

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD A. FLORES and U.S. POSTAL SERVICE,
POST OFFICE, San Jose, CA

*Docket No. 03-1455; Submitted on the Record;
Issued August 20, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained more than a five percent permanent impairment of his right upper extremity and a five percent permanent impairment of his left upper extremity, for which he received a schedule award.

On November 24, 2000 appellant, then a 55-year-old letter carrier, filed a claim alleging that he sustained bilateral carpal tunnel syndrome due to engaging in repetitive upper extremity tasks at work. In February 2001, the Office of Workers' Compensation Programs accepted that appellant sustained bilateral carpal tunnel syndrome.¹ In May and June 2001, he underwent right and left carpal tunnel release surgeries which were authorized by the Office.²

Appellant filed a claim for a schedule award and, in May 2002, the Office referred him to Dr. Allen Kaisler-Meza, a physician Board-certified in physical medicine and rehabilitation, for evaluation of his upper extremity impairment. In a report dated May 30, 2002, Dr. Kaisler-Meza reported his examination findings and diagnosed bilateral carpal tunnel syndrome. He reported that for each wrist appellant had extension of 60 degrees, flexion of 60 degrees, ulnar deviation of 40 degrees and radial deviation of 20 degrees. Dr. Kaisler-Meza indicated that motor strength of the proximal musculature, including shoulder girdle muscles and elbow flexors and extensors, was graded 5/5; motor strength for wrist flexors and extensors was graded 5/5; and intrinsic hand

¹ Nerve conduction studies from March 2001 supported a diagnosis of moderate bilateral carpal tunnel syndrome.

² Appellant stopped work for various periods and returned to light-duty work for the employing establishment in August 2001. He retired from the employing establishment in November 2001.

strength was graded 4+/5.³ He indicated Tinel's maneuver over the median nerves bilaterally elicited localized pain and that Phalen's maneuver elicited numbness in the left second digit.⁴

In a report dated September 8, 2002, Dr. Ellan Pichey, an Office medical consultant, indicated that she had reviewed the report of Dr. Kaisler-Meza. She indicated that, according to section 16.5d of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), appellant had a five percent permanent impairment of his right upper extremity and a five percent permanent impairment of his left upper extremity due to entrapment neuropathy. By award of compensation dated September 27, 2002, the Office granted appellant a schedule award for a five percent permanent impairment of his right upper extremity and a five percent permanent impairment of his left upper extremity. The award ran for 31.2 weeks from February 1 to September 7, 2002.

On October 21, 2001 appellant requested reconsideration of his claim. He submitted a September 17, 2002 report of Dr. Edward Damore, an attending Board-certified orthopedic surgeon,⁵ who indicated that appellant had lost 25 percent of his preinjury capacity for heavy lifting, grasping, pushing and pulling.⁶ In a report dated December 11, 2002, Dr. Pichey indicated that she had reviewed the September 17, 2002 report of Dr. Damore and noted that appellant continued to have a five percent permanent impairment of his right upper extremity and a five percent permanent impairment of his left upper extremity based on section 16.5d of the A.M.A., *Guides*. She stated that appellant had no impairment based on limited range of motion, that appellant's grip strength measurement were variable, and that residual weakness was already accounted for in the sensory deficit impairment rating she provided. By decision dated December 26, 2002, the Office denied modification of its September 27, 2002 decision.

The Board finds that appellant did not meet his burden of proof to establish that he sustained more than a five percent permanent impairment of his right upper extremity and a five percent permanent impairment of his left upper extremity, for which he received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act⁷ has the burden of establishing the essential elements of his claim by the weight of the reliable,

³ He indicated that, upon three tests, appellant exhibited grip strength on the right of 60, 50 and 50 pounds and on the left of 80, 70 and 70 pounds.

⁴ Dr. Kaisler-Meza indicated that sensation was notable for intact pinprick sensation and position sense, but that there was subtle loss of two-point discrimination in the median nerve distribution (first and second digits) compared with the ulnar nerve digits (fourth and fifth digits).

