

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

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C.S., Appellant )

and )

U.S. POSTAL SERVICE, CAPITOL STATION, )  
Raleigh, NC, Employer )

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**Docket No. 08-1285  
Issued: October 23, 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  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On March 31, 2008 appellant filed a timely appeal from a December 26, 2007 merit decision of the Office of Workers' Compensation Programs granting her a schedule award. 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 12 percent permanent impairment of the right upper extremity for which she received a schedule award.

**FACTUAL HISTORY**

On May 23, 2002 appellant, then a 55-year-old customer service supervisor, filed a traumatic injury claim alleging that she fractured and dislocated her elbow on May 17, 2002 when she tripped on broken cement. The Office accepted the claim for a closed fracture of the right radius head. On May 24, 2002 Dr. Joel Krakauer, a Board-certified orthopedic surgeon,

performed an open reduction of the elbow with a silicone implant arthroplasty and ligament reconstruction. She returned to work with restrictions on May 29, 2002.

On April 19, 2007 appellant filed a claim for a schedule award. On August 9, 2007 the Office requested that Dr. Krakauer determined the extent of any permanent impairment of her right arm in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*). In an August 21, 2007 impairment evaluation, Dr. Krakauer discussed appellant's complaints of some residual elbow discomfort, weakness and stiffness. On examination he found minimal elbow swelling and full range of motion of the digits and wrist. Dr. Krakauer measured range of motion of the right elbow as 120 degrees flexion, 30 degrees extension, 70 degrees supination and 70 degrees pronation. He concluded that she had a 17 percent impairment of the elbow due to loss of flexion and extension<sup>1</sup> and a 6 percent impairment due to loss of forearm rotation,<sup>2</sup> which he combined to find a 19 percent impairment of the elbow. Dr. Krakauer stated, "An additional five percent is added because of the nature of the implant and due to some persistent discomfort in the elbow." He concluded that appellant had a total right elbow impairment of 24 percent for a total upper extremity impairment of 17 percent. Dr. Krakauer opined that she had reached maximum medical improvement.

On September 27, 2007 an Office medical adviser reviewed Dr. Krakauer's findings and disagreed with his finding of a 24 percent right elbow impairment. Citing to Table 16-27 on page 506 of the A.M.A., *Guides*, he opined that appellant had an eight percent right upper extremity impairment due to her isolated radial head implant arthroplasty. The Office medical adviser determined that she had a three percent impairment due to loss of range of motion of the right elbow from -20 to 135 degrees according to a May 24, 2006 physical therapy report. He combined appellant's 8 percent impairment of the upper extremity due to her implant arthroscopy with a 3 percent impairment due to loss of range of motion of the right elbow to find an 11 percent impairment.

On November 5, 2007 the Office referred appellant to Dr. William A. Somers, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated December 4, 2007, he discussed her history of surgery on May 24, 2002 to repair a fracture dislocation of the right elbow with a "severely comminuted radial head." Appellant experienced some loss of strength with lifting and elbow pain with increased activity. Dr. Somers measured right elbow range of motion as 146 degrees flexion, -32 degrees extension, 60 degrees pronation and 90 degrees supination. He found "mild valgus instability on the right compared to the left at 30 degrees and 90 degrees flexion, this measures 3-4 [millimeters] on the ulnar side of the elbow and there is a little clicking with valgus stress." On examination Dr. Somers noted slight elbow crepitous with pronation and supination but no tenderness, effusion or inflammation. He measured grip strength on the right as 19.5 kilograms and on the left as 25 kilograms. Dr. Somers determined that appellant reached maximum medical improvement on December 18, 2002. Applying the A.M.A., *Guides* to his findings, he opined that she had a three percent impairment due to loss of extension and a one percent impairment due to loss of

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<sup>1</sup> A.M.A., *Guides* 472, Figure 16-34.

<sup>2</sup> *Id.* at 474, Figure 16-37.

pronation.<sup>3</sup> Dr. Somers further found an 8 percent impairment due to appellant's radial head implant<sup>4</sup> and a 20 percent impairment due to passive instability of the right elbow with under 10 degrees instability.<sup>5</sup> He added his impairment determinations to find a 70 percent impairment of the elbow which he converted to a 22 percent impairment of the right upper extremity. Dr. Somers noted that his conclusion differed from Dr. Krakauer because he did not measure instability, but instead used pain which was not in accordance with the A.M.A., *Guides*. He further indicated that the Office medical adviser did not examine appellant and "therefore" he did not include the instability in his assessment because she does have the instability, that leads to a lot of her functional complaints about weakness and lifting with the arm."

On December 18, 2007 the Office medical adviser reviewed Dr. Somers report and concurred with his finding of a four percent impairment due to loss of range of motion. He noted, however, that the eight percent impairment due to arthroplasty could not be combined with the impairment due to instability, subluxation or dislocation according to the A.M.A., *Guides*.<sup>6</sup> The Office medical adviser combined the 8 percent impairment due to the implant arthroplasty with the 4 percent impairment due to loss of range of motion of the elbow to find a 12 percent permanent impairment of the right upper extremity.

By decision dated December 26, 2007, the Office granted appellant a schedule award for a 12 percent permanent impairment of the right upper extremity.<sup>7</sup> The period of the award ran for 37.44 weeks from December 18, 2002 to September 6, 2003.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act,<sup>8</sup> and its implementing federal regulation,<sup>9</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all

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<sup>3</sup> A.M.A., *Guides* 472, 474, Figures 16-34, 16-27.

<sup>4</sup> *Id.* at 506, Table 16-27.

<sup>5</sup> *Id.* at 502, Table 16-23.

<sup>6</sup> *Id.* at 505, § 16.7b.

