

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

L.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Milwaukee, WI, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 06-1622
Issued: October 19, 2006**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 10, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 1, 2006 schedule award decision. Under 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 13 percent permanent impairment of the right upper extremity.

FACTUAL HISTORY

This is appellant's third appeal before the Board. On March 19, 1999 appellant, a 48-year-old mail handler, filed a Form CA-2 claim for benefits for a back condition causally related to factors of his federal employment. The Office accepted his claim for an acceleration of cervical spine disc disease. In a decision dated October 29, 2001, the Office granted a schedule award for a nine percent permanent impairment of the right upper extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.)

(the A.M.A., *Guides*). This decision was appealed to the Board. The Director filed a motion requesting that the Board remand the case for further development, noting that the Office medical adviser provided insufficient rationale in making his impairment rating. By order dated June 2, 2003, the Board granted the Director's motion, set aside the Office's October 29, 2001 decision and cancelled oral argument.¹ On remand the Office requested a supplemental report from Dr. James Lloyd, appellant's attending Board-certified neurosurgeon. The Office medical adviser requested that Dr. Lloyd provide detailed upper extremity findings, including range of motion measurements and sensory and motor findings. The Office, however, did not receive a supplemental report from Dr. Lloyd.²

By decision dated February 4, 2004, the Office found that appellant had not established that he had a right upper extremity impairment greater than the nine percent impairment already awarded. By decision dated November 5, 2004, an Office hearing representative affirmed the Office's February 4, 2004 decision. An appeal was taken to the Board. In a November 22, 2005 decision,³ the Board set aside the Office's November 5 and February 4, 2004 decisions, finding that additional medical evidence was required in order to determine the extent of appellant's permanent impairment to his right upper extremity. The Board remanded the case to the Office for further medical development. The complete facts of this case are set forth in the Board's November 22, 2005 decision and are herein incorporated by reference.

The Office referred appellant to Dr. Paul Cederberg, a Board-certified orthopedic surgeon. The Office advised Dr. Cederberg that the issue to be resolved was "whether the back injury has resulted in permanent impairment of the right or left upper extremity" pursuant to the A.M.A., *Guides*. The Office asked Dr. Cederberg to determine whether there was any increased impairment above the nine percent previously awarded and whether there was any permanent impairment to the left upper extremity. The Office asked Dr. Cederberg to provide "[a] full description of any permanent impairment injury residual to include preexisting conditions involving the bilateral upper or lower extremities."

In a report dated January 23, 2006, Dr. Cederberg found that appellant had a 13 percent permanent impairment of the left upper extremity pursuant to the A.M.A., *Guides*. He derived this rating based on a complete loss of sensation in the C6-7 distribution of appellant's left hand pursuant to Table 16-13 at page 489. Dr. Cederberg did not calculate any additional impairment for the right upper extremity.

¹ Order Granting Remand and Canceling Oral Argument, Docket No. 02-1225 (issued June 2, 2003).

² In a decision dated August 1, 2003, the Board reversed the Office's January 17, 2002 wage-earning capacity determination. *Larry M. Staffaroni*, Docket No. 02-1702 (issued August 1, 2003). The Board found that appellant's actual earnings at the time of his retirement on May 15, 2001 did not fairly and reasonably represent his wage-earning capacity as it was unclear from the record whether the position was appropriate. The Board noted that the issue of whether appellant had more than a nine percent permanent impairment of the right upper extremity was not before it at this time based on its action on a motion of the Director.

³ Docket No. 05-1726 (issued November 22, 2005).

By decision dated February 1, 2006, the Office awarded appellant an additional 4 percent impairment, for a total 13 percent award for the right upper extremity. This award covered the period December 10, 2005 to March 7, 2006, for a total of 12.48 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ sets 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 loss of use.⁵ However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (5th ed.) as the standard to be used for evaluating schedule losses.⁶

ANALYSIS

The Board finds the case is not in posture for decision.

The Office referred the case to Dr. Cederberg to determine whether appellant had impairment to the right upper extremity greater than the nine percent impairment previously awarded. The Office also instructed Dr. Cederberg to determine whether appellant was entitled to a schedule award for permanent impairment of the left upper extremity due to his accepted back injury. Dr. Cederberg provided an impairment rating finding a 13 percent impairment to the left upper extremity. This was based on a complete loss of sensation in the C6-7 distribution of appellant's left hand, pursuant to Table 16-13, page 489 of the A.M.A., *Guides*. He did not calculate an impairment for the right upper extremity.

In reviewing Dr. Cederberg's rating of the left upper extremity, the Board notes that his description of appellant's complete loss of sensation in the left hand would classify appellant's impairment as a Grade 0 impairment, pursuant to Table 16-10.⁷ This would allow for up to 100 percent of the maximum impairment value for sensory deficit. Pursuant to Table 16-13,⁸ sensory deficit of C6 is rated a maximum 8 percent upper extremity impairment and sensory deficit at C7 is rated a maximum 5 percent upper extremity impairment. Since Dr. Cederberg found that appellant was entitled to 100 percent of each value, 8 percent and 5 percent, he properly calculated that appellant had a 13 percent permanent impairment of the left upper extremity due to sensory deficit at C6-7.

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

⁵ 5 U.S.C. § 8107(c)(19).

⁶ 20 C.F.R. § 10.404.

⁷ A.M.A., *Guides* 482.

⁸ *Id.* at 488.

The Office, however, awarded appellant an additional four percent impairment for his right upper extremity in its February 1, 2006 decision, even though Dr. Cederberg did not rate any right upper extremity impairment. The Office did not specifically grant an award for the left upper extremity. Appellant has received a total 13 percent impairment under the schedule awards issued by the Office. However, the awards are not accurate as to the left upper extremity. The Board finds that appellant has a 13 percent permanent impairment of the left upper extremity. The case is not in posture for decision regarding appellant's right upper extremity impairment.

Accordingly, the Board will affirm the Office's February 1, 2006 decision, as modified, to find 13 percent permanent impairment of the left upper extremity based on Dr. Cederberg's January 23, 2006 report. The case is remanded for further development regarding the permanent impairment of appellant's right upper extremity. After such development as it deems necessary, the Office shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has a 13 percent impairment of his left upper extremity. The case is not in posture for decision on the extent of impairment to his right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2006 decision of the Office of Workers' Compensation Programs be affirmed, in part and is set aside in part. The case is remanded to the Office for further action consistent with this decision of the Board.

Issued: October 19, 2006
Washington, DC

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

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

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