⁵ Appellant had submitted a portion of this report on September 26, 2002, but it is unclear whether the Office considered this evidence in connection with its September 27, 2002 decision.

⁶ Dr. Damore indicated that appellant's grip strength averaged 59 pounds on the left and 57 pounds on the right and that for each wrist he had extension of 80 degrees, flexion of 80 degrees, ulnar deviation of 30 degrees and radial deviation of 20 degrees.

⁷ 5 U.S.C. §§ 8101-8193.

probative, and substantial evidence,⁸ including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.⁹

The schedule award provisions of the Act¹⁰ and its implementing regulation¹¹ 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 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.¹²

In the present case, Dr. Pichey, an Office medical consultant, properly determined in reports dated September 8 and December 11, 2002 that, according to section 16.5d of the A.M.A., *Guides* (5th ed. 2001), appellant had a five percent permanent impairment of his right upper extremity and a five percent permanent impairment of his left upper extremity. This section provides that an individual who remains symptomatic after an optimal recovery time following surgical decompression for carpal tunnel syndrome would fall into one of three categories. With respect to the category relevant to appellant's condition, an individual who has normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal electromyogram testing of the thenar muscles will be deemed to still have residual carpal tunnel syndrome present. In such a case, the A.M.A., *Guides* provides that "an impairment rating not to exceed 5 [percent] of the upper extremity may be justified."¹³ The record reveals that appellant had essentially normal sensibility and opposition strength but had some abnormal sensory deficits.¹⁴

Dr. Pichey properly determined that appellant's range of wrist motion would not entitle him to any impairment rating on such a basis. Dr. Kaisler-Meza reported that for each wrist appellant had extension of 60 degrees, flexion of 60 degrees, ulnar deviation of 40 degrees and radial deviation of 20 degrees and Dr. Damore reported that for each wrist he had extension of 80 degrees, flexion of 80 degrees, ulnar deviation of 30 degrees and radial deviation of 20 degrees. However, the application of these findings to the relevant standards of the A.M.A., *Guides* does

⁸ *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

⁹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹⁰ 5 U.S.C. § 8107.

¹¹ 20 C.F.R. § 10.404 (1999).

¹² *Id.*

¹³ Another category provides that in cases where there are positive clinical findings of median nerve dysfunction and electrical conduction delays, the impairment due to residual carpal tunnel syndrome should be rated according to the sensory and/or motor deficits described in sections 16.5a to 16.5d on pages 480 to 494. A.M.A., *Guides* 480-94. The record does not show that appellant had positive clinical findings of median nerve dysfunction or electrical conduction delays and therefore he would not fall within this category.

¹⁴ For example, appellant had abnormalities upon Tinel's and Phalen's maneuvers.

not yield any impairment rating.¹⁵ Dr. Kaisler-Meza and Dr. Damore both took grip strength measurements, but the Office medical consultant correctly noted that the assigned rating already took any residual weakness into account.¹⁶ Dr. Damore also indicated that appellant had lost 25 percent of his preinjury capacity for heavy lifting, grasping, pushing and pulling, but he did not explain how this ostensible deficit constituted an identifiable permanent impairment in accordance with the standards and protocols of the A.M.A., *Guides*.¹⁷ As the reports of Dr. Pichey provided the only evaluations which conformed with the A.M.A., *Guides*, they constitute the weight of the medical evidence.¹⁸

For these reasons, appellant has not shown that he sustained more than a five percent permanent impairment of his right upper extremity and a five percent permanent impairment of his left upper extremity, for which he received a schedule award.

The December 26 and September 27, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
August 20, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁵ A.M.A., *Guides* 467, 469, Figures 16-28, 16-31.

¹⁶ The A.M.A., *Guides* provides that grip strength would only be included in an impairment rating in rare circumstances. A.M.A., *Guides* 508-09. The evidence of the present case does not provide any indication that grip strength should be included in appellant's impairment rating as a separate element.

¹⁷ See *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

¹⁸ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).