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<b>S.K., Appellant</b>	)	
	)	<b>Docket No. 08-1400</b>
<b>and</b>	)	<b>Issued: January 9, 2009</b>
	)	
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Palatine, IL, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

On September 28, 2001 appellant, then a 51-year-old clerk, filed a traumatic injury claim for a left wrist injury sustained when she was struck by a shelf. She stopped work on September 28, 2001 and returned to a light-duty job on October 27, 2001. The Office accepted a

left wrist fracture and paid appropriate compensation. Appellant's pay rate on the date of injury was \$40,472.00 per year.

Appellant was treated in the emergency room on September 28, 2001 and diagnosed with an acute ulna fracture. She submitted treatment notes from Dr. Michael Lewis, a Board-certified orthopedist, dated October 1, 2001 to December 10, 2002. Dr. Lewis noted a history of the work injury and diagnosed fracture of the ulna. On October 3, 2001 he advised that appellant underwent a closed reduction. Dr. Lewis released appellant to limited duty effective October 27, 2001. In reports dated January 7 to December 10, 2002, he noted progressive healing of the fracture with some soreness of the left wrist and advised that appellant could continue light-duty work. A magnetic resonance imaging (MRI) scan of the left wrist dated April 16, 2003 revealed an ulnar fracture and triangulofibrocartilage tear with ulnar positive variant with no evidence of carpal tunnel syndrome.

Dr. Lewis referred appellant to Dr. Michael Jablon, a Board-certified orthopedic surgeon. In reports dated March 3 to October 24, 2003, Dr. Jablon diagnosed painful left wrist status post distal ulna fracture and currently triangulofibrocartilage tear with ulnar positive variant and ulna impaction syndrome. On October 24, 2003 he noted findings upon physical examination of numbness into the right elbow. Dr. Jablon advised that a recent electrophysiologic (EMG) study revealed evidence left ulnar neuropathy involving motor fibers due to a lesion at or about the elbow with significantly slowed conduction with the cubital tunnel Tinel's sign more accentuated on the left. He opined that previous EMG studies from May 15, 2002 were interpreted as normal or negative while the most recent study showed evidence of ulnar nerve involvement at the elbow. Dr. Jablon diagnosed a component of cubital tunnel syndrome, discomfort at the distal radioulnar joint level, degenerative changes and triangulofibrocartilage and recommended a night splint and physical therapy. An October 15, 2003 functional capacity evaluation revealed invalid results due to appellant's submaximal effort. An EMG dated October 15, 2003 revealed left ulnar neuropathy due to a lesion on or about the elbow, no evidence of sensory fiber involvement and no evidence of left median or radial neuropathies or brachial plexopathy.

On June 14, 2004 appellant filed a claim for a schedule award. In a May 25, 2004 report, Dr. Jablon opined that appellant had 60 percent permanent impairment of the left arm due to her left wrist injury and a 14 percent left arm impairment of the elbow in accordance with the fifth edition of the of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>1</sup> (A.M.A., *Guides*).

In a report dated July 2, 2004, an Office medical adviser reviewed the medical evidence and determined that appellant sustained a 17 percent impairment of the left upper extremity. He noted maximum medical improvement occurred on January 19, 2004.

On November 17, 2004 Dr. Jablon reiterated that appellant sustained a 60 percent permanent impairment of the left upper extremity based on her left wrist injury and a 14 percent left upper extremity impairment of the elbow in accordance under the A.M.A., *Guides*. He noted that the range of motion measurements for the left wrist and elbow as noted in his May 25, 2004 report were unchanged.

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<sup>1</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

On November 22, 2004 the employing establishment offered appellant a modified limited-duty position effective November 30, 2004. The salary of the position was \$44,496.00 per year. Appellant accepted the position and returned to work on November 30, 2004.

On December 10, 2004 appellant filed a claim for a schedule award. The annual pay rate at the date of injury was \$40,472.00 and the current pay rate was \$45,061.00.

