

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

<hr/>)	
VELMA RAE MEYERS, Appellant)	
)	
and)	Docket No. 03-2268
)	Issued: January 7, 2004
U.S. POSTAL SERVICE, POST OFFICE,)	
Hutchinson, KY, Employer)	
<hr/>)	

Appearances:
Velma Rae Meyers, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On February 23, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated August 11, 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 is entitled to a schedule award.

FACTUAL HISTORY

On June 15, 2002 appellant, then a 54-year-old distribution clerk, filed a notice of occupational disease alleging that she sustained an injury to her right wrist as a result of repetitive work. The Office accepted her claim for right wrist de Quervain's syndrome and authorized surgery. On August 22, 2002 Dr. Jonathan J. Loewen, a Board-certified orthopedic surgeon, performed a right de Quervain's release and tenosynovectomy of the right first dorsal wrist compartment. Appellant returned to limited duty on September 6, 2002 and to regular work on December 9, 2002.

In a report dated February 12, 2003, Dr. Loewen stated that appellant had a 10 percent right upper extremity impairment based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A. *Guides*) “based primarily on her decreased grip strength.”

On March 11, 2003 appellant filed a claim for a schedule award. On March 23, 2003 the Office medical adviser advised that appellant was eligible for an impairment rating due to the accepted condition of de Quervain’s syndrome and her subsequent surgical repair. The physician noted that in accordance with the A.M.A., *Guides*, maximum range of motion findings for the wrist must be made with a goniometer.

On April 3, 2003 the Office referred appellant, her medical records, a statement of accepted facts and a list of specific questions to Dr. Michael Munhall, Board-certified in physical medicine and rehabilitation, for a second opinion evaluation to determine whether she sustained a permanent impairment due to the accepted injury. On April 23, 2003 Dr. Munhall reviewed appellant’s history of injury and reported findings. Upon examination, he noted no evidence of swelling, erythema, synovitis, or joint deformity in the right wrist or hand and no evidence of atrophy of thenar or hypothenar hand. The physician advised that based on right wrist and thumb active range of motion findings, appellant had no permanent impairment of the right extremity.

On May 17, 2003 the Office medical adviser agreed with Dr. Munhall’s findings that appellant had a nonratable impairment of the right wrist.

In a May 20, 2003 decision, the Office denied appellant’s claim for a schedule award, finding that the weight of the medical evidence rested with Dr. Munhall, who found that appellant’s accepted condition did not result in any ratable impairment to her right upper extremity.

On July 7, 2003 appellant requested reconsideration and resubmitted Dr. Loewen’s February 12, 2003 report and a June 17, 2003 report from Dr. Loewen. The physician stated that appellant’s impairment rating for her right wrist, according to the fifth edition of the A.M.A., *Guides*, was no different from the fourth edition of the A.M.A., *Guides* and represented a 10 percent right upper extremity impairment based on decreased grip strength.

On August 11, 2003 the Office denied modification of the May 20, 2003 decision.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees’ Compensation Act¹ and its implementing regulation 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. However, the Act does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter

¹ 5 U.S.C. § 8101-8193.

which rests in the sound discretion of the Office. The Board has held, however, that 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 Office has adopted the A.M.A., *Guides*,² as an appropriate standard for evaluating schedule losses and to ensure equal justice for all claimants. The Board has concurred with the adoption of these A.M.A., *Guides*.³

ANALYSIS

In this case, the February 12 and June 17, 2003 reports from Dr. Loewen, generally referenced the A.M.A., *Guides* in support of his 10 percent impairment rating and did not refer to specific figures or tables. Although Dr. Loewen made an impairment rating based on loss of grip strength, the A.M.A., *Guides* provide at section 16.8a that the preferred method for assessing loss of strength is under Chapter 16.5 and Chapter 13. Only in rare cases, should loss of strength be separate. Dr. Loewen did not provide any explanation for his application of the A.M.A., *Guides*. Therefore, his reports are of diminished probative value in determining the extent of appellant's impairment for schedule award purposes.

In contrast, Dr. Munhall, the second opinion physician, performed an examination of appellant's right upper extremity, which revealed no evidence of swelling, erythema, synovitis, or joint deformity of the right wrist or hand and no evidence of atrophy of the thenar or hypothenar hand. Appellant's active right wrist range of motion measured with a goniometer revealed flexion 61 degrees, extension 60 degrees, radial abduction 26 degrees and ulnar deviation 30 degrees: her active right thumb carpometacarpal joint radial deviation revealed 48 degrees and right thumb interphalangeal joint 15 degrees measured with goniometer. Her two point discrimination was five millimeters at the right median and ulnar hand distribution. Dr. Munhall also noted inconsistent two-point discrimination throughout the right radial hand distribution. Monofilament testing revealed intact 4.31 throughout the right radial and median hand distribution and inconsistent 3.61 testing of the right radial and median hand distribution. He also noted that appellant had Grade 5 strength on right wrist flexion, extension and right extensor pollicis brevis and abductor pollicis longus. Dr. Munhall noted gross symmetry to light touch and positive pinwheel in hand distribution and trigger point of the right abductor pollicis longus. The physician further noted negative Tinel's sign, Phalen's test and Finkelstein's sign of the right wrist and Grade 5 strength of the right median and ulnar hand distribution. He concluded that appellant was status post right de Quervain's release/tenosynovectomy of the right extensor pollicis brevis and abductor pollicis longus and opined that appellant reached maximum medical improvement on December 9, 2002. Dr. Munhall determined that, based on the fifth edition of the A.M.A., *Guides*, utilizing

² A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002). *See also* 20 C.F.R. § 10.333.

³ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

Figures 16-28 and 16-31. For appellant's right wrist range of motion findings⁴ and, under Figures 16-8A and 16-12, for her right thumb, carpometacarpal joint and interphalangeal joint range of motion findings,⁵ appellant had a zero percent permanent impairment of the right upper extremity. The Office medical adviser reviewed Dr. Munhall's report and agreed that appellant had a zero percent impairment based on her work-related injury.

CONCLUSION

Therefore, the thorough and well-rationalized medical report of the Dr. Munhall, the second opinion physician, constitutes the weight of the medical evidence of record on this issue. The Board finds that appellant has not met her burden of proof to establish entitlement to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 11 and May 20, 2003 are affirmed.⁶

Issued: January 7, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ A.M.A., *Guide* at 467 and 469.

⁵ *Id.* at 456 and 459.

⁶ On appeal, appellant alleged that Dr. Munhall did not use a goniometer in his evaluation. Appellant offered no proof as to the truth of her assertion and thus her allegation is insufficient to require further development.