<sup>7</sup> The Office did not specify the percentage of award in its decision but it is apparent from the period of the award that is awarded appellant the 12 right upper extremity impairment found by the Office medical adviser.

<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> 20 C.F.R. § 10.404.

claimants.<sup>10</sup> Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.<sup>11</sup>

Section 16.7b of the A.M.A., *Guides* provides regarding arthroplasty:

“In the presence of decreased motion, motion impairments are derived separately (Section 16.4) and combined with the arthroplasty impairment. (Combined Values Chart, p. 604) If the same joint presents other findings, the rules outlined on page 499 must be followed to avoid duplication of impairments. However, impairment due to arthroplasty cannot be combined with impairments due to instability, subluxation, or dislocation.”<sup>12</sup>

If a claimant’s various impairment ratings cannot be combined, she is entitled only to the greater of the two evaluation methods.<sup>13</sup> It is the responsibility of the evaluating physician to explain in writing why a particular method to assign the impairment rating was chosen.<sup>14</sup>

### ANALYSIS

The Office accepted that appellant sustained a closed fracture of the right radius head of the elbow on May 22, 2002 when she tripped and fell on broken concrete. On May 24, 2002 Dr. Krakauer performed a silicone implant arthroplasty and open reduction of the elbow with ligament reconstruction. She returned to work with restrictions on May 29, 2002. Appellant filed a claim for a schedule award on April 19, 2007.

In an impairment evaluation dated August 21, 2007, Dr. Krakauer noted appellant’s history of an implant arthroplasty of the right elbow, her current complaints of residual elbow discomfort weakness and stiffness. On examination he measured full range of motion of the wrist and digits and right motion of the elbow of 30 degrees extension, 120 degrees flexion, 70 degrees supination and 70 degrees pronation. Dr. Krakauer determined that she had a 17 percent impairment of the elbow due to loss of flexion and extension, a 6 percent impairment due to loss of forearm rotation and a 5 percent impairment due to the “nature of the implant and due to some persistent discomfort in the elbow.” He concluded that she had a total right elbow impairment of 24 percent and a total upper extremity impairment of 17 percent. The A.M.A., *Guides*, however, do not provide for an additional five percent impairment for elbow discomfort under Chapter 16. As Dr. Krakauer’s report does not conform to the A.M.A., *Guides*, it is of diminished probative value.<sup>15</sup>

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<sup>10</sup> 20 C.F.R. § 10.404(a).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>12</sup> A.M.A., *Guides* 505.

<sup>13</sup> *Juanita L. Spencer*, 56 ECAB 611 (2005).

<sup>14</sup> *Tara L. Hein*, 56 ECAB 431 (2005).

<sup>15</sup> *Mary L. Henninger*, 52 ECAB 408 (2001).

The Office referred appellant to Dr. Somers for a second opinion evaluation to determine the extent of her permanent impairment of the right upper extremity. On December 4, 2007 he measured range of motion of the right elbow as 146 degrees flexion, -32 degrees extension, 60 degrees pronation and 90 degrees supination. Dr. Somers found mild valgus instability on the right measuring three to four millimeters and some elbow crepitous with pronation and supination. He determined that she had a three percent impairment of the right elbow due to loss of extension and a one percent impairment due to loss of pronation.<sup>16</sup> Dr. Somers further found that appellant had an eight percent impairment due to her radial head implant.<sup>17</sup> He noted that she experienced instability of the right elbow of less than 10 degrees, which he found constituted a 20 percent impairment of the right elbow.<sup>18</sup> Dr. Somers added his impairment determinations to find a 70 percent impairment of the elbow or a 22 percent impairment of the right upper extremity. He explained that appellant's elbow instability resulted in many of her complaints.

On December 18, 2007 the Office medical adviser reviewed Dr. Somers report and concurred with his finding of a four percent impairment due to loss of range of motion. He properly determined, however, that the eight percent impairment due to arthroplasty could not be combined with the impairment due to instability, subluxation or dislocation according to the A.M.A., *Guides*.<sup>19</sup> Section 16.7b of the A.M.A., *Guides* provides that an impairment due to arthroplasty cannot be combined with impairments due to instability, subluxation or dislocation.<sup>20</sup> Impairments of the upper extremity due to decreased motion may be combined with impairment due to arthroplasty.<sup>21</sup> The Office medical adviser combined the 8 percent impairment due to the implant arthroplasty with the 4 percent impairment due to loss of range of motion of the elbow to find a 12 percent permanent impairment of the right upper extremity. The Board notes, however, that joint instability values can be combined with other appropriate impairment values, including decreased motion.<sup>22</sup> As appellant's impairment ratings cannot be combined, she is entitled to the greater of the two evaluation methods.<sup>23</sup> The Board thus finds that appellant is entitled to a schedule award for a 4 percent permanent impairment of the upper extremity due to loss of range of motion and a 20 percent elbow impairment due to instability, which converts to a 14 percent right upper extremity impairment.<sup>24</sup> Combining the 14 percent impairment due to instability with the 4 percent impairment due to loss of range of motion yields a 17 percent right upper extremity impairment.

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<sup>16</sup> A.M.A., *Guides* 472, 474, Figures 16-34, 16-27.

<sup>17</sup> *Id.* at 506, Table 16-27.

<sup>18</sup> *Id.* at 502, Table 16-23.

<sup>19</sup> *Id.* at 505, § 16.7b.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 499.

<sup>23</sup> See *Juanita L. Spencer*, *supra* note 13.

<sup>24</sup> A.M.A., *Guides* 502, 499, Tables 16-23, 16-28.

**CONCLUSION**

The Board finds that appellant has a 17 percent permanent impairment of the right upper extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 26, 2007 is affirmed as modified.

Issued: October 23, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board