

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

D.B., Appellant

and

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

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**Docket No. 09-1426
Issued: February 24, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 19, 2009 appellant filed a timely appeal from a February 6, 2009 merit decision of the Office of Workers' Compensation Programs concerning a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has established that she has more than five percent impairment of her left upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On June 16, 2004 appellant, then a 42-year-old sales service associate, injured her left wrist and thumb while moving a 48-pound package from a counter to a hamper. The Office accepted the claim for left wrist de Quervain's syndrome, left radial nerve, cutaneous sensory lesion of radial nerve and other mononeuritis of the left upper limb. The Office authorized an April 11, 2005 left first dorsal compartment release, a December 16, 2005 left radial nerve laceration repair and a November 16, 2007 neuroma excision from the radial sensory nerve. On

August 9, 2006 the Office granted a schedule award for five percent permanent partial impairment of the left arm. The award represented 15.6 weeks of compensation from July 24 to November 10, 2006.

On January 7, 2009 appellant filed a claim for an additional schedule award. In a November 26, 2008 treatment note, Dr. Brian J. Battersby, a Board-certified orthopedic surgeon, opined that appellant had reached maximum medical improvement. He diagnosed left wrist radial nerve palsy and status post traumatic de Quervain's tenosynovitis. Dr. Battersby stated that under pages 495 and 494 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a 10 percent impairment of the left arm due to significant loss of strength, pain and decreased sensation. He advised that appellant would need continued pain medications and nerve medicines to control her symptoms.

On January 20, 2009 an Office medical adviser reviewed the medical record and found the date of maximum medical improvement was November 26, 2008. He found, however, no evidence of a impairment greater than the five percent previously awarded. The Office medical adviser noted that the attempted surgical repair of the injured superficial branch of the radial nerve was apparently unsuccessful, but that Dr. Battersby did not list specific findings as to any strength testing and advised that loss of strength would not be a factor with a sensory nerve. Based on the information provided in Dr. Battersby's report, there was no evidence of any change in the impairment rating.

By decision dated February 6, 2009, the Office denied appellant's claim for an additional schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.³ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁴ A

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.404.

³ 5 U.S.C. § 8107(c)(19).

⁴ *Supra* note 2.

claimant may seek an increased schedule award if the evidence establishes that she sustained an increased impairment at a later date causally related to her employment injury.⁵

ANALYSIS

The Office accepted appellant's claim for left wrist de Quervain's syndrome, injury to left radial nerve, cutaneous sensory lesion of the radial nerve and mononeuritis of the left arm and authorized surgery. Appellant received a schedule award for five percent loss of her left upper extremity. On appeal, appellant contends that she has 10 percent impairment as recommended by Dr. Battersby.

On November 26, 2008 appellant's treating physician, Dr. Battersby, noted that appellant reached maximum medical improvement with regard to her accepted condition. He indicated generally that, under pages 495 and 494 of the A.M.A., *Guides*, appellant had 10 percent impairment of the left upper extremity due to significant loss of strength, continued pain and decreased sensation. In making this impairment rating, Dr. Battersby did not address how he applied the A.M.A., *Guides*. The Board notes that page 495 refers generally to carpal tunnel syndrome and complex regional pain syndromes. Dr. Battersby did not provide any valid strength testing. The Board notes that, other than referring to pages 495 and 494, Dr. Battersby did not explain how he derived his impairment rating pursuant to the A.M.A., *Guides*. He did not provide any detailed description of how those provisions applied to appellant's claim. Dr. Battersby did not otherwise explain how he rated appellant's continued pain and decreased sensation pursuant to the A.M.A., *Guides*. Absent such information, the Board finds that the impairment rating of Dr. Battersby is of diminished probative value as he did not properly rate impairment in conformance to the A.M.A., *Guides*.⁶ The Office medical adviser also found no basis under the A.M.A., *Guides* on which to rate impairment, beyond that previously awarded.

The Board finds that appellant has not established that she has more than five percent permanent impairment of her left upper extremity. Appellant has not submitted sufficient medical evidence, conforming with the A.M.A., *Guides*, to establish that she has greater impairment. The Board affirms the Office's denial of an increased schedule award.

CONCLUSION

The Board finds that appellant has no more than a five percent permanent impairment of her left upper extremity, for which she received a schedule award.

⁵ *Linda T. Brown*, 51 ECAB 115 (1999).

⁶ *Shalanya Ellison*, 56 ECAB 150, 154 (2004) (schedule awards are to be based on the A.M.A., *Guides*; an estimate of permanent impairment is not probative where it is not based on the A.M.A., *Guides*).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 6, 2009 is affirmed.

Issued: February 24, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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