

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA J. KROSHUS and U.S. POSTAL SERVICE,
POST OFFICE, La Crosse, WI

*Docket No. 03-1401; Submitted on the Record;
Issued October 2, 2003*

DECISION and ORDER

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

The issue is whether appellant is entitled to more than a 19 percent impairment for her right upper extremity and an 18 percent impairment for her left upper extremity, for which she received a schedule award.

On March 20, 2000 appellant, then a 53-year-old clerk, filed a claim for occupational disease, stating that aches and pains in her arms and wrists were caused by her employment. In a report dated March 20, 2000, Dr. Larry Lindesmith, appellant's treating physician Board-certified in internal medicine, diagnosed bilateral tenosynovitis of the forearms, de Quervain's disease. On May 9, 2000 the Office of Workers' Compensation Programs accepted appellant's claim for bilateral wrist tenosynovitis with a January 15, 2000 date of injury.

On October 31, 2000 Dr. Charles H. Hayden, a Board-certified orthopedic surgeon with a specialty in hand surgery, performed a dorsal compartment release on the right wrist. On November 10, 2000 he performed a compartment release on the left wrist. On March 21, 2001 appellant returned to limited duty and on May 16, 2001 she accepted a limited-duty modified job.

On June 7, 2001 appellant filed a claim for a schedule award.

On June 26, 2001 the Office requested that Dr. William R. Scorby, appellant's treating physician Board-certified in preventive medicine, determine the extent of appellant's impairments of the right and left upper extremities based on her January 15, 2000 work-related injury. The Office advised Dr. Scorby to use the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) in his assessment. The Office also provided a copy of pages 436 and 437 of the A.M.A., *Guides* for Dr. Scorby's reference purposes.¹

¹ A.M.A., *Guides*, 436, Figure 16-1a, Upper Extremity Impairment Evaluation Record-Part I (Hand), and Figure 16-1b, Part 2 (Wrist, elbow and shoulder).

In a report dated July 13, 2001, Dr. Scorby stated that he was performing an impairment evaluation for appellant's bilateral extensor hand tendinitis. He related appellant's bilateral pain in her hands, especially thumb and wrist. Dr. Scorby noted that appellant had difficulty holding objects and that she dropped things frequently. He then evaluated appellant's right and left thumbs and fingers, wrists and elbows. Dr. Scorby initially found a 23 percent right upper extremity impairment based on a 25 percent hand impairment, and added 6 percent for wrist impairment for a total of 29 percent impairment of the right upper extremity. He initially found a 20 percent left upper extremity impairment based on a 22 percent hand impairment and added 4 percent for wrist impairment for a total of 24 percent impairment of the left upper extremity. Dr. Scorby noted no atrophy or sensory loss. In an attached report, he noted that appellant had moderate pain mostly in the dorsal radial wrists and the extensor tendons of the hand and thumbs. Dr. Scorby noted no sensory loss in the wrists, hand or fingers.

In a report dated August 3, 2001, the Office medical adviser reviewed Dr. Scorby's report and found that appellant had a 22 percent impairment of the right thumb, a 6 percent impairment of the right wrist, a 3 percent impairment due to wrist pain and a 3 percent impairment due to sensory deficit for a total of 19 percent right upper extremity impairment. He also found a 24 percent impairment of the left thumb, a 4 percent impairment of the left wrist, a 3 percent impairment for left wrist pain and a 3 percent impairment for sensory deficit for a total of 18 percent left upper extremity impairment.

By decision dated January 9, 2003, the Office awarded appellant a schedule award of 19 percent for right upper extremity impairment and 18 percent for left upper extremity impairment to run for 115.44 weeks from May 16, 2001 to August 2, 2003.

By letter dated February 13, 2003, appellant, through counsel, requested an oral hearing. By decision dated March 24, 2003, the Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that it was untimely filed. The Branch of Hearings and Review noted that the Office issued a decision on January 9, 2003 and that appellant's request for an oral hearing was postmarked February 13, 2003, more than 30 days from the date of the January 9, 2003 decision and thus was untimely filed. The Branch of Hearings and Review also noted that the issue appellant raised could be addressed in a request for reconsideration.

The Board finds that the case is not in posture for decision.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is a permanent disability involving the loss or loss of use, of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function. 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 scheduled losses.²

² Jacqueline S. Harris, 54 ECAB ____ (Docket No. 02-203, issued October 4, 2002).

In this case, the Office accepted appellant's claim for bilateral wrist tenosynovitis and requested that Dr. Scorby, her treating physician, determine the impairment of her bilateral upper extremities. Dr. Scorby provided an impairment evaluation on July 13, 2001, and found a 29 percent right upper extremity impairment and a 23 percent left upper extremity impairment and submitted range-of-motion findings on appellant's wrist, fingers and thumbs as well as an assessment of his wrist and hand pain.³

In the Office medical adviser's August 3, 2001 report, he stated that the range-of-motion findings of appellant's fingers were symmetric. However, Dr. Scorby found that appellant's distal interphalangeal joint of the index finger had 40 degrees of flexion on the left and 50 degrees of flexion on the right, and 80 degrees of motion of the left metacarpophalangeal joint (MPJ) with 80 degrees on the left; on the long finger, appellant had 90 degrees of motion on the right proximal interphalangeal joint (PIPJ) versus 100 degrees of motion on the left; and 80 degrees of motion of the left MPJ versus 90 degrees on the right. Regarding appellant's ring finger, he had 90 degrees of motion on the right PIPJ and 100 degrees of motion on the left, and of the MPJ, he had 70 degrees on the right MPJ and 80 degrees on the left. Appellant's small finger range-of-motion findings were 90 degrees of motion of the right PIPJ versus 100 degrees of the left, and 70 degrees of motion of the right MPJ with 80 degrees on the left.

Further, the Office medical adviser failed to account for Dr. Scorby's finger measurements in his August 3, 2001 report of appellant's impairment. In that report, the Office medical adviser noted appellant's thumb and wrist measurements but made no reference to appellant's finger measurements. The Board concludes that the Office medical adviser failed to apply the A.M.A., *Guides* to the range-of-motion measurements of appellant's fingers based on Dr. Scorby's data and thus the Office's January 9, 2003 decision must be set aside and the case remanded to the Office. Upon remand, the Office will refer the case to the Office medical adviser to determine appellant's upper extremity impairments by including his bilateral finger impairment evaluations as noted by Dr. Scorby and issue a *de novo* decision regarding appellant's entitlement to a schedule award.

³ The Board asked Dr. Scorby for an evaluation of appellant's bilateral upper extremities. Dr. Scorby stated that he was providing an impairment evaluation based on appellant's bilateral hand tendinitis. Nonetheless, he filled out each of the medical forms and provided range-of-motion findings and sensory assessments as requested by the Office.

The January 9, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.⁴

Dated, Washington, DC
October 2, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ The Board's disposition of the schedule award issue renders the Branch of Hearings and Review's March 24, 2003 decision moot.