

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD M. STOKES and U.S. POSTAL SERVICE,
AIR MAIL CENTER, Baltimore, MD

*Docket No. 02-2208; Submitted on the Record;
Issued February 7, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has greater than a nine percent permanent impairment of his left arm and an eight percent permanent impairment of his right arm.

On February 24, 1998 appellant, then a 53-year-old acting plant manager, filed a claim for a traumatic injury to his left leg, left wrist and low back sustained on February 3, 1998 when steps broke and he fell, landing on his hands and striking his left leg.

On October 20, 1998 appellant filed a claim for a schedule award.

On November 9, 1998 the Office of Workers' Compensation Programs advised appellant that it had accepted his claim for a left shin strain and contusion, a lumbar spine strain and a left wrist strain.

On May 25, 1999 appellant filed a claim for an occupational disease for carpal tunnel syndrome due to repetitive stress in grasping, keyboarding and filing.

On January 14, 2000 the Office advised appellant that it had authorized surgery for his bilateral carpal tunnel syndrome.

On February 15, 2000 the Office issued appellant a schedule award for a 16 percent permanent impairment of his left arm. This award was based on limited range of motion of appellant's left shoulder.

On May 3, 2001 appellant filed a claim for a schedule award for his bilateral carpal tunnel syndrome.

In a report dated April 2, 2002, appellant's attending physician, Dr. Howard J. Hoffberg, a Board-certified physiatrist, described findings of nerve conduction velocity studies of appellant's ulnar, radial and median nerves and stated that appellant had "attained maximum

medical improvement relative to his left wrist and conservative management of his right wrist. His continued symptoms, electrodiagnostic abnormalities and physical examination findings are indicative of a permanent partial impairment.” Dr. Hoffberg then stated:

“Based upon the A.M.A., *Guides*, [American Medical Association, *Guides to the Evaluation of Permanent Impairment*] [f]ifth [e]dition, [appellant] has a 50 percent sensory impairment to his right median nerve affecting the sensory fibers and a 50 percent sensory impairment to his left median nerve based upon carpal tunnel syndrome. In addition, there is a 60[-]percent sensory impairment to his left ulnar nerve at the wrist affecting the sensory fibers (Table 13-23, page 346). There is also a 15 percent each motor impairment to the bilateral median motor nerve with thenar weakness (Table 16-11, page 484). Using Table 16-15, page 492, the maximum median deficit is 39 percent for sensory and 10 percent for motor and the maximum ulnar sensory is 7 percent. Multiplying the sensory and motor impairments and combining the values, there is a 20 percent median sensory impairment each to the bilateral upper extremities and a 2 percent each median motor impairment to the upper extremities with a percent left ulnar sensory impairment to the upper extremities. This results in a total impairment rating of 22 percent to the right upper extremity and a 26 percent impairment to the left upper extremity.

“[Appellant] currently has no restrictions in range of motion in his hands and wrists.”

On May 1, 2002 the Office requested that one of its medical advisers review the statement of accepted facts, Dr. Hoffberg’s impairment rating and the medical evidence in the record and provide an opinion on whether appellant had an additional permanent impairment of the left arm and any permanent impairment of the right arm. On May 6, 2002 an Office medical adviser rated the permanent impairment of appellant’s arms due to restrictions in shoulder motion, concluding that appellant had an eight percent permanent impairment of the right arm and a nine percent permanent impairment of the left arm.

On June 3, 2002 the Office issued appellant a schedule award for an eight percent permanent impairment of the right arm and a nine percent permanent impairment of the left arm.

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

The schedule award provisions of the Federal Employees’ Compensation Act¹ and its implementing regulation² 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

¹ 5 U.S.C. § 8107.

² 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.

On May 3, 2001 appellant filed a claim for a schedule award for his bilateral carpal tunnel syndrome. He submitted an April 2, 2002 report from Dr. Hoffberg describing the impairments of his wrists and rating these impairments using the A.M.A., *Guides*. Despite this claim and evidence, the Office did not analyze whether appellant had any permanent impairment of his arms due to his accepted bilateral carpal tunnel syndrome. The case will be remanded to the Office for this purpose, to be followed by an appropriate schedule award.

The June 3, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
February 7, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member