In a report dated March 25, 2005, the Office medical adviser again determined that appellant had 17 percent impairment of the left upper extremity. He noted that the range of motion measurements and the impairment rating were unchanged from the previous evaluation.

In a decision dated July 15, 2005, the Office granted appellant a schedule award for 17 percent permanent impairment of the left upper extremity. The period of the schedule award was from January 19 to November 4, 2004. The effective pay rate date was September 28, 2001 and compensation was to be paid at the weekly rate of \$659.88.

Appellant requested reconsideration and submitted a November 16, 2005 report from Dr. Jablon, who again advised that she had 60 percent impairment of the left arm for her wrist injury and 14 percent impairment for her elbow under the A.M.A., *Guides*. Dr. Jablon noted that range of motion for the left wrist for radial deviation was 2 degrees for 10 percent impairment, ulnar deviation was 7 degrees for 20 percent impairment, dorsi-flexion was 62 degrees for 0 percent impairment, palmar flexion was 8 degrees for 20 percent impairment and 10 percent impairment for weakness, atrophy, pain or discomfort. For the left elbow he noted flexion of 122 degrees for 2 percent impairment, full extension for 0 percent impairment, pronation of 62 degrees for 1 percent impairment, supination of 60 degrees for 1 percent impairment and 10 percent impairment for weakness, atrophy, pain or discomfort.

In a report dated September 6, 2006, the Office medical adviser determined that appellant had 19 percent impairment of the left arm. He noted dorsiflexion was measured at 62 degrees for zero percent impairment,<sup>2</sup> palmar-flexion was measured at 8 degrees for eight percent impairment,<sup>3</sup> ulnar deviation was measured at 7 degrees for four percent impairment,<sup>4</sup> radial deviation was measured at 2 degrees for four percent impairment,<sup>5</sup> supination was measured at 60 degrees for one percent impairment<sup>6</sup> and pronation was measured at 62 degrees for one percent impairment.<sup>7</sup> The medical adviser further noted that appellant had one percent impairment for Grade 4 pain in the distribution of the posterior interosseous nerve to the wrist.<sup>8</sup>

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<sup>2</sup> *Id.* at 467, Figure 16-28.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 469, Figure 16-31.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 474, Figure 16-37.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 482, 492, Table 16-10, 16-15.

He used the Combined Values Chart to arrive at 19 percent impairment of the left upper extremity.<sup>9</sup>

In a decision dated April 18, 2007, the Office granted appellant a schedule award for an additional two percent impairment of the left arm. The period of the schedule award was from November 5 to December 18, 2004 for a total of 6.24 weeks of compensation based on her weekly compensation rate of \$659.88 as of September 28, 2001, the date of injury. The Office noted that, with cost-of-living adjustments, appellant's weekly compensation rate was \$686.50. It noted that the weekly pay rate was calculated at \$879.84 per week multiplied by the augmented, three-quarters, compensation rate for a weekly pay rate of \$659.88 or \$686.50 with cost-of-living adjustments.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of the Federal Employees' Compensation Act<sup>10</sup> and its implementing regulation<sup>11</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 to 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

### **ANALYSIS -- ISSUE 1**

On appeal, appellant contends that she has more than 19 percent impairment of the left upper extremity.

In a report dated November 16, 2005, Dr. Jablon found that radial deviation of the wrist measured 2 degrees for 10 percent impairment, ulnar deviation measured 7 degrees for 20 percent impairment, dorsi-flexion was 62 degrees for 0 percent impairment, palmar flexion was 8 degrees for 20 percent impairment and 10 percent impairment for weakness, atrophy, pain or discomfort. With regard to the left elbow he noted flexion of 122 degrees for 2 percent impairment, full extension for 0 percent impairment, pronation of 62 degrees for 1 percent impairment, supination of 60 degrees for 1 percent impairment and 10 percent impairment for weakness, atrophy, pain or discomfort. Dr. Jablon opined that based on A.M.A., *Guides* appellant had 60 percent impairment of the left arm. However, he incorrectly advised that wrist flexion or palmar flexion, measured at 8 degrees yielded 20 percent impairment. The A.M.A., *Guides* provides for eight percent impairment rating for 8 degrees of palmar or wrist flexion.<sup>12</sup>

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<sup>9</sup> The record reflects that on November 28, 2006 Dr. Jablon performed left wrist surgery to excise a foreign body and also for right carpal tunnel release. Appellant was diagnosed with a foreign body, left dorsal wrist.

