

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA L. HENDERSON and SOCIAL SECURITY ADMINISTRATION,
Philadelphia, PA

*Docket No. 03-1446; Submitted on the Record;
Issued October 2, 2003*

DECISION and ORDER

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

The issue is whether appellant has more than a 12 percent impairment to her right arm, for which she received a schedule award.

On April 17, 1999 appellant, then a 44-year-old legal assistant, filed a claim (Form CA-1) alleging that on April 16, 1999 she slipped and fell, injuring her right hip, left hand and back. Although the Office of Workers' Compensation Programs initially denied appellant's claim, pursuant to an April 25, 2000 decision by a hearing representative, on May 15, 2000 the Office accepted appellant's claim for acute cervical strain with right-sided radiculopathy.

On December 10, 2001 appellant filed a claim for a schedule award and submitted an August 2, 2001 report from Dr. Nicholas P. Diamond, an osteopath, who noted that appellant had three work-related injuries, including the April 16, 1999 fall as well as injuries that occurred on August 18, 1998 and September 22, 1999. Dr. Diamond listed his diagnoses as: L5-S1 herniated nucleus pulposus, right L5 radiculopathy, C5-6 and C6-7 degenerative disc, chronic cervical and lumbosacral strain and sprain, chronic myofascial pain syndrome and right C5-6 radiculopathy. He noted that appellant's grip strength testing indicated that she had 12 kilograms of force strength in her right hand versus 20 kilograms of force strength in her left hand. Dr. Diamond then applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001) and determined that appellant had a 20 percent impairment for right grip strength deficit. With regard to the cervical spine, Dr. Diamond indicated:

“Examination reveals paravertebral muscular spasm and tenderness noted, the right greater than the left. There is trapezius and splenius capitis muscle spasm and tenderness noted. Range of motion is painful on forward flexion, and painful and restricted on backward extension, left lateral flexion, right lateral flexion, left rotation and right rotation. There is a positive foraminal compression test. Travell's trigger points are positive on the right.”

Utilizing the A.M.A., *Guides*,¹ Dr. Diamond concluded that appellant had a sensory deficit right C5 nerve root of four percent and a sensory deficit right C6 nerve root of four percent. He then indicated that appellant had a pain-related impairment pursuant to the A.M.A., *Guides* of 3 percent,² for a total right upper extremity impairment of 31 percent (20 percent for loss of grip strength plus 4 percent each for sensory deficit related to the right C5 and C6 nerve roots plus 3 percent for pain). Dr. Diamond also noted that appellant sustained a 24 percent impairment of her right lower extremity.

An Office medical adviser reviewed Dr. Diamond's report and, in a report dated January 22, 2002, noted that, since this claim was accepted for right cervical radiculopathy, a schedule award for the right upper extremity was appropriate for this claim. He addressed Dr. Diamond's report, as follows:

"Dr. Diamond used grip strength. However p[age] 508 of the [A.M.A.,] *Guides* allows grip strength impairment only if based on unrelated cause. Muscle weakness here is two [degrees] radiculopathy -- so root impairment for C5 root is used.

"Dr. Diamond used both C5 and C6 roots but C5 comes in the C5-6 interspace. C6 root is from C6-7 interspace. Only C5 root was documented with impairment.

"Finally Dr. Diamond awards an additional three percent for pain. However, pain is part of the sensory calculation for the nerve root and no diagnosis of chronic myofascial pain syndrome was accepted in this case."

The Office medical adviser evaluated appellant's impairment for schedule award purposes as follows:

"[Maximum] for C5 nerve root; 5 percent sensory [deficit] for pain; 30 percent muscle strength; Sensory: Grade 2 -- prevents some activity 80 percent: 80 percent x 5 percent = 4 percent; Motor Grade 4/5 -- 25 percent: 25 percent x 30 percent = 7.5 = 8 percent."

He then combined the 8 percent motor impairment with the 4 percent sensory impairment utilizing the Combined Values Chart to find that appellant had a 12 percent impairment of the right upper extremity based on Dr. Diamond's report.

By decision dated February 20, 2002, the Office issued a schedule award for a 12 percent impairment of the right upper extremity.

By letter dated March 1, 2002, appellant requested a hearing which was held on November 25, 2002. In a February 20, 2003 decision, the hearing representative affirmed the Office's February 20, 2003 schedule award for a 12 percent impairment of the right upper extremity.

¹ A.M.A., *Guides* 424, Tables 15-15 and 15-17.

² *Id.* at 574, Figure 18-1.

The Board finds that appellant has no more than a 12 percent impairment of her right arm, for which she received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,⁴ including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.⁵ The schedule award provisions of the Act⁶ and its implementing regulation⁷ 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 to that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* (5th ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁸

Appellant's claim was accepted for right cervical radiculopathy. Dr. Diamond, appellant's treating physician, found that appellant had a right grip strength deficit of 20 percent, a sensory deficit of right C5 nerve root of 4 percent and a sensory deficit right C6 root of 4 percent. He determined that this yielded a combined right upper extremity impairment of 28 percent. Dr. Diamond also added 3 percent for pain, for a total right upper extremity impairment of 31 percent. The Board finds that he did not properly apply the A.M.A., *Guides*. He found a right grip strength deficit of 20 percent; however, the A.M.A., *Guides* indicate that grip strength is only evaluated separately in rare occurrences where grip strength impairment is based on an unrelated cause. The A.M.A., *Guides* note that, because strength measurements are functional tests influenced by subjective factors that are difficult to control, further research is needed before loss of grip and pinch strength is given a larger role in impairment evaluation.⁹ Dr. Diamond did not provide any explanation as to why appellant's loss of strength could not be adequately considered by the other methods of the A.M.A., *Guides*. His additional three percent impairment rating for pain was also not proper. As noted by the Office medical adviser, pain is part of the sensory calculation for the nerve root and no diagnosis of chronic myofascial pain syndrome was accepted in this case. The Office medical adviser properly applied the A.M.A., *Guides*, and as noted, determined that appellant had a 12 percent impairment of the right upper extremity due to sensory and motor impairments. The Office medical adviser based his recommendation on Dr. Diamond's description of motor and sensory impairment. The Board

³ 5 U.S.C. §§ 8101-8193.

⁴ *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404 (1999).

⁸ *See id.*; *James Kennedy Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁹ A.M.A., *Guides*, Paragraph 16-8, page 507, 508.

finds that the Office medical adviser's report a 12 percent impairment of the right upper extremity, is entitled to probative weight.

The decision of the Office of Workers' Compensation Programs dated February 20, 2003 is hereby affirmed.

Dated, Washington, DC
October 2, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member