

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FELIPPA C. SCALES and U.S. POSTAL SERVICE,  
POST OFFICE, Memphis, TN

*Docket No. 02-1652; Submitted on the Record;  
Issued March 7, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has more than a 24 percent impairment of the right arm and 12 percent impairment of the left thumb.

On November 14, 1998 appellant, then a 46-year-old carrier, was attacked by a dog while delivering mail. The Office of Workers' Compensation Programs accepted her claim for dog bite right arm, fracture of the right ulna and later expanded this to include left trigger thumbs and post-traumatic stress disorder. Appellant stopped work on November 14, 1998 and returned to a limited-duty position.

On October 25, 1999 appellant filed a claim for swelling of both wrists which occurred when she was casing mail. The Office accepted her claim for tenosynovitis of the wrists and paid appropriate compensation. Appellant did not stop work.

Appellant submitted medical records from Dr. William Warner, a Board-certified orthopedist, dated December 14, 1998 to July 22, 1999. He documented appellant's work-related injury and diagnosed her with dog bite with open comminuted distal ulna fracture with bone loss. His report of July 22, 1999 indicated that appellant developed trigger finger of her left hand due to overuse. Dr. Warner noted that on January 27, 1999 he performed a right iliac bone crest graft to the right ulna.

In a report dated January 3, 2000, Dr. Warner determined that appellant had an impairment rating of 32 percent of the right upper extremity and 8 percent of the left upper extremity. Dr. Warner noted supination of 15 degrees; radial deviation of 10 degrees; ulnar deviation of 5 degrees; palmer flexion of 20 degrees; and dorsiflexion of 10 degrees. With regard to the thumb, he provided the following figures: MP (metacarpophalangeal) flexion of 20 percent and IP (interphalangeal) flexion of 25 percent.

Dr. Warner's report and the case record were referred to an Office medical adviser, who determined, in accordance with the American Medical Association, *Guides to the Evaluation of*

*Permanent Impairment* (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*), that appellant sustained a 24 percent impairment of the right upper extremity and a 12 percent impairment of the left thumb.

On August 8, 2000 appellant filed a claim for a schedule award. She submitted a report from Dr. Mark S. Harriman, a Board-certified orthopedist, dated October 4, 2000. Dr. Harriman determined that appellant sustained a 32 percent impairment of the right upper extremity and 8 percent impairment of the left thumb.

In a decision dated November 16, 2000, the Office granted appellant a schedule award for a 24 percent impairment of the right upper extremity and 12 percent impairment of the left thumb.<sup>1</sup>

In a December 5, 2000 letter, appellant requested an oral hearing before an Office hearing representative.

In a decision dated March 19, 2001, the Office hearing representative determined that the case was not in posture for a hearing. The Office hearing representative remanded the case and indicated that the medical adviser did not indicate whether his calculations were in accordance with the A.M.A., *Guides*.

Dr. Warner's report and the case record were referred to the Office medical adviser, who determined in a report dated March 29, 2001, in accordance with the A.M.A., *Guides*, that appellant sustained 24 percent impairment of the right upper extremity and 12 percent impairment of the left thumb.

In a decision dated March 30, 2001, the Office granted appellant a schedule award for 24 percent impairment of the right upper extremity and 12 percent impairment of the left thumb.

In a letter dated September 28, 2001, appellant requested reconsideration and submitted a report from Dr. J.T. Gaylon, a specialist in orthopedics, dated November 30, 2001. Dr. Gaylon determined that appellant sustained a 48 percent permanent impairment of the right upper extremity and a 10 percent permanent impairment of the left upper extremity.

Dr. Gaylon's report and the case record were referred to the Office medical adviser, who determined that a second opinion report was in order due to the large discrepancy in the schedule award from the physicians.

The Office referred appellant for a second opinion evaluation to Dr. Carl W. Huff, a Board-certified orthopedist. In a report dated February 5, 2002, Dr. Huff indicated that he reviewed the records provided and performed a physical examination of appellant. He noted that the right elbow had normal flexion and extension; the right wrist flexion and extension was normal; pronation was 40 degrees; supination was 30 degrees; full range of motion of the MP and IP joint of the thumb; and full range of motion of the MP, proximal interphalangeal (PIP) and DIP (distal interphalangeal) joints of the fingers. Dr. Huff noted that he did not understand

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<sup>1</sup> The decision dated November 16, 2000 sets forth a 12 percent impairment rating for the right thumb; however, this appears to be a typographical error and should refer to the left thumb.

why appellant was not performing regular work based on his orthopedic examination and condition. He indicated that, based on the A.M.A., *Guides* (5<sup>th</sup> ed. 2001), appellant sustained a five percent impairment of the right upper extremity with no permanent impairment of the left upper extremity or thumb.

In a decision dated February 26, 2002, the Office granted appellant a schedule award for 24 percent permanent impairment of the right upper extremity and 12 percent permanent impairment of the left thumb.

The Board finds that appellant has no more than a 24 percent impairment of the right upper extremity and 12 percent impairment of the left thumb.

