

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

K.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Archdale, NC, Employer**

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**Docket No. 07-2208
Issued: February 6, 2008**

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 August 29, 2007 appellant timely appealed the July 17, 2007 merit decision of the Office of Workers' Compensation Programs, which denied his claim for a schedule award. 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 is entitled to a schedule award for permanent impairment of his left upper extremity.

FACTUAL HISTORY

Appellant, a 63-year-old rural carrier, injured his left hand on December 6, 2002 when he slipped and fell on an ice-covered sidewalk. The Office accepted his claim for open fracture of the left trapezoid bone (06-2074370). On May 30, 2006 Dr. Robert V. Sypher, Jr., a Board-certified orthopedic surgeon, performed a left wrist proximal row carpectomy, which the Office

authorized.¹ He released appellant to return to his regular duties beginning September 11, 2006. Appellant did not return to work, but instead retired effective September 30, 2006.

On October 15, 2006 appellant filed a claim for a schedule award. In support of his claim, he submitted a September 25, 2006 impairment rating from Dr. Sypher, who found 32 percent permanent impairment of the left upper extremity. The overall rating represented a combination of impairments due to surgical removal of three carpal bones (scaphoid, lunate and triquetrum), loss of strength and limited range of motion.

In a February 6, 2007 report, Dr. James W. Dyer, the district medical adviser, found only six percent impairment of the left upper extremity due to loss of range of motion at the wrist.²

The Office provided Dr. Sypher with an opportunity to review and comment on Dr. Dyer's impairment rating of six percent. On February 16, 2007 he reiterated his earlier finding that appellant had 32 percent impairment of the left upper extremity. Dr. Sypher calculated 12 percent impairment for appellant's May 30, 2006 surgery and 10 percent impairment for each of his two other surgeries. Thereafter, the Office referred the claim to an impartial medical examiner to resolve the conflict between Drs. Sypher and Dyer.

Dr. James C. Califf, a Board-certified orthopedic surgeon and impartial medical examiner, saw appellant on June 5, 2007. In a report dated July 12, 2007, he found 13 percent impairment of the left upper extremity based on the surgical procedure performed on May 30, 2006.

The Office subsequently referred the impartial medical examiner's report to a different district medical adviser, Dr. Guillermo M. Pujadas.³ In a July 12, 2007 report, Dr. Pujadas noted his disagreement with the manner in which Dr. Califf calculated appellant's 13 percent impairment.⁴ But nonetheless, he concurred with the 13 percent left upper extremity impairment rating. Dr. Pujadas based his rating on loss of range of motion at the wrist.

The record indicates that appellant previously injured his left arm on March 5, 2001, for which he received a June 29, 2005 schedule award for 19 percent impairment (06-2049211). The June 29, 2005 schedule award also references another claim (06-0670601) for which appellant had already received an award for 10 percent impairment of the left upper extremity.

By decision dated July 17, 2007, the Office found that appellant was not entitled to an additional schedule award. The Office explained that appellant had already received awards totaling 29 percent impairment of the left upper extremity under two separate claims (06-

¹ Dr. Sypher's postoperative diagnosis was scapholunate interosseous ligament tear associated with fibrous and partial bony union of scaphoid trapezoid trapezoid arthrodesis. During surgery, he removed hardware inserted during a previous surgery on October 21, 2003. Appellant also had left wrist surgery on March 19, 2002.

² Dr. Dyer is a Board-certified orthopedic surgeon.

³ Dr. Pujadas is a Board-certified orthopedic surgeon.

⁴ As discussed *infra*, Dr. Pujadas' criticism of Dr. Califf's impairment rating was not valid. He mistook Dr. Califf's identification of "[T]able 16-27" as a reference to "fig. 16-27."

2049211 and 06-0670601), and the current medical evidence demonstrated only 13 percent impairment with respect to appellant's December 6, 2002 injury under file number 06-2074370.

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.⁵ 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 standard for evaluating schedule losses.⁶ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁷

The Act provides for the reduction of compensation for subsequent injury to the same schedule member.⁸ Benefits payable under section 8107(c) shall be reduced by the period of compensation paid under the schedule for an earlier injury if compensation in both cases is for disability of the same member or function or different parts of the same member or function and compensation payable for the later disability in whole or in part would duplicate the compensation payable for the preexisting disability.⁹

ANALYSIS

The Board finds that the case is not in posture for decision. The Office denied appellant a schedule award under the current claim because he had already received schedule awards totaling 29 percent of the left upper extremity on two separate prior claims. The record, however, includes scant information regarding appellant's prior claims. While the record includes a copy of the June 29, 2005 schedule award under file number 06-2049211, the other schedule award appellant reportedly received under file number 06-0670601 is not included. And the medical evidence which presumably formed the bases for these two prior awards is also not present in the record. Thus, there is insufficient information to determine whether appellant's current impairment either duplicates in whole or in part any of the two previous left upper extremity schedule awards he received. The Office should obtain all relevant and pertinent information from appellant's two prior claims (06-2049211 and 06-0670601) and refer this information to the district medical adviser to determine if any part of appellant's current upper extremity impairment is duplicated by either of the two prior schedule awards.

⁵ For a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1) (2000).

⁶ 20 C.F.R. § 10.404 (2007).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁸ 5 U.S.C. § 8108.

⁹ *Id.*

The case will also be remanded to the Office for clarification regarding the extent of appellant's current left upper extremity impairment. The Office medical adviser, Dr. Pujadas, calculated appellant's left upper extremity impairment based on loss of range of motion at the wrist. In doing so, he properly applied Figures 16-28 and 16-31, A.M.A., *Guides* 467, 469. However, Dr. Pujadas mistakenly criticized Dr. Califf for basing his upper extremity impairment rating on Figure 16-27, A.M.A., *Guides* 467. Dr. Califf did not find impairment due to wrist ankylosis under Figure 16-27, but instead relied on Table 16-27, A.M.A., *Guides* 506. Applying this particular table, appellant's May 30, 2006 total wrist proximal row carpectomy represents 12 percent impairment of the left upper extremity.¹⁰

Dr. Pujadas' 13 percent range of motion impairment and the impartial medical examiner's corrected 12 percent rating for the May 30, 2006 surgery are both appropriate measures of impairment under the A.M.A., *Guides*. However, the Board notes that neither Dr. Pujadas nor the impartial medical examiner took into account the A.M.A., *Guides*' allowance for a combination of both of the above-noted impairments. According to section 16.7b, A.M.A., *Guides* 505-06, motion impairments under section 16.4 are derived separately and then combined with the arthroplasty impairment derived under Table 16-27. This would result in a combined left upper extremity impairment of 23 percent.¹¹ It is unclear from the record why this particular method was not employed in the present case. Accordingly, the case is remanded to the Office to obtain clarification from the impartial medical examiner as to the appropriateness of combining the two separate impairments for wrist arthroplasty and loss of range of motion. After such further development as the Office deems appropriate, a *de novo* decision shall be issued regarding appellant's October 15, 2006 claim for a schedule award.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹⁰ Dr. Califf erroneously identified appellant's impairment as 13 percent.

¹¹ See Combined Values Chart, A.M.A., *Guides* 604.

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: February 6, 2008
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