

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

RENET BALAS-DESANDOLO, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION HOSPITAL,
Lyons, NJ, Employer**

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**Docket No. 04-2189
Issued: February 4, 2005**

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 September 7, 2004 appellant filed a timely appeal of a May 11, 2004 merit decision of a hearing representative of the Office of Workers' Compensation Programs that affirmed a July 15, 2003 schedule award for a 10 percent permanent impairment of the left arm and no permanent impairment of the right arm. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the scheduled award issue.

ISSUE

The issue is whether appellant has more than a 10 percent permanent impairment of the left arm and no permanent impairment of the right arm.

FACTUAL HISTORY

On January 6, 2000 appellant filed a claim for compensation for an occupational disease of carpal tunnel syndrome of both wrists that she attributed to constant typing in her job as a patient funds clerk. Appellant underwent carpal tunnel release surgery on the right wrist on

November 15, 1999 and on the left wrist on November 29, 1999. The Office accepted that appellant sustained bilateral carpal tunnel syndrome in the performance of duty.

On September 28, 2002 appellant filed a claim for a schedule award and submitted a July 22, 2002 report from Dr. David Weiss, an osteopath. He listed appellant's complaints as weakness and decreased grip strength of both hands, but no difficulty with household chores or self-care. Examination revealed, for both hands, no thenar or hypothenar atrophy, normal fist presentation, negative Tinel's and Phalen's signs, negative carpal compression test, a grade of 5/5 on resistive thumb abduction, normal wrist motions and no perceived dermatomal abnormalities in the median or ulnar nerve distribution on sensory examination. Grip strength testing by Jamar hand dynamometer revealed 36 kilograms (kg) of force strength in the right hand and 30 kg of force strength in the left hand. He rated the permanent impairment of appellant's arms, using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as 10 percent for left grip strength deficit, using Table 16-34, and 3 percent for pain to each arm, using Figure 18-1.

On June 20, 2003 an Office medical adviser reviewed Dr. Weiss' report and applied Table 16-34 of the fifth edition of the A.M.A., *Guides* to the left grip strength impairment, indicating that appellant had a 14 percent index which equaled a 10 percent impairment. The 14 percent strength loss was computed by subtracting 30, the left hand grip, from 36, the right hand grip, and dividing the result by 36. The Office medical adviser noted that Dr. Weiss did not mention any pain on activities in either hand and concluded that the three percent increase for pain was not applicable.

On July 15, 2003 the Office granted appellant a schedule award for a 10 percent permanent impairment of the left arm and no permanent impairment of the right arm.

Appellant's attorney requested a hearing, at which he contended that the three percent permanent impairment for pain assigned by Dr. Weiss should be paid, or that a conflict of medical opinion should be declared.

By decision dated May 11, 2004, an Office hearing representative affirmed the July 15, 2003 schedule award, noting that Dr. Weiss did not report any findings of pain on physical examination.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² sets 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,

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

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.

ANALYSIS

An Office medical adviser properly applied section 16.8b, Grip and Pinch Strength, and Table 16-34 of the fifth edition of the A.M.A., *Guides* in concluding that appellant had a 10 percent impairment of the left arm. Section 16.8b states that an index of loss of strength is computed by subtracting the limited strength from the normal strength and dividing by the normal strength. This is the formula the Office medical adviser used, although he incorrectly arrived at an index of 14 instead of an index of 17. This makes no difference in the calculation of the arm impairment, as Table 16-34 provides for a 10 percent arm impairment for the range of strength loss indexes from 10 to 30.

The allotment of zero percent for pain in each arm was proper. Although Dr. Weiss added three percent for pain for each arm using Table 18-1, this table states that up to three percent can be added if the pain-related impairment appears to increase the burden of the condition slightly. There is no indication in the physician's report that pain has increased the burden of appellant's condition at all. Dr. Weiss did not report pain in describing appellant's complaints, and noted that she denied difficulty with household chores or self-care. There is no mention of pain on physical examination, or in the listing of subjective factors. The Office properly denied any percentage for pain.

CONCLUSION

The medical evidence establishes that appellant has no more than a 10 percent permanent impairment of the left arm and no permanent impairment of the right arm.

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2005
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member