

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MOLLIE BROOKS and DEPARTMENT OF THE NAVY,  
NAVAL CRIMINAL INVESTIGATIVE SERVICES, Perth Amboy, NJ

*Docket No. 03-872; Submitted on the Record;*  
*Issued July 10, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has more than a 10 percent impairment of her right and left upper extremities for which she received a schedule award.

This case has previously been before the Board. By decision dated September 18, 2001,<sup>1</sup> the Board reversed the Office of Workers' Compensation Programs decision regarding the termination of appellant's compensation benefits effective June 4, 1999 and remanded the case to the Office on the issue of a schedule award.<sup>2</sup> The Board found that the issue was not in posture for decision since the Office did not forward the September 17, 1997 medical report from appellant's treating physician, Dr. Ronald J. Potash, a Board-certified surgeon, to the Office medical adviser to determine the nature and percentage of impairment using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>3</sup> The Board's September 18, 2001 decision is hereby incorporated by reference.

Dr. Potash stated in his report, in pertinent part:

“Examination of the patient's wrist reveals palmar tenderness on the right. There is no dorsal aspect tenderness noted. The Tinel's sign is positive bilaterally. The Phalen's sign is positive bilaterally. Range of motion reveals dorsiflexion of 0-70/75 degrees on the right, 0-75/75 degrees on the left; palmar-flexion of 0-50/75

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<sup>1</sup> Docket No. 00-2083 (issued September 18, 2001).

<sup>2</sup> In June 1997, the Office accepted that appellant, then a 50-year-old secretary, sustained bilateral carpal tunnel syndrome due to typing and other repetitive motion she engaged in since June 1993. On October 15, 1997 appellant filed a schedule award claim for her upper extremities.

<sup>3</sup> A.M.A., *Guides* (4<sup>th</sup> ed. 1993); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.080.8 (April 1995), stating that, after obtaining all necessary medical evidence, appellant's file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment using the A.M.A., *Guides*.

degrees bilaterally; radial deviation of 0-20/20 degrees bilaterally; and ulnar deviation 0-35/35 degrees bilaterally.

“Examination of the patient’s bilateral hands revealed no dorsal or palmar tenderness noted. There is no swelling of the thumb or digits noted. There is no tenderness of the thumb or digits noted. There is a small 1-inch childhood scar between the MC [metacarpal] heads of the 2<sup>nd</sup> and 3<sup>rd</sup> digits on the right. There are no amputations noted. There is no atrophy noted.”

Regarding range of motion, he stated:

“Range of motion of the metacarpophalangeal joint extension-flexion of (-) 20-90/90 degrees involving the index, middle, ring and little finger.

“Range of motion of the proximal interphalangeal joint extension-flexion of 0-100/100 degrees involving the index, middle, ring and little finger.

“Range of motion of the distal interphalangeal joint extension-flexion of 0-35/35 degrees involving the index, middle, ring and little finger.

“Range of motion of the thumb reveals metacarpal phalangeal extension-flexion of (-) 5-65/65 degrees, palmar abduction of 0-70/70 degrees, radial abduction of 0-80/80 degrees.

“Grip strength testing performed via Jamar Hand Dynamometer reveals 22 kg. [kilograms] of force strength in the right hand versus 25 kg. of force strength in the left hand. The patient is right hand dominant. There is no opposition weakness or opposition measurement noted. Fist presentation is normal bilaterally.”

Under objective factors of disability, he noted:

“Wrists: Revealed palmar tenderness on the right. The Tinel’s sign is positive bilaterally. The Phalen’s sign is positive bilaterally. Range of motion is restricted involving dorsiflexion on the right, and palmar-flexion bilaterally.

“Grip strength testing performed via Jamar Hand Dynamometer reveals 22 kg. of force strength in the right hand versus 25 kg. of force strength in the left hand. The patient is right hand dominant.”

Using the fourth edition of the A.M.A., *Guides*, Dr. Potash found that appellant had a 31 percent combined permanent impairment of the right upper extremity and a 22 percent combined permanent impairment of the left upper extremity.<sup>4</sup> He stated that appellant reached maximum medical improvement on August 20, 1997.

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<sup>4</sup> Dr. Potash used Table 26, page 36 and Table 16, page 57 in the fourth edition of the A.M.A., *Guides*.

