

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**MARILYN J. PHERIGO, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Des Moines, IA, Employer**

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**Docket No. 04-877  
Issued: August 30, 2004**

*Appearances:*  
*Marilyn J. Pherigo, pro se*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On February 17, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated March 6, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

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

**FACTUAL HISTORY**

Appellant, a 41-year-old postal clerk, filed a Form CA-2 claim for benefits on February 16, 1995 alleging that she developed a bilateral carpal tunnel condition. The Office accepted the claim for bilateral carpal tunnel syndrome. Appellant underwent right carpal tunnel release on October 6, 1995 and a left carpal tunnel release on November 3, 1995.

On November 6, 1996 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use, of her left and right upper extremities.

On May 22, 1997 the Office granted appellant schedule awards for a four percent permanent impairment of the right upper extremity and a six percent permanent impairment of the left upper extremity for the period March 12 to October 16, 1997, a total of 31.20 weeks of compensation.

On May 30, 2001 appellant filed a Form CA-2 claim for benefits, alleging that she developed work-related conditions in her left wrist, left arm and left shoulder. The Office accepted the claim for left carpal tunnel syndrome. The claim was subsequently expanded to include the condition of lateral epicondylitis.

On November 11, 2001 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use, of her left upper extremity.

On December 9, 2002 the Office referred appellant to Dr. Jerome G. Bashara, a Board-certified orthopedic surgeon, for an impairment evaluation to determine the extent of any permanent impairment to her left upper extremity.

In a report dated January 6, 2003, Dr. Bashara found that appellant had a five percent impairment of her left upper extremity based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He stated that appellant had a decreased range of motion of the left wrist, specifically finding that she lacked 10 degrees of dorsiflexion, 10 degrees of volar flexion and 10 degrees of radial deviation. Dr. Bashara found that, pursuant to Figure 16-28, page 467 and Figure 16-31, page 469 of the A.M.A., *Guides*, this resulted in a five percent upper extremity impairment resulting from appellant's accepted left-sided carpal tunnel condition.

In a report dated July 9, 2002, an Office medical adviser reviewed Dr. Bashara's findings and conclusions and concurred that appellant had a five percent permanent impairment for loss of use, of the left upper extremity. He found, however, that she was not entitled to a schedule award because she had previously been granted a schedule award for six percent impairment to the same part of the body in May 1997. The Office medical adviser stated that the previous processed award for left carpal tunnel syndrome must be subtracted from the current impairment rating to determine appellant's current entitlement to an award; this resulted in a minus one percent rating. He found that appellant was not entitled to any additional schedule award for a part of the body which had been surgically treated on two occasions for which she had already received a schedule award and which rendered a lower impairment rating stemming from the second surgery.<sup>1</sup>

In a decision dated March 6, 2003, the Office denied appellant's claim for an additional award. The Office stated that she had previously received a six percent impairment rating for the left upper extremity which was processed from March 12 through October 16, 1997. The Office found that the current medical evidence indicated that appellant had a five percent impairment and, therefore, she was not entitled to an additional schedule award.

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<sup>1</sup> Dr. Bashara indicated in his report that appellant underwent repeat carpal tunnel release on November 16, 2001.

## LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> set forth the number of weeks of compensation to be paid for permanent loss or loss of use, of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>3</sup> However, the Act does not specify the manner in which the percentage of loss of use, of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.<sup>4</sup>

## ANALYSIS

In this case, Dr. Bashara, an orthopedic surgeon, calculated a five percent impairment of the left upper extremity based on his calculation of decreased range of motion of appellant's left wrist. He determined that she lacked 10 degrees of dorsiflexion, 10 degrees of volar flexion and 10 degrees of radial deviation in her left wrist. He then applied these findings to the applicable figures of the A.M.A., *Guides*, resulting in a finding of a five percent upper extremity impairment resulting from appellant's accepted left-sided carpal tunnel condition. However, the Office medical adviser determined that appellant did not sustain an employment-related permanent impairment because the previously processed award for left carpal tunnel syndrome must be subtracted from the current impairment rating to determine her current entitlement to an award. Pursuant to Figure 16-28, page 467 of the A.M.A., *Guides* and Figure 16-31, page 469, 10 degrees less than normal equates to a 2 percent impairment derived from flexion, extension and radial deviation, respectively, which when totaled together in accordance with section 16.4g<sup>5</sup> amounts to a 6 percent impairment.<sup>6</sup> Since appellant had already received a six percent award, the Office found that she was not entitled to an additional schedule award based on her left-sided carpal tunnel syndrome. The probative medical evidence, therefore, does not establish that she is entitled to an additional schedule award.

As there is no other medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found that she was not entitled to more than a six percent permanent impairment to her left arm.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> Section 16.4g, titled "Wrist Motion Impairment", states: "The actual range-of-motion measurements are recorded and applied to the various impairment pie charts. *Impairment values for motion measurements falling between those shown in the pie chart may be adjusted or interpolated proportionally in the corresponding interval.*" (Emphasis in original). A.M.A., *Guides*, page 466.

<sup>6</sup> Though Dr. Bashara found that appellant had a five percent impairment, it still adds up to a zero impairment for appellant so any error is harmless.

**CONCLUSION**

The Board finds that appellant has no more than a six percent permanent impairment to her left arm.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 6, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 30, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member