

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

EDGARDO P. DIAZ, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Francisco, CA, Employer**

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**Docket No. 04-1574
Issued: November 24, 2004**

Appearances:
Edgardo P. Diaz, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On June 2, 2004 appellant filed a timely appeal of the May 19, 2004 decision of the Office of Workers' Compensation Programs, which granted a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the May 19, 2004 schedule award.

ISSUE

The issue is whether appellant has greater than a 12 percent permanent impairment of his left and right upper extremities, for which he received a schedule award.

FACTUAL HISTORY

Appellant, a 49-year-old clerk, has an accepted occupational disease claim for bilateral shoulder strain which arose on or about March 29, 2002 (13-2052097). He also has preexisting bilateral carpal tunnel syndrome (13-1179709) for which he previously received a schedule

award for 11 percent permanent impairment of both upper extremities.¹ Appellant was restricted to limited-duty work as a result of his shoulder strain and carpal tunnel syndrome.

On February 11, 2004 appellant filed a claim for a schedule award under claim number 13-2052097. The Office referred appellant for examination by Dr. Alan B. Kimelman, a Board-certified physiatrist, who in a report dated April 8, 2004, diagnosed bilateral shoulder strain. Appellant exhibited no loss of range of motion. The physician also noted that there was no atrophy or weakness of the upper extremities. Additionally, Dr. Kimelman reported that there was no tenderness to palpation at the anterior shoulders, but appellant claimed supraspinatus myofascial tension bilaterally. He characterized appellant's shoulder pain as mild and noted that it interfered with his ability to perform overhead work. There was no reported sensory loss or alteration of sensation.

The Office obtained records from appellant's prior claim (13-1179709), which included operative reports for his two carpal tunnel releases and an August 6, 2001 report from Dr. Philip Wirganowicz, a Board-certified orthopedic surgeon and Office referral physician, who evaluated appellant for purposes of determining the extent of any permanent impairment due to his bilateral carpal tunnel syndrome. The Office also obtained an October 2, 2001 report from Dr. Ellen Pichey, an Office medical adviser, who calculated an 11 percent bilateral upper extremity impairment due to carpal tunnel syndrome.

The Office forwarded the record, including Dr. Kimelman's April 8, 2004 findings, to another medical adviser, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon, who in a report dated May 3, 2004, found that appellant had a 12 percent impairment of the left and right upper extremity. The Office medical adviser attributed 11 percent of the impairment to residual bilateral carpal tunnel symptoms and the other one percent impairment he attributed to appellant's March 29, 2002 bilateral shoulder injury.

On May 19, 2003 the Office granted a schedule award for an additional one percent impairment of the left and right upper extremities. The award covered a 6.24-week period from August 4 to September 16, 2003.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.² The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate

¹ Appellant underwent surgical releases for his carpal tunnel syndrome on May 19, 1999 and September 14, 2000.

² The Act provides that for a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks of compensation. 5 U.S.C. § 8107(c)(1).

standard for evaluating schedule losses.³ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁴

ANALYSIS

Dr. Kimelman did not provide an impairment rating under the A.M.A., *Guides* (5th ed. 2001), therefore, the Office properly referred the case to its medical adviser for review. The Office medical adviser correctly noted that Dr. Kimelman's examination revealed full and symmetric range of motion in both shoulders. The reported measurements for forward flexion, extension, abduction, adduction, internal rotation and external rotation all fell within the normal range.⁵ The Office medical adviser also correctly noted that there was no evidence of muscle weakness, atrophy or instability. Accordingly, the Office medical adviser properly concluded that appellant did not have bilateral upper extremity impairments for loss of motion, muscle weakness, atrophy or instability.

The Office medical adviser calculated a one percent bilateral impairment due to sensory deficit or pain. Based on Dr. Kimelman's April 8, 2004 examination findings the Office medical adviser rated the severity of appellant's pain or sensory deficit as Grade 4, which represents a 25 percent sensory deficit under Table 16-10, A.M.A., *Guides* 482. The Office medical adviser properly found that the maximum impairment based on the axillary nerve was 5 percent according to Table 16-15, A.M.A., *Guides* 492. Under Tables 16-10 and 16-15, a Grade 4 rating (25 percent) and an axillary nerve sensory deficit (5 percent) results in 1.25 percent impairment (25 percent x 5 percent = 1.25 percent), which is properly rounded down to 1 percent.⁶

Based upon his review of the record the Office medical adviser noted that there did not appear to be any change in appellant's residual problems with bilateral carpal tunnel syndrome. He, therefore, combined appellant's previously determined 11 percent bilateral impairment for motor and sensory deficits involving the median nerve with his 1 percent bilateral impairment for sensory deficit or pain involving the axillary nerve.⁷ Utilizing the Combined Values Chart, A.M.A., *Guides* 604, he properly determined that appellant had a combined bilateral upper extremity impairment of 12 percent. Inasmuch as the Office medical adviser's May 3, 2004 calculation conforms to the A.M.A., *Guides* (5th ed. 2001), his finding constitutes the weight of the medical evidence.⁸ Appellant has not submitted any credible medical evidence indicating that he has greater than a 12 percent impairment of the left and right upper extremities.

³ 20 C.F.R. § 10.404 (1999).

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); FECA Bulletin No. 01-05 (January 29, 2001).

⁵ See Figure 16-40, A.M.A., *Guides* 476; Figure 16-43, A.M.A., *Guides* 477; Figure 16-46, A.M.A., *Guides* 479.

⁶ See *Marco A. Padilla*, 51 ECAB 202, 206 n.6 (1999) (the Office's policy is to round the calculated impairment percentage to the nearest whole number).

⁷ See Example 16-58, A.M.A., *Guides* 487-88.

⁸ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

As appellant previously received an award for an 11 percent permanent impairment of both upper extremities, the Office properly awarded only an additional 1 percent impairment for both upper extremities.⁹

CONCLUSION

The Board finds that appellant failed to establish that he has more than a 12 percent permanent impairment of his left and right upper extremities.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 24, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁹ See *Mike E. Reid*, 51 ECAB 543, 547-48 (2000).