

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

I.N., Appellant)	
)	
and)	Docket No. 07-2098
)	Issued: March 13, 2008
U.S. POSTAL SERVICE, VEHICLE)	
MAINTENANCE FACILITY, Philadelphia, PA,)	
Employer)	
)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 7, 2007, with respect to a schedule award for the right and left arms. Pursuant to 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 10 percent permanent impairment to his right and left arms.

FACTUAL HISTORY

The case was before the Board on a prior appeal.¹ The Office had issued an August 2, 2006 schedule award decision for a nine percent permanent impairment to the right arm, based on the report of attending physician Dr. George Rodriguez and review by an Office medical

¹ Docket No. 06-1867 (issued May 15, 2007).

adviser. In a May 15, 2007 decision, the Board modified the Office decision to reflect that appellant had 10 percent right arm impairment. The Board noted that the Office medical adviser had inadvertently written 9 percent in summarizing his findings, even though his report had found 10 percent impairment based on sensory deficit/pain of the median nerve. The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

In a report dated July 1, 2007, an Office medical adviser concurred that appellant had a 10 percent right arm impairment. The Office requested the medical adviser to provide an opinion as to permanent impairment in the left arm, based on the July 21, 2005 report of Dr. Rodriguez. In a July 10, 2007 report, the Office medical adviser reviewed the medical evidence. For the left arm, the medical adviser found a 10 percent left arm impairment, based on the same method as the right arm. The medical adviser identified the median nerve under Table 16-15 and graded the impairment at 25 percent of the maximum 39 percent for sensory deficit/pain, resulting in a 10 percent impairment. He indicated the date of maximum medical improvement was March 15, 2001.

By decision dated August 7, 2007, the Office determined that appellant was entitled to an additional 1 percent for the right arm and 10 percent for the left arm. The period of the award was 34.32 weeks commencing September 28, 2001.²

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.³ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.⁴

ANALYSIS

With respect to the right arm, in the prior decision, the Board reviewed the report of Dr. Rodriguez and noted that he did not properly apply the A.M.A., *Guides* in evaluating the degree of permanent impairment. The Board found that the Office medical adviser had properly found a 10 percent right arm impairment based on sensory deficit/pain in the right arm. Since appellant had received a schedule award for a nine percent permanent impairment, he was entitled to an additional one percent.

The prior Board decision noted that the Office had not issued a schedule award for the left arm. In his July 10, 2007 report, the Office medical adviser applied Table 16-15 and 16-10

² The period of the prior schedule award was March 15 to September 27, 2001.

³ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁴ A.M.A., *Guides*, (5th ed.); A. George Lampo, 45 ECAB 441 (1994).

in the same manner as the right arm.⁵ The maximum impairment for sensory deficit/pain in the medical nerve is 39 percent, and the impairment is graded pursuant to Table 16-10 at 25 percent of the maximum, or 9.75 percent, rounded to 10 percent. This is consistent with Dr. Rodriguez' findings for both arms.

No additional medical evidence was submitted regarding a permanent impairment. Dr. Rodriguez had opined that appellant had an 11 percent left arm impairment, but, as the Board explained in its prior decision, he did not properly apply the appropriate method for evaluating peripheral nerve disorders. Based on the probative evidence of record applying the A.M.A., *Guides*, appellant has a 10 percent permanent impairment to each arm. The Office therefore properly issued a schedule award for a 10 percent left arm permanent impairment in this case.

The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the arm, the maximum number of weeks of compensation is 312 weeks. Since appellant's impairment was 10 percent for the left arm, he is entitled to 31.2 weeks for the left arm, and an additional 3.12 weeks for the right arm. The period of the award began at the conclusion of the prior schedule award.

CONCLUSION

The probative medical evidence of record supports the Office's finding that appellant had a 10 percent permanent impairment to each arm.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 7, 2007 is affirmed.

Issued: March 13, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁵ A.M.A., *Guides* 492, Table 16-15, page 482, Table 16-10.