

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGELA R. MILLER and U.S. POSTAL SERVICE,
POST OFFICE, Colorado Springs, CO

*Docket No. 03-876; Submitted on the Record;
Issued June 10, 2003*

DECISION and ORDER

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

The issue is whether appellant has more than a three percent permanent impairment of each of the upper extremities for which she received a schedule award.

On December 23, 1999 appellant, then a 37-year-old letter carrier, filed an occupational disease claim alleging that she sustained tendinitis causally related to factors of her federal employment. The Office of Workers' Compensation Programs accepted her claim for bilateral de Quervain's tenosynovitis and bilateral ganglion cysts.¹ Appellant began working in a limited-duty capacity.

By decision dated January 30, 2002, the Office reduced appellant's compensation to zero based on its determination that her actual earnings in her position as modified letter carrier effective November 3, 2001 fairly and reasonably represented her wage-earning capacity.

In a letter dated January 30, 2002, the Office informed appellant that in order to obtain a schedule award she should submit an impairment evaluation from her attending physician when she reached maximum medical improvement.

In an impairment evaluation dated March 29, 2002, Dr. Thomas A. Eskestrand, a Board-certified orthopedic surgeon and appellant's attending physician, opined that she had a 17 percent impairment of the whole person. He found that, for the left wrist, appellant had 50 degrees of flexion which constituted a 1 percent impairment, 55 degrees of extension which constituted a 1 percent impairment, 15 degrees of radial deviation which constituted a 1 percent impairment and 30 degrees of ulnar deviation which constituted a 0 percent impairment. Dr. Eskestrand added his impairment findings and determined that appellant had a 3 percent impairment due to loss of range of motion. He further found that appellant had a 12 percent

¹ The Office authorized the surgical removal of appellant's ganglion cysts on February 1, 2001.

permanent impairment of the left upper extremity due to cumulative trauma disorder.² He added the 3 percent impairment due to loss of range of motion to the 12 percent impairment due to cumulative trauma disorder and found that appellant had a 15 percent impairment of the left upper extremity.

For appellant's right wrist, Dr. Eskestrand found that 65 degrees of flexion constituted a 0 percent impairment, 50 degrees of extension constituted a 2 percent impairment, 15 degrees radial deviation constituted a 1 percent impairment and 30 degrees of ulnar deviation constituted a 0 percent impairment. He added his impairment findings and determined that appellant had a 3 percent impairment due to loss of range of motion. Dr. Eskestrand next determined that appellant had a 12 percent impairment of the right upper extremity due to cumulative trauma disorder, which he added to the 3 percent impairment due to loss of range of motion to find a 15 percent permanent impairment of the right upper extremity. In a report dated April 16, 2002, Dr. Eskestrand opined that appellant had reached maximum medical improvement on February 5, 2002.

On July 29, 2002 an Office medical adviser reviewed Dr. Eskestrand's impairment evaluation and determined that appellant had a three percent impairment of the bilateral upper extremities based on loss of range of motion. The Office medical adviser noted that the A.M.A., *Guides* (5th ed. 2001) did not provide for an impairment due to cumulative trauma.³

On September 24, 2002 the Office issued a schedule award for each of the upper extremities.

The Board finds that appellant has a three percent impairment of the right upper extremity and a four percent impairment of the left upper extremity.

The schedule award provisions of the Federal Employees' Compensation Act,⁴ and its implementing federal regulation,⁵ 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all

² Dr. Eskestrand utilized Table 18 on page 58 of the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* in finding appellant's impairment due to cumulative trauma disorder.

³ By letter dated November 27, 2002, appellant requested reconsideration of her claim and submitted additional medical evidence. On January 4, 2003 a second Office medical adviser indicated that a three percent bilateral upper extremity impairment was proper. He stated, "Cumulative trauma is expressed in the specific anatomic or physiologic abnormalities that is defined as ratable by the A.M.A., *Guides*, 5th edition." In a letter dated January 31, 2003, the Office informed appellant that she had received a schedule award for a three percent bilateral upper extremity impairment because a rating due to cumulative trauma was inappropriate. The Office did not, however, issue a decision on appellant's request for reconsideration.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

claimants.⁶ Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁷

Dr. Eskestrand, a Board-certified orthopedic surgeon and appellant's attending physician, applied the fourth edition of the A.M.A., *Guides* in finding that appellant had a nine percent bilateral impairment of the upper extremities.⁸ However, the relevant edition of the A.M.A., *Guides* is the fifth edition. The Office medical adviser properly applied the tables and pages of the fifth edition of the A.M.A., *Guides* to Dr. Eskestrand's findings. He found that, for the left wrist, 50 degrees of flexion constituted a 1 percent impairment,⁹ 55 degrees of extension constituted a 1 percent impairment,¹⁰ 15 degrees of radial deviation constituted a 1 percent impairment,¹¹ and 30 degrees of ulnar deviation constituted no impairment.¹² The Office medical adviser added the impairment percentages and concluded that appellant had a total left upper extremity impairment of 3 percent. For the right wrist, the Office medical adviser determined that 65 degrees of flexion constituted no impairment,¹³ 50 degrees of extension constituted a 2 percent impairment,¹⁴ 15 degrees of radial deviation constituted a 1 percent impairment,¹⁵ and 30 degrees of ulnar deviation constituted no impairment,¹⁶ which when added yielded a total right upper extremity impairment of 3 percent. The Office medical adviser further noted that the fifth edition did not provide for an impairment due to cumulative trauma. However, the Board notes that, according to Figure 16-28 on page 467 of the A.M.A., *Guides*, 50 degrees of flexion for appellant's left wrist constitutes a 2 percent impairment of the upper extremity rather than the 1 percent found by the Office medical adviser. When added to the one percent impairments due to loss of radial deviation and extension, the total impairment of the left upper extremity equals four percent. The Board, therefore, finds that appellant has a four percent

⁶ 20 C.F.R. § 10.404(a).

⁷ See FECA Bulletin No. 01-5, issued January 29, 2001.

⁸ Dr. Eskestrand concluded that appellant had a 17 percent whole person impairment; however, the Act does not provide a schedule award for whole person impairments. 5 U.S.C. § 8107(c).

⁹ A.M.A., *Guides* at 467, Figure 16-28.

¹⁰ *Id.*

¹¹ *Id.* at 469, Figure 16-31.

¹² *Id.*

¹³ *Id.* at 467, Figure 16-28.

¹⁴ *Id.*

¹⁵ *Id.* at 469, Figure 16-31.

¹⁶ *Id.*

impairment of the left upper extremity and a three percent impairment of the right upper extremity.¹⁷

The decision of the Office of Workers' Compensation Programs dated September 24, 2002 is affirmed as modified.

Dated, Washington, DC
June 10, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁷ Appellant submitted new evidence subsequent to the Office's September 24, 2002 decision. The evidence included an October 22, 2002 report from Dr. Eskestrand in which he evaluated appellant's impairment pursuant to the fifth edition of the A.M.A., *Guides*. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c). The Board notes that appellant has requested reconsideration before the Office based on this evidence but the Office has not issued a decision on the reconsideration request.