 29, 2001).

<sup>4</sup> *Robert V. DiSalvatore*, 54 ECAB \_\_\_\_ (Docket No. 02-2256, issued January 17, 2003).

The April 10, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
August 25, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member