

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LILLIE H. COLE and U.S. POSTAL SERVICE,  
ACCOUNTING SERVICE CENTER, St. Louis, MO

*Docket No. 02-1871; Submitted on the Record;  
Issued June 5, 2003*

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DECISION and ORDER

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

The issue is whether appellant sustained more than a four percent permanent impairment of the right arm for which she received a schedule award.

On November 4, 1999 appellant, then a 56-year-old accounting clerk, filed an occupational disease claim alleging that she sustained right carpal tunnel syndrome due to her job activities. On May 25, 2000 appellant underwent surgery on her right hand.

By letter dated February 23, 2000, the Office of Workers' Compensation Programs accepted appellant's claim for right carpal tunnel syndrome. The Office granted appellant a schedule award for 12.48 weeks based on a 4 percent permanent impairment of the right arm by decision dated June 5, 2002.

By letter dated July 2, 2001, appellant requested an oral hearing before an Office hearing representative and the hearing was held on November 1, 2001. By decision dated and finalized December 20, 2001, the Office hearing representative affirmed the Office's June 5, 2001 decision.

By letter dated February 28, 2002, appellant requested reconsideration and submitted additional evidence. By decision dated March 27, 2002, the Office denied modification of its December 20, 2001 decision.

The Board finds that this case is not in posture for a decision due to an unresolved conflict in the medical opinion evidence.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation payable to employees

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In a report dated May 3, 2001, Dr. Kurt D. Merkel, a Board-certified orthopedic surgeon and an Office referral physician, provided findings on examination. He stated:

“Detailed findings related to [appellant’s] carpal tunnel surgery on the right show that she has normal 2-point discrimination in the right hand. There is no atrophy of the thenar or hypothenar or interosseous muscles. She has measurement of the wrist today measured by goniometer of 50 degrees of dorsiflexion [extension], 70 degrees palmar flexion, radial deviation 15 and ulnar deviation 25. The rest of the examination regarding wrist and hand [is] essentially normal. She has full range of motion of all her digits. Neurovascular examination is intact.”

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“[Appellant] had carpal tunnel release and has had good relief of her pain and numbness. She has been left with some mild residual loss of motion. Based upon her physical examination I feel that her impairment is best rated according to loss of motion in the wrist. According to figure 16-31 [of the fifth edition of the A.M.A., *Guides*], she would receive a 1 percent impairment for limitation of radial deviation. According to figure 16-28, she would also receive a two percent limitation of extension of the wrist and no limitation for flexion of the wrist. Therefore, she would receive a total of four [percent] impairment of the wrist.”<sup>3</sup>

Subsequent to the Office’s June 5, 2000 schedule award decision and its December 20, 2001 decision affirming that decision, appellant submitted a report dated February 1, 2002 from Dr. Bruce Schlafly, her attending orthopedic surgeon.<sup>4</sup> He stated:

“[Appellant] complains about residual tingling in the right hand, extending into the forearm. She states that at times she will experience muscle spasms in the

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<sup>3</sup> The impairments described by Dr. Merkel total three percent, not four percent. He did not explain how he determined the missing one percent but his finding of 25 degrees of ulnar deviation equals a 1 percent impairment according to Figure 16-31 at page 469 of the fifth edition of the A.M.A., *Guides*.

<sup>4</sup> Appellant earlier submitted a December 18, 2000 report from Dr. Schlafly in which he found that she had a 15 percent permanent impairment of the right upper extremity based on Table 16 at page 57 (entrapment neuropathy of the median nerve) of the then applicable fourth edition of the A.M.A., *Guides*. Also of record is a report dated August 17, 2001 in which Dr. Schlafly stated that appellant had some pain with writing and intermittent muscle spasms in the right hand resulting in a 15 percent permanent impairment of the right arm based on Table 16 at page 57 of the fourth edition of the A.M.A., *Guides*. However, this report is not based on the correct edition of the A.M.A., *Guides*. The fifth edition of the A.M.A., *Guides* became effective on February 1, 2001; see FECA Bulletin No. 01-05, issued January 29, 2001.

right hand. She finds it difficult to write for a long period of time with her right hand.... She complains about weakness in the right hand, stating that she has difficulty removing lids from jars.

“On exam[ination] today, she ... can demonstrate normal range of motion in the digits of the right hand. She has 56 degrees of right wrist dorsiflexion [extension] with 60 degrees of palmar flexion and 20 degrees of radial deviation with 30 degrees of ulnar deviation....

“My opinion is that [appellant] has permanent partial impairment of the right upper extremity due to her work-related carpal tunnel syndrome. Using the [f]ifth [e]dition of the A.M.A., *Guides*, I find that on Table 16-10 on page 482, [appellant] has a Grade III sensory/pain deficit, and based upon my clinical judgment, she has a 35 percent sensory deficit applied to the median nerve at the right wrist. Using Table 16-15 on page 492, her upper extremity impairment due to sensory deficit and pain is 35 percent of 39 percent, that is, 14 percent. Using Table 16-11 on page 484, I classify her as Grade IV muscle function, and using my clinical judgment, I find that she has motor deficit of 10 percent. Using Table 16-15 on page 492, I calculate her upper extremity impairment due to the motor deficit as 10 percent of 10 percent, that is, 1 percent. Her combined motor and sensory deficit in the right upper extremity due to the right carpal tunnel syndrome is 15 percent, using the Combined Values Chart on page 604.”

The Board finds that the February 1, 2002 report of Dr. Schlafly is sufficient to create a conflict in the medical opinion evidence with that of Dr. Merkel as to the degree and nature of appellant’s work-related permanent impairment of her right arm, necessitating referral to an impartial medical specialist.

Dr. Schlafly’s February 1, 2002 report is based on correct application of the applicable edition of the A.M.A., *Guides*, the fifth edition, to his findings on examination of appellant regarding her sensory and motor deficits due to her accepted condition of right carpal tunnel syndrome. The February 1, 2002 report is also consistent with his earlier reports regarding appellant’s degree of right arm impairment. The February 1, 2002 report of Dr. Schlafly is sufficient to create a conflict with the May 3, 2001 report of Dr. Merkel that was the basis for the Office’s granting of a schedule award for a four percent permanent impairment of appellant’s right arm. Section 8123(a) of the Act provides, 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.”<sup>5</sup>

On remand, the Office should refer appellant to an appropriate Board-certified impartial medical specialist for a thorough examination and evaluation of the degree and nature of permanent impairment of her right upper extremity based on the fifth edition of the A.M.A., *Guides*.

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<sup>5</sup> 5 U.S.C. § 8123(a); see *James P. Roberts*, 31 ECAB 1010 (1980).

The decisions of the Office of Workers' Compensation Programs dated March 27, 2002 and December 20, 2001 are set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, DC  
June 5, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member