

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

JOYCE M. EVANS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sandusky, OH, Employer**

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**Docket No. 05-544
Issued: June 20, 2005**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On January 3, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated November 23, 2004 in which an Office hearing representative determined that she had no more than a four percent impairment of the right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award.

ISSUE

The issue is whether appellant has more than four percent impairment of the right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On January 28, 2001 appellant, then a 50-year-old window clerk, filed a Form CA-2, occupational disease claim, alleging that she sustained right carpal tunnel syndrome due to

repetitive duties at work.¹ On April 19, 2001 the Office accepted that appellant sustained an employment-related right carpal tunnel syndrome.

The Office developed the claim and, by letter dated November 26, 2001, informed appellant that, as she was receiving wage-loss compensation under another claim,² the instant claim was being closed as a “no time lost” claim. On April 5, 2002 appellant filed a schedule award claim. By letter dated June 11, 2002, the Office requested that appellant’s attending physician, Dr. Paul Bruner, an osteopath Board-certified in family practice, provide an evaluation of impairment for schedule award purposes. In a June 25, 2002 letter, Dr. Bruner advised that he could not do an impairment evaluation.

Appellant thereafter submitted an August 28, 2002 report in which Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, provided an impairment evaluation of appellant’s right shoulder and wrist in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).³ Regarding the wrist, the physician stated that appellant had full range of motion, which equated to a zero percent impairment. He also found slightly positive wrist compression and Phalen’s tests over the median nerve and rated her sensory and pain deficit as Grade 4 or 10 percent under Table 16-10, with a maximum 39 percent impairment under Table 16-15. He multiplied these to find that appellant had a four percent right wrist impairment.⁴ In a September 18, 2002 report, an Office medical adviser agreed with Dr. Kaffen’s assessment.

By letter dated September 24, 2002, the Office advised appellant that she could not receive compensation under a schedule award and wage-loss compensation at the same time. In an April 17, 2003 letter, appellant’s attorney informed the Office that she had retired and was therefore eligible to receive schedule award compensation.

On June 20, 2003 the Office referred appellant to Dr. Frederick J. Shiple, III, Board-certified in orthopedic surgery, for an impairment evaluation of her right carpal tunnel syndrome. In a report dated July 16, 2003, Dr. Shiple advised that range of motion was equal and symmetrical in both wrists with findings of 70 degrees of dorsiflexion, 60 degrees of palmar flexion, 90 degrees of supination and pronation, 30 degrees of ulnar deviation and 20 degrees of radial deviation bilaterally. The fingers and thumbs were symmetrical and equal with negative

¹ At approximately the same time, appellant also filed a claim for a right shoulder injury that was accepted by the Office as a shoulder strain. Under that claim she missed work intermittently until she stopped completely on June 4, 2001 and was thereafter placed on the periodic rolls. The employing establishment submitted an investigative report and the Office continued to develop the medical evidence. In a decision dated December 12, 2002, the Office terminated appellant’s compensation benefits for her right shoulder strain condition on the grounds that this condition had resolved. This decision was affirmed by an Office hearing representative in a September 16, 2003 decision and by the Board in a decision dated March 4, 2004, Docket No. 04-77.

² *Id.*

³ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁴ Dr. Kaffen also provided an impairment analysis of appellant’s right shoulder, noting that abnormal motion of 160 degrees of flexion would equal a 1 percent impairment and abduction to 100 degrees would equal a 4 percent impairment, for a total 5 percent impairment of the right shoulder.

Phalen's and Tinel's signs, intact two-point discrimination and normal pinch and intrinsic strength. He stated that under the A.M.A., *Guides* appellant's mild subjective symptoms related to a maximum impairment of 39 percent or a 10 percent upper extremity impairment using Table 16-15, which under Table 16-10, corresponded to Grade 5 or a 0 percent impairment. He multiplied the 0 percent by the 10 percent to equal a 0 percent impairment and opined that maximum medical improvement had been reached.

By decision dated February 13, 2004, appellant was granted a schedule award for a 4 percent impairment of the right upper extremity, for a total of 12.48 weeks of compensation, to run from August 28 to November 23, 2002. On February 19, 2004 appellant, through her attorney, requested a hearing that was held on July 26, 2004. In a decision dated November 23, 2004, an Office hearing representative determined that appellant had no more than a four percent impairment of the right upper extremity and affirmed the prior decision.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act⁵ and section 10.404 of the implementing federal regulations,⁶ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*⁷ has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁸ Chapter 16 provides the framework for assessing upper extremity impairments.⁹

Regarding carpal tunnel syndrome, the A.M.A., *Guides* provide:

“If, after an *optimal recovery time* following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present --

- (1). Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual carpal tunnel syndrome is rated according to the sensory and/or motor deficits as described earlier.
- (2). Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal [electromyogram] testing of the thenar

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ A.M.A., *Guides*, *supra* note 3.

⁸ See *Joseph Lawrence, Jr.*, *supra* note 3; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁹ A.M.A., *Guides*, *supra* note 3 at 433-521.

muscles: a residual carpal tunnel syndrome is still present and an impairment rating not to exceed five percent of the upper extremity may be justified.

(3). Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating.”¹⁰

Section 16.5b of the A.M.A., *Guides* describes the methods for evaluating upper extremity impairments due to peripheral nerve disorders and provides that the severity of the sensory or pain deficit and motor deficit should be classified according to Tables 16-10a and 16-11a respectively. The values for maximum impairment are then to be discerned, utilizing the appropriate table for the nerve structure involved. The grade of severity for each deficit is then to be multiplied by the maximum upper extremity impairment value for the nerve involved to reach the proper upper extremity impairment for each function. Mixed motor and sensory or pain deficits for each nerve structure are then to be combined.¹¹

ANALYSIS

The Board finds that appellant has not established that she is entitled to more than a four percent right upper extremity impairment. In determining appellant’s schedule award, the Office relied on the August 2002 report of Dr. Kaffen, who found a 4 percent impairment, rather than the July 2003 report of Dr. Shiple, who found that she had no impairment. Dr. Kaffen advised that appellant had full range of motion of her wrist but found that she had a sensory deficit resulting from carpal tunnel syndrome. Based on the physical findings, he properly rated appellant’s sensory deficit as Grade 4 and found that, pursuant to Table 16-10 of the A.M.A., *Guides*, a severity rating of 10 percent should apply.¹² He also properly found that, under Table 16-15, the maximum upper extremity impairment for a median nerve sensory deficit was 39 percent. Multiplying the 39 percent impairment by the 10 percent grade, Dr. Kaffen properly concluded that appellant had a 4 percent right upper extremity sensory impairment.¹³ Dr. Kaffen provided a basis for his impairment rating and referenced the specific figures and tables in the A.M.A., *Guides* on which he relied. Other than Dr. Shiple’s July 16, 2003 report, there is no medical evidence of record providing an impairment analysis of appellant’s right upper extremity. The Board therefore finds that Dr. Kaffen’s report establishes that appellant is not entitled to a schedule award for her right upper extremity of greater than four percent.¹⁴

¹⁰ *Id.* at 495.

¹¹ *Id.* at 481.

¹² *Id.* at 482.

¹³ *Id.* at 492.

¹⁴ See *Mary L. Henninger*, 52 ECAB 408 (2001).

CONCLUSION

The Board finds that appellant has failed to establish that she is entitled to more than a four percent schedule award for the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 23, 2004 is affirmed.

Issued: June 20, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member