

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

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LINDA F. MOORE, Appellant )

and )

U.S. POSTAL SERVICE, PROCESSING & )  
DISTRIBUTION CENTER, Philadelphia, PA, )  
Employer )

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**Docket No. 05-1922  
Issued: December 29, 2005**

*Appearances:*

*Jeffrey P. Zeelander, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
WILLIE T.C. THOMAS, Alternate Judge

**JURISDICTION**

On September 16, 2005 appellant filed a timely appeal of the September 9, 2005 merit decision of the Office of Workers' Compensation Programs, which affirmed a schedule award for bilateral upper extremity impairment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has greater than five percent impairment of the left and right upper extremities, for which she received a schedule award.

**FACTUAL HISTORY**

Appellant, a 60-year-old letter sorting machine operator, has an accepted occupational disease claim for bilateral carpal tunnel syndrome (CTS), which arose on or about December 6, 1989. She underwent a right median nerve decompression on May 1, 1990.

Appellant returned to work in a limited-duty capacity on August 14, 1990. Over the next decade and a half she continued to perform various limited-duty assignments.

Dr. George L. Rodriguez, a Board-certified physiatrist, provided an impairment rating on January 12, 2005.<sup>1</sup> He reviewed appellant's medical records, including an October 2, 2003 electromyography that revealed C5, C6 radiculopathy and left CTS. Dr. Rodriguez described appellant's condition as bilateral hand numbness resulting from bilateral CTS, status post carpal tunnel release in 1990. He stated that appellant experienced significant bilateral hand pain and numbness.<sup>2</sup> Dr. Rodriguez found 22 percent bilateral upper extremity impairment due to combined motor and sensory deficits involving the median nerve. He indicated that appellant reached maximum medical improvement on July 9, 1991.

On March 17, 2005 the Office medical adviser reviewed the case record. The Office medical adviser found five percent bilateral upper extremity impairment. He explained that Dr. Rodriguez's examination findings did not support his impairment rating conclusion. The Office medical adviser also noted that Dr. Rodriguez's calculation was incorrect.

By decision dated May 25, 2005, the Office granted a schedule award for 5 percent impairment of both the left and right upper extremity or "10 percent bilateral upper extremities." The award covered a period of 31.2 weeks from January 12 to August 18, 2005.

Appellant requested a review of the written record. In a decision dated September 9, 2005, the Office hearing representative affirmed the May 25, 2005 schedule award.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>3</sup> The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate

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<sup>1</sup> Dr. Rodriguez first examined appellant on September 9, 2003.

<sup>2</sup> The January 12, 2005 impairment rating did not include current physical findings. Dr. Rodriguez noted that he relied in part on his own examination reports from September 9, 2003 through January 11, 2005; however, this latest referenced report was not of record. The most recent prior report that included physical examination results is dated October 5, 2004. At that time, Dr. Rodriguez noted right hand swelling, positive Tinel's sign at the left wrist with radiation and numbness into the wrist and thumb. He also provided grip strength measurements. Appellant's pain was rated 4 to 6 on a scale of 10.

<sup>3</sup> The Act provides that, for a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks of compensation. 5 U.S.C. § 8107(c)(1).

standard for evaluating schedule losses.<sup>4</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>5</sup>

### ANALYSIS

In his March 17, 2005 report, the Office medical adviser found five percent impairment of both upper extremities due to CTS. The A.M.A., *Guides* provide that, if after an optimal recovery time following surgical decompression, an individual continues to complain of pain, paresthasias, and/or difficulties performing certain activities, three possible scenarios can be present.<sup>6</sup> The first scenario notes that, where there are positive clinical findings of median nerve dysfunction and electrical conduction delays, the impairment due to residual CTS should be rated according to the sensory and/or motor deficits.<sup>7</sup> This was the method of evaluation utilized by Dr. Rodriguez on January 12, 2005. The Office medical adviser, however, utilized a different method. The second of three scenarios for rating impairment due to CTS provides that where there is evidence of:

“Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG [electromyography] testing of the thenar muscles: a residual CTS is still present, and an impairment rating not to exceed five percent of the upper extremity may be justified.”<sup>8</sup>

The Office medical adviser relied on this latter scenario to find that appellant had five percent bilateral upper extremity impairment. He also noted that Dr. Rodriguez’s examination findings did not support his impairment assessment under scenario one and that at least one of Dr. Rodriguez’s calculations was mathematically incorrect.

