

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA I. BRAINARD-SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Goodyear, AZ

*Docket No. 03-76; Submitted on the Record;
Issued July 16, 2003*

DECISION and ORDER

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

The issue is whether appellant is entitled to greater than a five percent schedule award for her right upper extremity impairment.

On July 9, 1997 appellant, then a 36-year-old machine operator, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that her employment duties, including working excessive overtime, lifting and loading heavy tubs, caused her to experience numbness in her right hand and swelling and pain in her right arm and shoulder. Appellant stopped working on September 4, 1997 due to pain.

In a March 8, 1997 report, Dr. Chester Christianson, an osteopath, diagnosed appellant with right shoulder tendinitis and carpal tunnel syndrome that he attributed to her employment. He indicated that she could return to work with restrictions.

In a July 30, 1997 decision, the Office of Workers' Compensation Programs accepted appellant's claim for right shoulder tendinitis and cervical strain. In a November 4, 1997 decision, the Office accepted the condition of right carpal tunnel syndrome.

On April 4, 1998 Dr. Elliot Katz, an orthopedic surgeon, performed a surgical release in appellant's right wrist. Appellant returned to work four hours a day on July 20, 1998 and increased her workload to six hours a day on October 9, 1998. In an October 21, 1998 progress note, Dr. Christianson wrote that appellant presented with an aching right shoulder and tingling in her wrist with restricted mobility in both. In a November 18, 1998 note, he indicated that appellant had severe pain in her shoulder, elbow, wrist and hand.

In a December 18, 1998 report, Dr. Christianson indicated that appellant was doing well with a full range of motion in her shoulder and released her to eight hours per day, effective January 20, 1999, with restrictions on lifting and repetitive motions. In a January 29, 1999 progress note, he reported appellant's full-time work resulted in severe pain in her shoulder and

wrist. In a July 30, 1999 progress note, Dr. Christianson indicated that appellant underwent surgery for right shoulder impingement.

In a February 1, 2000 progress note, Dr. Christianson wrote that appellant presented with a very tight shoulder. In an October 31, 2000 report, he indicated that she started a new job as distribution clerk that would not put as much strain on her right shoulder. In a May 8, 2001 report, Dr. Christianson wrote that appellant presented with wrist pain but almost complete motion in her shoulder.

In a January 3, 2002 progress note, Dr. Katz wrote that appellant had a baby in December 2000 and now was experiencing severe pain in her wrist and hand with numbness in her right third and fourth fingers. On that same day appellant applied for a schedule award.

In an April 17, 2002 report, Dr. Katz found appellant's wrist had a 60 degree dorsiflexion, a 60 degree palmar flexion, a 20 degree radial deviation, a 10 degree ulnar deviation, a 70 degree pronation and a 70 degree supination for a total of five percent wrist impairment based on minimal loss of motion and pain. He found her right shoulder had 180 degrees motion on forward elevation, 50 degrees backward elevation, 180 degrees of abduction, 105 degrees internal rotation and 80 degrees external rotation for a 5 percent impairment. He gave her a total impairment of the right upper extremity at 10 percent based on the American Medical Association, *Guides to the Evaluation Permanent Impairment*. He found her hand and finger motions to be normal and her date of maximum medical improvement was October 30, 2000.

The Office referred Dr. Katz's report to Dr. Ellen Pichey, an orthopedist, for a district medical consultant report. In an April 28, 2002 report, Dr. Pichey applied Dr. Katz's calculations and concluded, per section 16.5d, page 495 of the A.M.A., *Guides*, fifth edition, appellant had a permanent impairment due to residual right carpal tunnel syndrome of 5 percent, for a total of impairment of the right upper extremity of 5 percent. The date of maximum medical improvement was October 31, 2000.

In a May 15, 2002 decision, the Office found appellant entitled to a schedule award based on a five percent impairment of the upper extremity.

The Board finds this case must be remanded for further development.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,² including that she sustained an injury in the performance of duty as alleged and that her disability, if any, was causally related to the employment injury.³

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

The schedule award provisions of the Act⁴ and its implementing regulation⁵ 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.⁶

In determining whether a claimant has discharged his or her burden of proof and is entitled to compensation benefits, the Office is required by statute and regulation to make findings of fact.⁷ Office procedure specifies additional requirements for a final decision of the Office which denies an employee's claim for benefits. A final decision denying a claim must include findings of fact and provide "a correct description of the basis for denial so that the parties of interest will have a clear understanding of the precise defect of the claim and the kind of evidence which would tend to overcome it."⁸ These requirements are supported by Board precedent.⁹

The April 17, 2002 report by Dr. Katz found appellant with a 5 percent impairment of the wrist and 5 percent impairment of the shoulder for a total of 10 percent impairment of the right upper extremity. Yet when Dr. Pichey, acting as the Office's DMA consultant, reviewed his report she concluded, based on section 16.5(d), page 495 of the A.M.A., *Guides*, that appellant had only a five percent impairment based on residuals of carpal tunnel in her wrist. It appears from her April 28, 2002 report that Dr. Pichey ignored Dr. Katz's range of motion results for appellant's shoulder; that based on Figures 16-28 and 16-31, pages 467, 469, suggest an impairment of greater than five percent. The Board notes that section 16.5(d) does not appear to cover loss of motion.

This case is to be remanded for further development on the issue of the degree of permanent impairment appellant has in her right upper extremity with the calculations related to appellant's range of motion in her right wrist included.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ See *id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁷ 5 U.S.C. § 8124(a) provides: "The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.130 provides in pertinent part that the final decision of the Office "shall contain findings of fact and a statement of reasons."

⁸ The procedure manual states that the findings of fact should include the following: "(1) whether [a] timely claim for compensation was filed; (2) whether the injured person was a civil employee; (3) date and place of injury or alleged injury; (4) circumstances surrounding the injury or alleged injury; (5) nature and extent of injury or alleged injury; [and] (6) any other facts which are necessary to address each substantive allegation made concerning the issue on which the denial is based." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.9a (July 1993).

⁹ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

The May 15, 2002 decision of the Office of Workers' Compensation Programs is remanded for further development consistent with this decision.

Dated, Washington, DC
July 16, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member