

U.S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of
Claimant; Employed by the
; Case number Hearing was held on February 16, 2005 in Atlanta,
Georgia.

The issue for determination is whether the Office properly determined that the claimant is entitled to a schedule award for 10% permanent impairment of each upper extremity.

The claimant, born , was employed as a mail handler the
in New York. On the claimant filed a timely Notice of
Occupational Disease and Claim for Compensation, claiming that as of
he developed bilateral carpal tunnel syndrome due to repetitive work tasks.

On the Office accepted the claim for bilateral carpal tunnel syndrome.

On the claimant underwent authorized right carpal tunnel release
conducted by On the claimant underwent authorized
left carpal tunnel release, also conducted by Dr. .

On the claimant filed a form CA7 to claim a schedule award in
connection with the accepted injury. The claimant submitted in support of such claim a
report by Dr. dated Dr. opined as to 25% permanent impairment
of the right upper extremity.

The Office referred the file to Dr. the District Medical Advisor (DMA).
In a report of Dr. stated that Dr. report was insufficient
to support a schedule award. Dr. F stated that examination findings as to sensory
and motor deficits were required.

The claimant submitted a report by Dr. dated Dr. opined that
the claimant had employment related bilateral carpal tunnel syndrome and bilateral ulnar
neuropathy. Dr. provided examination findings and referred to results of bilateral
upper extremity EMG/NCS testing of January 8, 2003. Dr. opined as to permanent
impairment of 13% of the left upper extremity and 20% on the right. Dr. cited the
AMA Guides to the Evaluation of Permanent Impairment, 5th edition, at table 16-5 and
16-10.

The Office referred the file to Dr. [redacted] for an impairment rating pursuant to Office policy. In a report of [redacted] Dr. [redacted] opined that Dr. [redacted] assessment of permanent impairment was correct, but only if ulnar neuropathy were an accepted condition. Dr. [redacted] opined that because such condition was not accepted as employment related, permanent impairment was only 10% for each upper extremity based upon the accepted carpal tunnel condition.

In a letter of [redacted] to the claimant's congressional representative the Office stated "upon further review of the file, we determined that the additional condition(s) noted in Dr. [redacted] report are in fact, related to the injury of record."

On [redacted] the Office notified the claimant that he was being awarded a schedule award based upon 10% permanent impairment of each upper extremity. The award covered the period [redacted]. The claimant disagreed and requested an oral hearing.

Accordingly, said hearing was scheduled and held on [redacted] in Atlanta, Georgia. Paul H. Felser, Esq., represented the claimant. Based upon the hearing testimony, together with the written evidence of record, I find that the Office's decision of [redacted] should be set aside.

The claimant did not attend the hearing. The claimant's attorney argued that by the letter of [redacted] the Office effectively accepted bilateral ulnar neuropathy as an employment related condition. The attorney argued that as a result the claimant was entitled to a schedule award consistent with Dr. [redacted]'s opinion.

Post hearing the record was held open for 30 days to allow for the submission of additional evidence. A copy of the hearing transcript was provided to the claimant and the employing agency, and 20 days allowed for the submission of written comments. The claimant's attorney advised by letter dated [redacted] that the transcript was satisfactory. No additional evidence was received.

The schedule award provisions of the Federal Employees' Compensation Act (FECA) provide for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body. The FECA however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office.¹ For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The *AMA Guides* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.²

¹ *Daniel C. Goings*, 37 ECAB 781 (1986)

² *Luis Chapa, Jr.*, 41 ECAB 159 (1989)

The Office Procedure Manual provides that "the attending physician should make the evaluation of permanent impairment whenever possible. The attending physician's report should include a detailed description of the impairment, as well as an estimate of the impairment in terms of percentage and the date of maximum medical improvement."³ The Procedure Manual provides that "where this information is missing, the claims examiner may ask the attending physician to provide it; if this fails, the Office claims examiner may ask the District Medical Advisor (DMA) to calculate percentage."⁴ The Procedure Manual provides that "after obtaining all necessary medical evidence, the file should be routed to the DMA for an opinion concerning the nature and percentage of impairment."⁵

By way of the _____ letter the Office accepted bilateral ulnar neuropathy as an employment related condition. The file should be amended to include such condition as employment related, and the Office should issue a new schedule award decision consistent with Dr. _____ opinion as to permanent impairment.

For the reasons set forth above, the Office's decision of _____ is hereby set aside and REMANDED, and the case file is returned to the district office for actions consistent with this decision.

Upon return of the case file, the Office should issue a *de novo* schedule award for permanent impairment for 13% of the left upper extremity and 20% of the right upper extremity, less the 10% previously paid for each upper extremity.

Dated: **APR 5 2005**
Washington, D.C.

Hearing Representative
for
Director, Office of Workers'
Compensation Programs

³ Office Procedure Manual, Ch. 2-808-6(b-c)

⁴ Office Procedure Manual, Ch. 2-808-6-c-(3)

⁵ Office Procedure Manual, Ch. 2-808-6(d)