Dr. Rodriguez calculated appellant’s impairment applying Tables 16-10, 16-11 and 16-15, A.M.A., *Guides* 482, 484 and 492. He classified appellant’s right upper extremity impairment as Grade 3 (25 percent deficit) and the left upper extremity impairment received a Grade 4 (50 percent deficit) classification.<sup>9</sup> Dr. Rodriguez indicated that appellant’s impairment

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<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); FECA Bulletin No. 01-05 (issued January 29, 2001).

<sup>6</sup> A.M.A., *Guides* 495.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> With respect to sensory deficits or pain, a Grade 4 classification is characterized by “[d]istorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensation or pain, that is forgotten during activity.” This classification represents a 1 to 25 percent deficit. Table 16-10, A.M.A., *Guides* 482. A Grade 3 classification represents a deficit range of 26 to 60 percent and is characterized by “[d]istorted superficial tactile sensibility (diminished light touch and two-point discrimination), with some abnormal sensations or slight pain, that interferes with some activities.” *Id.* Motor deficits are graded under Table 16-11, A.M.A., *Guides* 484. A Grade 4 classification represents “[c]omplete active range of motion against gravity with some resistance,” with a percentage deficit from 1 to 25. *Id.* A Grade 3 classification represents a deficit of 26 to 50 percent and is characterized by “[c]omplete active range of motion against gravity only, without resistance.” *Id.*

involved the median nerve distribution under which according to Table 16-15, 45 percent is the maximum upper extremity impairment for combined motor and sensory deficits involving the median nerve (below midforearm).<sup>10</sup> To determine the upper extremity impairment, one multiplies the percentage deficit based on the grade classifications under Tables 16-10 and 16-11 by the maximum combined motor/sensory deficit under Table 16-15. As indicated, Dr. Rodriguez provided a Grade 3 classification with a 50 percent deficit for the right upper extremity. This 50 percent deficit when multiplied by the 45 percent combined motor/sensory deficit under Table 16-15 resulted in a right upper extremity impairment rating of 22 percent (50 percent x 45 percent = 22.5 percent). Dr. Rodriguez also found 22 percent impairment of the left upper extremity, despite the fact that he classified the left upper extremity as Grade 4 with a 25 percent deficit. A Grade 4, 25 percent deficit when multiplied by a 45 percent median nerve motor/sensory deficit results in 11 percent impairment (25 percent x 45 percent = 11.25 percent), not 22 percent as noted by Dr. Rodriguez.

The Office medical adviser correctly noted that Dr. Rodriguez erred in his impairment calculations. But more importantly, Dr. Rodriguez did not identify any examination findings to justify the Grade 3 and Grade 4 classifications he assigned under Tables 16-10 and 16-11. While the January 12, 2005 impairment rating stated that appellant was “suffering significantly from her bilateral hand pain and numbness,” it is not readily apparent from the remainder of Dr. Rodriguez’s report how this information corresponds to a Grade 3 impairment of the right upper extremity and a Grade 4 impairment of the left. Accordingly, the Office properly declined to rely on Dr. Rodriguez’s January 12, 2005 impairment rating as a basis for granting a schedule award. Given the absence of physical findings to support a greater award, the Office medical adviser properly assigned a maximum 5 percent impairment of both upper extremities.<sup>11</sup> As the Office medical adviser’s March 17, 2005 impairment rating conforms to the A.M.A., *Guides* (5<sup>th</sup> ed. 2001), his finding constitutes the weight of the medical evidence.<sup>12</sup> Appellant has not submitted any credible medical evidence indicating that she has greater than five percent impairment of the left and right upper extremities.

### **CONCLUSION**

The Board finds that appellant failed to establish that she has greater than five percent impairment of the left and right upper extremities.

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<sup>10</sup> A.M.A., *Guides* 492, Table 16-15.

<sup>11</sup> A.M.A., *Guides* 495.

<sup>12</sup> See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 9, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 29, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board