The schedule award provision of the Act<sup>2</sup> and its implementing regulation<sup>3</sup> 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.

On appeal, appellant alleges that he is entitled to a schedule award greater than 24 percent impairment of the right upper extremity and 12 percent impairment of the left thumb.

In a report dated January 3, 2000, Dr. Warner provided the following range of motion figures: supination of 15 degrees radial deviation of 10 degrees; ulnar deviation of 5 degrees; palmer flexion of 20 degrees; and dorsiflexion of 10 degrees. He determined appellant sustained a 32 percent impairment of the right upper extremity and 8 percent impairment of the thumb. However, Dr. Warner improperly calculated the rating<sup>4</sup> with regard radial deviation of 10 degrees, which results in a 2 percent impairment not a 12 percent impairment as cited by Dr. Warner.<sup>5</sup> The A.M.A., *Guides* provide that supination of 15 degrees is 3 percent impairment;<sup>6</sup> ulnar deviation of 5 degrees is 4 percent impairment;<sup>7</sup> palmer flexion of 20 degrees

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

<sup>4</sup> See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (an attending physician's report is of little probative value where the A.M.A., *Guides* were not properly followed); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

<sup>5</sup> See page 38, Figure 29 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 469, Figure 16-31 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>6</sup> See page 41, Figure 35 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 474, Figure 16-37 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>7</sup> See *supra* note 5.

is 7 percent impairment;<sup>8</sup> and dorsiflexion of 10 degrees is 8 percent impairment.<sup>9</sup> The A.M.A., *Guides* provide that to determine upper extremity impairment the range of motion losses are added to find the value for upper extremity impairment. These figures total a 22 percent impairment of the right upper extremity. With regard to the thumb, Dr. Warner provided the following figures: MP flexion of 20 degrees for an impairment rating of 8 percent;<sup>10</sup> and IP flexion of 25 degrees for an impairment rating of 4 percent<sup>11</sup> for a total permanent partial impairment of the thumb of 12 percent.

Dr. Gaylon, appellant's physician, submitted a report dated November 30, 2001 which determined that appellant sustained a 48 percent impairment of the right upper extremity and 10 percent impairment of the left thumb. However, Dr. Gaylon improperly calculated the rating with regard to supination, radial deviation and ulnar deviation.<sup>12</sup> He noted the following figures: supination of 20 degrees which is an impairment rating of 3 percent not 5 percent as noted;<sup>13</sup> radial deviation of 10 degrees which is an impairment rating of 2 percent not 10 percent as noted;<sup>14</sup> ulnar deviation of 5 degrees which is an impairment rating of 4 percent not 20 percent as noted.<sup>15</sup>

The second opinion physician, Dr. Huff, noted that the right elbow had normal flexion and extension; the right wrist flexion and extension was normal; pronation was 40 degrees for an impairment rating of 3 percent;<sup>16</sup> supination was 30 degrees;<sup>17</sup> full range of motion of the MP and IP joint of the thumb; and full range of motion of the MP, PIP and DIP joints of the fingers. He noted that he did not understand why appellant was not performing regular work based on his

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<sup>8</sup> See page 36, Figure 26 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 467, Figure 16-28 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>9</sup> *Id.*

<sup>10</sup> See page 27, Figure 13 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 457, Figure 16-15 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>11</sup> See page 26, Figure 10 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 456, Figure 16-12 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>12</sup> See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (an attending physician's report is of little probative value where the A.M.A., *Guides* were not properly followed); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

<sup>13</sup> See page 41, Figure 35 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 474, Figure 16-37 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>14</sup> See page 38, Figure 29 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 469, Figure 16-31 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>15</sup> *Id.*

<sup>16</sup> See *supra* note 13.

<sup>17</sup> *Id.*

orthopedic examination and condition. Dr. Huff indicated that, based on the A.M.A., *Guides*, (fifth ed. 2001), appellant sustained a 5 percent impairment of the right upper extremity with no impairment of the left upper extremity.<sup>18</sup>

The Board notes that Dr. Warner and the medical adviser calculated appellant's schedule award based on the fourth edition of the A.M.A., *Guides*. The fifth edition of the A.M.A., *Guides*<sup>19</sup> became effective February 1, 2001 and thereafter, the Office issued its March 30, 2001 and February 26, 2002 decisions. Upon review of both the fourth and fifth editions of the A.M.A., *Guides* the Board notes that there is no difference in the impairment rating in appellant's case.<sup>20</sup>

The Board finds that the medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Warner's January 3, 2000 report and reached an impairment rating of 24 percent impairment of the right upper extremity and 12 percent impairment of the thumb. The medical evidence of record establishes that appellant has no more than a 24 percent impairment of the right upper extremity and 12 percent impairment of the left thumb.

The decision of the Office of Workers' Compensation Programs dated February 26, 2002 is hereby affirmed.

Dated, Washington, DC  
March 7, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>18</sup> *Supra* note 13.

<sup>19</sup> *See* FECA Bulletin 01-05 (issued January 31, 2001).

<sup>20</sup> *Supra* note 3-11.