

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

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**B.W., Appellant** )

**and** )

**DEPARTMENT OF THE NAVY, ARMED** )  
**FORCES RETIREMENT HOME, Gulfport, MS,** )  
**Employer** )

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**Docket No. 07-2428**  
**Issued: March 11, 2008**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 25, 2007 appellant filed a timely appeal from the July 30, 2007 merit decision of the Office of Workers' Compensation Programs, which awarded scheduled compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

**ISSUE**

The issue is whether the Office's schedule award for nine percent to the left arm was proper.

**FACTUAL HISTORY**

On May 11, 2004 appellant, a 41-year-old physical therapy assistant, sustained an injury in the performance of duty when she repositioned a veteran who was reclining in a wheelchair. She was discharged from medical treatment on May 12, 2004 and released to resume regular duty the following day. Appellant was discharged from physical therapy on June 25, 2004. The

Office accepted her claim for aggravation of cervical radiculopathy. Appellant filed a claim for a schedule award.

On June 6, 2007 Dr. Raymond R. Fletcher, an orthopedic surgeon and Office referral physician, examined appellant and evaluated her impairment. He found that she had sensory and motor deficits of the C6 spinal nerve. Dr. Fletcher graded both deficits at 20 percent and calculated that appellant had a two percent impairment of her left upper extremity due to C6 sensory deficits and a seven percent impairment of her left upper extremity due to C6 motor deficits. He estimated the date of maximum medical improvement to be three months post injury, or August 11, 2004.

On July 30, 2007 the Office issued a schedule award for a nine percent permanent impairment of the left upper extremity. The Office awarded 28.08 weeks of compensation beginning August 11, 2004, the date of maximum medical improvement.

On appeal, appellant asks how the Office determined the period of the schedule award and why the period of the award did not begin on the date of her initial injury.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>2</sup>

The A.M.A., *Guides* explains that impairment should not be considered permanent until the clinical findings indicate that the medical condition is static and well stabilized:

“It is understood that an individual’s condition is dynamic. Maximal medical improvement refers to a date from which further recovery or deterioration is not anticipated, although over time there may be some expected change. Once an impairment has reached MMI, a permanent impairment rating may be performed.”<sup>3</sup>

It is well established that the period of a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>3</sup> A.M.A., *Guides* 19.

employment injury.<sup>4</sup> The determination of whether maximum medical improvement has been reached is based on the probative medical evidence of record.<sup>5</sup>

### ANALYSIS

Dr. Fletcher, the orthopedic surgeon and Office referral physician, examined appellant and found that she had sensory and motor deficits of the C6 spinal nerve. According to Table 16-13, page 489 of the A.M.A., *Guides*, injury to the C6 spinal nerve can cause an eight percent maximum sensory impairment of the upper extremity. It can also cause a 35 percent maximum motor impairment. Using the grading schemes set forth in Table 16-10, page 482, and Table 16-11, page 484, Dr. Fletcher graded the severity of both deficits at 20 percent. Then, following the procedure for determining upper extremity impairment, he multiplied the severity of the deficits by the maximum impairment values of the C6 spinal nerve: 20 percent x 8 percent = 1.6 percent impairment due to sensory deficit, which the Office rounded up to 2 percent; 20 percent x 35 percent = 7 percent impairment due to motor deficit. The sensory and motor impairments combine for a nine percent total impairment of the left upper extremity.

Section 8107 of the Act provides 312 weeks of compensation for the total loss of an arm.<sup>6</sup> Partial losses are compensated proportionally.<sup>7</sup> A nine percent impairment of appellant's left upper extremity is therefore nine percent of 312 weeks, or 28.08 weeks of compensation, which is what the Office awarded.

As for when the schedule award should begin, Dr. Fletcher estimated that she reached maximum medical improvement three months post injury, or by August 11, 2004. It was his opinion that residuals of the May 11, 2004 employment injury had stabilized after three months, such that further recovery or deterioration was not anticipated. This was the earliest date that her impairment could be considered permanent. The Office properly used August 11, 2004 as the starting date of the schedule award.

The Board finds that appellant was properly granted 28.08 weeks of compensation under section 8107 of the Act. Moving the start of the award to an earlier date would not gain her additional weeks of compensation. The Office may pay no more because Congress, through the Act, has limited the compensation payable for permanent impairment to a specified number of weeks.<sup>8</sup>

The Board will affirm the Office's July 30, 2007 schedule award. Dr. Fletcher's impairment rating was in accordance with the standards contained in the A.M.A., *Guides*. The

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<sup>4</sup> *Peter C. Belkind*, 56 ECAB 580 (2005).

<sup>5</sup> *Mark A. Holloway*, 55 ECAB 321 (2004).

<sup>6</sup> 5 U.S.C. § 8107(c)(1).

<sup>7</sup> *Id.* at § 8107(c)(19).

<sup>8</sup> *Linda R. Sherman*, 56 ECAB 127 (2004). Appellant retains the right to file a claim for an increased schedule award based on new exposure or on medical evidence noting a progression of her accepted condition which results in greater impairment. See *Tommy R. Martin*, 56 ECAB 273 (2005).

Office properly determined the number of weeks of compensation to which appellant was entitled and the date her schedule award should begin.

**CONCLUSION**

The Board finds that appellant has no more than nine percent impairment of the left arm.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 30, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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