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<b>WILLIAM R. HOLLAWAY, Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 02-754</b>
	)	<b>Issued: February 19, 2004</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Fort Leonard Wood, MO, Employer</b>	)	
	)	

*Case Submitted on the Record*

Before:  
ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member

On January 27, 2002 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 5, 2001. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has *de novo* jurisdiction over the merits of this case.

The issue on appeal is whether appellant is entitled to a schedule award.

On June 9, 1999 appellant, then a 47-year-old postal clerk, filed an occupational disease claim alleging that he sustained lateral epicondylitis as a result of “throwing letters.” Appellant had undergone surgery on his right elbow on May 5, 1999. By letter dated September 8, 1999, the Office accepted appellant’s claim for lateral epicondylitis, right elbow. By decision dated January 25, 2000, the Office denied appellant’s claim for periods of disability for the reason that appellant had not established that the claimed periods of disability were causally related to his accepted condition.

On March 24, 2000 appellant filed a claim for a schedule award. On April 12, 2000 the Office medical adviser reviewed appellant's claim and noted that, for a schedule award to be issued, appellant needed to submit medical evidence indicating that appellant had reached maximum medical improvement. By letter dated April 13, 2000, the Office requested that appellant submit all postoperative medical records. No evidence was timely received, and by letter dated July 12, 2000, the Office again requested said information, and again received no timely response. By decision dated September 28, 2000, the Office denied appellant's claim for a schedule award for the reason that the evidence failed to demonstrate that he sustained a permanent impairment. By letter dated April 10, 2001, appellant requested reconsideration. In support thereof, appellant submitted a January 11, 2001 medical report by Dr. Thomas F. Satterly, appellant's treating osteopath. He opined:

"[Appellant] has developed a problem of chronic lateral epicondylitis. He underwent surgery for this problem, but he still is having some problems. While not as bad as before surgery, he still has problems with activities with pain and discomfort in the elbow. His examination today shows a well-healed incision. He still has quite a bit of tenderness with direct palpitation. He has no muscle atrophy, and no ligamentous instability is noted about the elbow.

"At this time I would give him a permanent partial disability rating of 20 [percent] to the right elbow due to his chronic lateral epicondylitis, subsequent surgery, and residual pain for which the patient, at this time, is going to be wearing a tennis elbow brace."

By decision dated June 25, 2001, the Office reviewed appellant's case on the merits, but determined that the evidence submitted was not sufficient to warrant modification of the prior decision.

### **LEGAL PRECEDENT**

An employee seeking compensation under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim by weight of the reliable, probative and substantial evidence,<sup>2</sup> including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.<sup>3</sup>

The schedule award provision of the Act<sup>4</sup> and its implementing regulation<sup>5</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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Donna Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404 (1999).

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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>6</sup>

### **ANALYSIS**

In the instant case, appellant has not submitted any medical evidence giving him a permanent impairment rating under the A.M.A., *Guides*. Although Dr. Satterly, an attending osteopath, noted in his January 11, 2001 report that appellant had a 20 percent permanent disability rating to the right elbow due to his chronic lateral epicondylitis, subsequent surgery, and residual pain, Dr. Satterly did not indicate that he applied the A.M.A., *Guides* in reaching this conclusion. Dr. Satterly briefly noted a few findings on physical examination, but he did not provide sufficient examination findings such that the relevant standards of the A.M.A., *Guides* could otherwise be applied to determine the extent of appellant's permanent impairment. The reports of Dr. Satterly, as well as the other medical reports of record, do not contain an adequate description which would allow for a clear visualization of the impairment with its restrictions and limitations.<sup>7</sup> The record does not contain any medical report showing that appellant has a permanent impairment which would entitle him to a schedule award.

### **CONCLUSION**

Under the circumstances as described above, the Board finds that appellant has not established that he is entitled to a schedule award.

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<sup>6</sup> See *id.*, *James Kennedy Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

<sup>7</sup> The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation must include "a detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6 (August 2002). See *John H. Smith*, 41 ECAB 444, 448 (1990); *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 5, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 19, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member