

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA M. McCANN and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Southeastern, PA

*Docket No. 03-134; Submitted on the Record;
Issued February 24, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has more than a 20 percent permanent impairment of the right upper extremity and more than a 12 percent permanent impairment of the left upper extremity, for which she received a schedule award.

On January 31, 2001 appellant, a 40-year-old secretary, filed an occupational disease claim alleging that she sustained an employment-related injury to both her left and right hands. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome and bilateral tennis elbow.

On June 12, 2001 the Office granted appellant a schedule award for a 20 percent permanent impairment of the right upper extremity and a 12 percent permanent impairment of the left upper extremity. The award covered a period of 99.84 weeks.

On June 6, 2002 appellant requested reconsideration. The request was accompanied by a May 13, 2002 report from Dr. David Weiss, an osteopath specializing in orthopedic and hand surgery, who calculated a 33 percent permanent impairment of both upper extremities.

By decision dated July 16, 2002, the Office denied modification of the June 12, 2001 schedule award.

The Board finds that appellant failed to establish that she has more than a 20 percent permanent impairment of the right upper extremity and more than a 12 percent permanent impairment of the left upper extremity.

Section 8107 of the Federal Employees' Compensation Act¹ 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. The Act, however, does not specify the manner by which the percentage

¹ 5 U.S.C. § 8107.

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* (A.M.A., *Guides*) as the appropriate standard for evaluating schedule losses.²

The June 12, 2001 schedule award for permanent impairment of appellant's left and right upper extremities was based on the April 23, 2001 report, of Dr. Richard I. Zamarin, a Board-certified orthopedic surgeon.³ The Office medical adviser reviewed the relevant medical evidence, including Dr. Zamarin's April 23, 2001 report and he concurred with Dr. Zamarin's impairment rating.

Dr. Scott M. Fried, appellant's treating physician, found that appellant had a 60 percent permanent impairment of the right upper extremity and a 40 percent permanent impairment of the left upper extremity. Dr. Fried, however, did not clearly delineate how he obtained his impairment rating under the fifth edition of the A.M.A., *Guides* (2001). He merely noted that in his April 19, 2001 report, that appellant's "limitations are consistent with the A.M.A., [*Guides*]." As Dr. Fried did not specifically correlate his findings with the A.M.A., *Guides*, his April 19, 2001 impairment rating is insufficient to establish the extent of appellant's permanent impairment.⁴

In contrast, Dr. Zamarin explained that he calculated appellant's permanent impairment in both her left and right upper extremities in accordance with Tables 16-10 and 16-15 of the A.M.A., *Guides* (5th ed. 2001). Under Table 16-10 at page 482 of the A.M.A., *Guides*, Dr. Zamarin classified appellant's sensory deficit resulting from peripheral nerve disorders as Grade 3, which allows for a maximum sensory deficit of 60 percent. He noted that a 50 percent sensory deficit on the right and a 30 percent sensory deficit on the left. He explained that the greater rating on the right was because of the anesthesia appellant has in her third and radial border of her fourth finger. Pursuant to Table 16-15 at page 492 of the A.M.A., *Guides*, the maximum percentage upper extremity impairment due to sensory deficit involving the median nerve is 39 percent. To determine the impairment of the upper extremity due to sensory deficit you multiply the maximum upper extremity impairment for sensory deficit of the median nerve (39 percent) by the severity of sensory deficit on both the right and left upper extremity (50 percent and 30 percent, respectively). This calculation results in a percentage impairment of 19.5 on the right and 11.7 on the left, which Dr. Zamarin properly rounded-up to 20 percent and 12 percent, respectively. As previously noted, the Office medical adviser concurred with Dr. Zamarin's impairment rating.

² 20 C.F.R. § 10.404 (1999). On January 29, 2001 the Office announced that effective February 1, 2001, schedule awards would be determined in accordance with the A.M.A., *Guides* (5th ed. 2001). FECA Bulletin No. 01-05 (January 29, 2001). This action was in accordance with the authority granted the Office under 20 C.F.R. § 10.404 (1999).

³ The employing establishment referred appellant to Dr. Zamarin for a fitness-for-duty examination.

⁴ *Lela M. Shaw*, 51 ECAB 372 (2000).

In his May 13, 2002 report, Dr. Weiss calculated a 33 percent permanent impairment of both upper extremities. His overall rating consisted of a 30 percent impairment for loss of grip strength combined with a 3 percent impairment for pain in both extremities. Dr. Weiss relied on Table 16-34 at page 509 of the A.M.A., *Guides* to calculate appellant's 30 percent impairment due to loss of grip strength. And he relied on Figure 18-1 at page 574 to calculate appellant's 3 percent impairment due to pain.

The Office medical adviser reviewed Dr. Weiss' May 13, 2002 report and correctly noted that the A.M.A., *Guides* at page 494 state that "[i]n compression neuropathies, additional impairment values are not given for decreased grip strength." As Dr. Weiss attributed 30 percent of appellant's impairment to a loss of grip strength, the Office medical adviser indicated that an increase over the prior award was unwarranted.

Section 16.8 of the fifth edition of the A.M.A., *Guides* at page 508 states in relevant part:

"[I]mpairment due to loss of strength *could be combined* with the other impairments, *only* if based on unrelated etiologic or pathomechanical causes. *Otherwise, the impairment ratings based on objective anatomic findings take precedence.* Decreased strength *cannot* be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts (e.g., thumb amputation) that prevent effective applications of maximal force in the region being evaluated." (Emphasis in the original.)

In FECA Bulletin No. 01-05, the Office explained that the criteria for diagnosing and rating weakness not due to other ratable conditions and for using grip and pinch strength measurements, have been clarified in section 16.8. The Office further noted that the A.M.A., *Guides* now state that the loss of strength should be rated separately only if it is based on an unrelated cause or mechanism. Additionally, the Office explained that the fifth edition of the A.M.A., *Guides* "continues to say that 'motor weakness associated with disorders of the peripheral nervous system and various degenerative neuromuscular conditions are evaluated according to section 16.5 and Chapter 13.'" Accordingly, the Office advised that "grip and/or pinch strength should not be used to calculate upper extremity impairment caused by a compression neuropathy such as carpal tunnel syndrome."⁵

In the instant case, the Office properly denied modification of the June 12, 2001 schedule award, as Dr. Weiss' May 13, 2002, impairment rating was inconsistent with both the A.M.A., *Guides* and Office procedure regarding impairment ratings involving compression neuropathies.

Inasmuch as the Office medical adviser's calculation of appellant's left and right upper extremity impairments conforms to the A.M.A., *Guides* (5th ed. 2001), his finding constitutes the weight of the medical evidence.⁶ Accordingly, appellant has failed to provide any probative

⁵ FECA Bulletin No. 01-05 (January 29, 2001).

⁶ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

medical evidence that he has greater than a 20 percent permanent impairment of the right upper extremity and more than a 12 percent permanent impairment of the left upper extremity.⁷

The July 16, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 24, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁷ The Act provides that for a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1). In the instant case, appellant does not have a total, or 100 percent loss of use of his arms, but rather a 20 percent loss in his right arm and a 12 percent loss in his left arm. As such, appellant is entitled to 99.84 weeks of compensation.