On October 15, 2001 the Office forwarded the case record, including Dr. Potash's September 17, 1997 report and a list of questions, to the district medical adviser for review. In a report dated December 26, 2001, the district medical adviser stated that appellant had "mild CTS [carpal tunnel syndrome]" and was positive for Phalen's test and Tinel's sign and opined that she had a 10 percent impairment of the right and left upper extremity. Regarding Dr. Potash's September 17, 1997 report, he noted:

"Dr. Potash presents no evidence of atrophy or sensory deficit or EMG [electromyogram]/NCV[nerve conduction velocity] evidence of neuropathy in the hand and wrist to support carpal tunnel impairment. The lost wrist motion presumably is related to the CTS and is therefore included in the 10 percent."<sup>5</sup>

By decision dated January 4, 2002, the Office granted appellant schedule awards for 10 percent impairment of each upper extremity.

Appellant disagreed with the Office's decision and requested an oral hearing. At the oral hearing held on August 28, 2002, appellant, through her counsel, argued that a second opinion examination was necessary and if the district medical adviser's report was considered probative, then a conflict in medical opinion existed between Dr. Potash and the medical adviser.

Appellant also submitted an April 2, 2001 report from Dr. Joseph P. Leddy, a Board-certified orthopedic surgeon, in which he stated, in pertinent part, that appellant was "slightly positive" for Tinel's and positive for Phalen's test. Dr. Leddy diagnosed carpal tunnel syndrome and recommended a surgical release.

By decision dated November 12, 2002, the Office hearing representative affirmed the January 4, 2002 decision on the grounds that the district medical adviser's report carried the weight of the medical evidence.

The Board finds that this case is not in posture for decision due to a conflict in medical opinion between Dr. Potash, appellant's attending physician, and the Office medical adviser regarding the percentage of impairment of appellant's upper extremities, thereby necessitating a referral to an impartial medical specialist pursuant to 5 U.S.C. § 8123(a) for resolution.

5 U.S.C. § 8123(a) states in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

Dr. Potash reported on September 17, 1997 that he applied Table 26, page 36 and Table 16, page 57 of the A.M.A., *Guides* in estimating that appellant had a 31 percent impairment of the right upper extremity and a 22 percent impairment of the left upper extremity. In measuring range of motion deficit, Dr. Potash found that palmar-flexion for appellant's right wrist was 0-50/75 degrees. In applying Table 26, page 36 to measure impairment due to loss of flexion, 50 degrees is equal to a 2 percent impairment. Dr. Potash also found the same results for palmar-flexion of appellant's left wrist. In measuring impairment due to nerve entrapment using Table

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<sup>5</sup> The district medical adviser noted the same comments for the left and right wrist.

16, page 57, Dr. Potash determined that appellant had between a moderate and severe impairment of the median nerve in the right wrist, which was equal to a 30 percent impairment. For nerve entrapment of the left wrist, Dr. Potash found that the degree of severity was moderate, which equaled a 20 percent impairment. Using the Combined Values Chart on page 322 of the A.M.A., *Guides*, Dr. Potash determined that appellant had a 31 percent total combined impairment of the right upper extremity and a 22 percent total combined impairment of the left upper extremity.<sup>6</sup>

On the other hand, the district medical adviser concluded that appellant had a 10 percent impairment of the right and left upper extremity according to the A.M.A., *Guides*. In applying Table 16, page 57 of the A.M.A., *Guides*, the district medical adviser determined that appellant only had a mild degree of severity of the median nerve in the right and left wrist, which equaled a 10 percent impairment of the right and left upper extremity. He also stated that Dr. Potash had provided no evidence of atrophy or sensory deficit or neuropathy in the hand and wrist to support carpal tunnel impairment. He also indicated that the lost wrist motion was presumably related to the carpal tunnel syndrome and was included in the 10 percent.

Since both Dr. Potash and the medical adviser applied the fourth edition of the A.M.A., *Guides* in calculating their individual percentages of impairment attributable to appellant's upper extremities as a result of the June 1, 1993 employment injury, and they computed percentage estimates of 31 percent and 10 percent for the right upper extremity and 22 percent and 10 percent for the left upper extremity, respectively, the Board finds that there is a conflict in medical opinion regarding the percentage of impairment of appellant's upper extremities. Accordingly, the case will be remanded for a resolution of the conflict.

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an impartial medical specialist. The specialist should provide medical rationale explaining how he or she reached the percentage of impairment and his or her application of the A.M.A., *Guides*, in estimating the percentage of impairment of appellant's upper extremities. After such development as the Office deems necessary, a *de novo* decision should be issued.

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<sup>6</sup> The Board notes that the combined values of 20 and 2 for the left upper extremity equals 21 percent, not 22 percent.

The November 12, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further development consistent with this decision of the Board.

Dated, Washington, DC  
July 10, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member