<sup>10</sup> 5 U.S.C. § 8107.

<sup>11</sup> 20 C.F.R. § 10.404 (1999).

<sup>12</sup> A.M.A., *Guides*, 467, Figure 16-28.

Additionally, Dr. Jablon incorrectly found that radial deviation of 2 degrees was to 10 percent impairment. The A.M.A., *Guides* provides four percent impairment for 2 degrees of radial deviation.<sup>13</sup> Dr. Jablon also incorrectly noted that ulnar deviation of 7 degrees yielded 20 percent impairment. The A.M.A., *Guides* provides for four percent impairment for 7 degrees of ulnar deviation.<sup>14</sup>

The Office medical adviser correlated Dr. Jablon's findings to the specific provisions in the A.M.A., *Guides*. He properly found no impairment for dorsiflexion of 62 degrees,<sup>15</sup> eight percent impairment for wrist flexion, four percent impairment for ulnar deviation and four percent impairment for radial deviation. The medical adviser determined that appellant had a one percent impairment of the left upper extremity for sensory deficit or pain in the radial nerve (posterior interosseous nerve to the wrist), under Table 16-15 of the A.M.A., *Guides*.<sup>16</sup> He advised that, for sensory deficit or pain, appellant would be classified as Grade 4, for a 25 percent sensory deficit or pain,<sup>17</sup> in the distribution of posterior interosseous nerve, a branch of the radial nerve. The medical adviser noted that the maximum allowed for total impairment of the radial nerve was five percent. He then multiplied the maximum for the radial nerve, 5 percent, by the 25 percent allowed for a Grade 4 deficit to find 1 percent impairment for sensory loss.<sup>18</sup>

The medical adviser further attributed two percent impairment to the elbow for deficit in range of motion with regard to supination and pronation. However, an elbow condition was not accepted by the Office as work related. The Board notes that preexisting impairments of the body are to be included in determining the amount of a schedule award.<sup>19</sup> However, the medical evidence in this case fails to establish any preexisting impairment of appellant's left elbow. Dr. Jablon, in his report of October 24, 2003, noted that recent EMG studies revealed evidence of left ulnar neuropathy involving motor fibers due to a lesion at or about the elbow with significantly slowed conduction. He opined that previous EMG studies from May 15, 2002 were interpreted as normal or negative regarding the elbow but that the more recent EMG study showed evidence of ulnar nerve involvement at the elbow. The evidence does not establish that appellant had any elbow condition preexisting to the accepted September 28, 2001 injury. Dr. Jablon did not explain how the EMG studies of October 2003, which revealed a lesion about the elbow, were caused or contributed to by the accepted injury. Therefore, the Board finds that appellant was not entitled to have impairment attributable to her left elbow included in her schedule award as the medical evidence does not establish that she has left elbow impairment preexisting her accepted left wrist condition.

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<sup>13</sup> *Id.* at 469, Figure 16-31.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* 467, Figure 16-28.

<sup>16</sup> *Id.* at 489, Figure 16-15.

<sup>17</sup> *Id.* at 482, Figure 16-10.

<sup>18</sup> *See supra* note 8.

<sup>19</sup> *Walter R. Malena*, 46 ECAB 983 (1995).

