

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID D. CUMINGS and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, TX

*Docket No. 03-1804; Submitted on the Record;
Issued January 22, 2004*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant had more than a six percent impairment of his right upper extremity for which he received a schedule award.

On November 26, 2001 appellant, then a 43-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he experienced pain in his right elbow, forearm and hand as a result of his federal duties. On January 15, 2002 appellant's claim was accepted for right lateral epicondylitis and right carpal tunnel syndrome. On April 24, 2002 appellant underwent a right endoscopic carpal tunnel release with first dorsal extensor compartment injection and lateral epicondylar injection. On October 16, 2002 appellant had a right elbow arthroscopy and synovectomy with medial and lateral epicondylar release.

On March 13, 2003 appellant filed a claim for a schedule award.

In a medical report dated March 5, 2003, Dr. A.J. Morris, a family practitioner, applying the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, noted a six percent impairment to appellant's right wrist. He also noted a 22 percent impairment to appellant's right hand due to loss of grip strength, which he noted "translates to a 20 percent impairment at this location." Dr. Morris then combined 6 percent and 20 percent and found that this resulted in an impairment of the right arm of 22 percent, or a 15 percent whole person impairment.

In a report dated April 3, 2003, an Office of Workers' Compensation Programs' medical adviser noted that appellant reached maximum medical improvement on March 3, 2003. He determined appellant's right upper extremity permanent impairment as follows:

"For sensory deficit, median nerve, below midforearm, T[able] 16-15, p[age] 492, 39 percent; Grade 4, T[able] 16-10, p[age] 482, Dr. Morris' estimate, x 15 percent; Total rounded, 6 percent;

“For grip strength loss, T[able] 16-32 and T[able] 16-34, p[age] 509;
49 kg [kilograms] – 31.5 kg
49 kg = 35.7 [s]trength [l]oss [i]ndex yields 20 PPI [permanent
partial impairment].

“The [f]ifth [e]dition of the [A.M.A.] *Guides* does not allow using grip strength loss in cases of carpal tunnel syndrome (compression neuropathies, p[age] 494). The claimant has had medial and lateral epicondylar releases but these do not seem to have been accepted as work related. The presence of work-related epicondylar releases would allow using grip strength in this determination. Until there is information indicating the acceptance of epicondylitis there is six percent PPI present resulting from carpal tunnel syndrome.

“Permanent impairment of the RUE [right upper extremity] is six percent.”

On April 21, 2003 the Office issued a schedule award for a six percent impairment of the right upper extremity.

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

The schedule award provisions of the Federal Employees’ Compensation Act¹ and its implementing regulation,² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ 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.⁴

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.⁵

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (2003).

³ 5 U.S.C. § 8107(c)(19).

⁴ See 20 C.F.R. § 10.606(b)(2).

⁵ See *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

In the instant case, Dr. Morris found that appellant had a 6 percent impairment to his right wrist and a 22 percent impairment of his right hand due to loss of grip strength, for a 25 percent impairment of his right arm. The Office medical adviser found that appellant had an impairment to his right upper extremity of six percent. With regard to impairment for grip strength loss, the Office medical adviser correctly noted that the A.M.A., *Guides* do not allow using grip strength loss in cases of carpal tunnel syndrome.⁶ However, in discounting loss of grip strength in appellant's case, the Office medical adviser made an erroneous factual assumption when he stated that this claim had not been accepted for epicondylitis. The Board notes that appellant's claim was accepted for both right lateral epicondylitis and right carpal tunnel syndrome. Under section 16.7d of the A.M.A., *Guides*, if an individual has had lateral epicondylitis or has had excision of the epicondyle, there may be some permanent weakness of grip as a result of the tendon rupture or surgery. The A.M.A., *Guides* note that, in such a case, impairment can be given on the basis of weakness of grip strength.⁷ Accordingly, the case will be remanded in order for the Office medical adviser to reconsider the nature and extent of appellant's permanent impairment.

The decision of the Office of Workers' Compensation Programs dated April 21, 2003 is hereby set aside and the case is remanded for further consideration pursuant to this opinion.

Dated, Washington, DC
January 22, 2004

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ A.M.A., *Guides* at 494; *see also Robert V. Disalvatore*, 54 ECAB ____ (Docket No. 02-2256, issued January 17, 2003).

⁷ A.M.A., *Guides* at 507, § 16.7d.