

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

E.E., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, San Francisco, CA, Employer**

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**Docket No. 07-76
Issued: March 23, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 10, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 7, 2006. Pursuant to 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 has more than a 4 percent permanent impairment to the left arm, or a 52 percent permanent impairment to the right arm.

FACTUAL HISTORY

The Office accepted that appellant sustained right thumb sprain, right hand contusion, permanent aggravation of right thumb arthritis, right shoulder sprain and left hand tendinitis as causally related to a January 31, 1995 employment incident. On June 15, 1998 the Office issued a schedule award decision for a 52 percent permanent impairment to the right arm. The period of the award was 162.24 weeks commencing December 16, 1996.

The Office referred appellant for a second opinion examination by Dr. Allen Kaisler-Meza, a Board-certified physiatrist. In a report dated June 3, 2006, Dr. Kaisler-Meza provided a history and results on examination, including range of motion for the shoulders, hands, fingers and thumbs. He diagnosed right shoulder impingement syndrome and bilateral de Quervain's tenosynovitis with probable right metacarpal arthropathy and left extensor tenosynovitis of forearm musculature. Dr. Kaisler-Meza completed a form for bilateral hands and fingers and checked a box that appellant had "uncomfortable" pain. For the wrists, the second opinion examiner also indicated that appellant had uncomfortable pain, as well as sensory deficit, and he reported "left median nerve distribution." With regard to the right shoulder, Dr. Kaisler-Meza reported uncomfortable pain, as well as motor weakness.

In a report dated July 20, 2006, an Office medical adviser reviewed the evidence. The medical adviser indicated that he would grade the pain/sensory deficit impairment of the bilateral hand/wrists at 80 percent of the maximum 5 percent for the radial nerve. For right shoulder pain, the impairment was 60 percent of the maximum 5 percent for the axillary nerve, or 3 percent. The medical adviser noted that 150 degrees of shoulder flexion was a two percent impairment. He also found a one percent impairment for 40 degrees of external rotation.¹ In addition, the medical adviser found a five percent impairment for strength deficit. He concluded that appellant had a 15 percent right arm impairment. The left arm impairment was reported as four percent for pain in the left wrist/hand. The date of maximum medical improvement was the date of examination.

By decision dated September 7, 2006, the Office issued a schedule award for a four percent impairment to the left arm. The period of the award was 12.48 weeks from June 3, 2006.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act² and section 10.404 of the implementing federal regulation,³ 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

¹ The narrative portion of Dr. Kaisler-Meza's report stated that there was 90 degrees of external rotation, and it appears the handwritten form also reported 90 degrees, although it is difficult to read. Ninety degrees of external rotation results in no impairment.

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.404.

⁴ *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.⁵

ANALYSIS

Appellant had received a prior schedule award for a 52 percent permanent impairment to the right arm. The Office medical adviser reviewed Dr. Kaisler-Meza's findings and found an impairment of 15 percent for the right arm. Although he did not identify Table 16-15, this table provides a maximum impairment for the axillary nerve of five percent.⁶ The impairment for pain/sensory deficit was graded at 60 percent of the maximum, or 3 percent.⁷ The range of motion impairments are calculated pursuant to Figure 16-40 and 16-46, and based on the findings of the second opinion examiner, the medical adviser found a three percent impairment.⁸ With respect to motor weakness, the medical adviser applied Table 16-35 to determine a strength deficit impairment of five percent.⁹

The remaining issues regarding the permanent impairment to the arms involve the hand/wrist impairment reported for pain/sensory deficit. The medical adviser reported that, for both arms, the impairment was 4 percent based on 80 percent of the maximum 5 percent for the radial nerve. Under Table 16-15, the radial nerve has a maximum of five percent for pain/sensory deficit.¹⁰ The problem with this assessment in this case, particularly with the left arm, is that Dr. Kaisler-Meza clearly stated, "left median nerve distribution" in his report covering the wrists. The median nerve has a maximum of 39 percent for pain/sensory deficit under Table 16-15. It is not clear why the medical adviser identified the radial nerve for the left hand/wrist impairment, rather than the median nerve. If the radial nerve is appropriate, the medical adviser should explain why it is appropriate based on the findings of the second opinion examiner Dr. Kaisler-Meza.

The Board accordingly finds the July 20, 2006 report from the Office medical adviser is not a rationalized medical report on the issues presented. The case will be remanded to the Office to secure a rationalized medical report regarding the impairment to the left and right arms. After such further development as the Office deems necessary, it should issue an appropriate decision.

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

⁶ A.M.A., *Guides* 492, Table 16-15.

⁷ *Id.* at 482, Table 16-10.

⁸ *Id.* at 476, Figure 16-40 and 479, Figure 16-46. As noted above, it appeared that Dr. Kaisler-Meza reported normal external rotation, but the medical adviser interpreted the writing as a one percent impairment.

⁹ *Id.* at 510, Table 16-35.

¹⁰ *Id.*, *supra* note 6.

CONCLUSION

The record does not contain a rationalized medical opinion as to the percentage of permanent impairment in this case and the case is remanded for further development.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 7, 2006 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: March 23, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board