The Office medical adviser's opinion supports that appellant has 17 percent impairment of the left arm attributable to her employment-related left wrist condition. Appellant has not established that she has more than 19 percent impairment of the left arm, for which she was granted schedule awards.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8107 of the Act<sup>20</sup> provides that compensation for a schedule award shall be based on the employee's monthly pay.<sup>21</sup> Section 8105(a) of the Act provides: If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of his monthly pay, which is known as his basic compensation for total disability.<sup>22</sup>

Section 8101(4) of the Act defines monthly pay for purposes of computing compensation benefits as follows: The monthly pay at the time of injury or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater.<sup>23</sup> The Board has held that rate of pay for schedule award purposes is the highest rate which satisfies the terms of section 8101(4).<sup>24</sup> Office regulations provide that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness without a new or intervening injury.<sup>25</sup>

### **ANALYSIS -- ISSUE 2**

The Office accepted appellant's traumatic injury claim for a left wrist fracture, which occurred on September 28, 2001 when a metal shelf fell on her wrist. Appellant sustained a traumatic injury and stopped work on September 28, 2001 and returned to work full-time modified duty on October 27, 2001. There is no evidence that appellant sustained a recurrence of disability. Appellant's pay rate on the date of injury, September 28, 2001, was \$40,472.00 and the record reflects that the pay rate as of her return to work on October 27, 2001 was the same. She received a fixed annual rate of pay, for a position that provided employment for the whole year preceding the injury.<sup>26</sup> The Office calculated her pay rate on April 18, 2007 as

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<sup>20</sup> 5 U.S.C. §§ 8101-8193; *see also* R.S., 58 ECAB \_\_\_\_ (Docket No. 06-1346, issued February 16, 2007).

<sup>21</sup> 5 U.S.C. § 8107.

<sup>22</sup> 5 U.S.C. § 8105(a). Section 8110(b) of the Act provides that total disability compensation will equal three fourths of an employee's monthly pay when the employee has one or more dependents. 5 U.S.C. § 8110(b).

<sup>23</sup> 5 U.S.C. § 8101(4). In an occupational disease claim, the date of injury is the date of last exposure to the employment factors which caused or aggravated the claimed condition. *Patricia K. Cummings*, 53 ECAB 623, 626 (2002).

<sup>24</sup> *Robert A. Flint*, 57 ECAB 369 (2006).

<sup>25</sup> 20 C.F.R. § 10.5(x).

<sup>26</sup> 5 U.S.C. § 8114.

\$686.50 per week,<sup>27</sup> which included cost-of-living adjustments, based on the date of injury, which is the same as the date disability began, September 28, 2001.

The Board finds that appellant's pay rate for schedule award purposes is no more than \$686.50, her pay rate at the time of her September 28, 2001 work injury and which is also the date disability began. Pursuant to section 8101(4) of the Act appellant's monthly pay for purposes of computing compensation benefits is the monthly pay at the time of injury or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment, whichever is greater.<sup>28</sup> Appellant's claim was accepted for a traumatic injury which occurred on September 28, 2001 and she stopped work on September 28, 2001 and did not file a recurrence of disability. The Office calculated his pay rate on April 18, 2007 as \$659.88 per week (\$879.84 weekly pay rate times .75 augmented compensation rate equals \$659.88, with applicable cost-of-living adjustments bringing the total to \$686.50) based on information provided by the employing establishment. It based appellant's April 18, 2007 schedule award on the September 28, 2001 date-of-injury pay rate, which was also the date disability commenced. The Board finds that the Office properly calculated appellant's pay rate for the purposes of her April 18, 2007 left arm schedule award.

### **CONCLUSION**

The Board finds that appellant has no more than 19 percent permanent impairment of the left upper extremity for which she has received a schedule award. The Board further finds that the Office properly determined appellant's pay rate for schedule award purposes.

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<sup>27</sup> The pay rate prior to the cost-of-living adjustment was \$659.88.

<sup>28</sup> 5 U.S.C. § 8101(4).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 18, 2007 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: January 9, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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