United States Department of Labor
Employees' Compensation Appeals Board

G.S., Appellant	)	
and	)	**Docket No. 08-2554**
	)	**Issued: June 11, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Scranton, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 22, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 10, 2008, affirming a schedule award for a three percent permanent impairment to the left arm. 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 three percent permanent impairment to his left arm causally related to his employment injury.

FACTUAL HISTORY

On December 12, 2005 appellant, then a 57-year-old letter carrier, sustained injuries in a slip and fall while in the performance of duty. The Office initially accepted the claim for chest wall contusion and left rib fractures. Appellant worked intermittently and retired from federal employment on December 1, 2007. Based on a December 19, 2007 report from an Office medical adviser, the Office also accepted multiple neuromas of left intercostal nerves. On February 5, 2008 appellant underwent a left thoracotomy (excision of the left intercostal nerve) by Dr. Mark Katlic, an orthopedic surgeon.

On February 19, 2008 appellant filed a claim for a schedule award. By letter dated March 3, 2008, the Office referred the medical evidence to an Office medical adviser for an opinion as to whether appellant had an employment-related permanent impairment to a scheduled member or function of the body.

In a report dated March 15, 2008, the Office medical adviser noted that appellant had pain that required nerve blocks and a resection of the nerve between the ribs causing the pain. The medical adviser stated that, because the pain was in the direction of the left upper extremity, he recommended a three percent permanent impairment based on Figure 18-1 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He also stated that there was no other methodology under the A.M.A., *Guides* to make this calculation. The medical adviser did not provide a date of maximum medical improvement.

By decision dated March 19, 2008, the Office issued a schedule award for a three percent permanent impairment to the left arm. The period of the award was 9.36 weeks from December 1, 2007.

Appellant requested an oral hearing before an Office hearing representative, which was held on July 10, 2008. In a report dated April 28, 2008, Dr. Katlic reported that appellant had been pain free since the surgery. By decision dated September 10, 2008, the hearing representative affirmed the March 19, 2008 schedule award.

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.[1] 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 A.M.A., *Guides* as the uniform standard applicable to all claimants.[2]

ANALYSIS

The schedule award in this case was based on the March 15, 2008 report from the Office medical adviser, who reviewed the medical evidence. Under Figure 18-1 of the A.M.A., *Guides* a pain-related impairment of up to three percent can be awarded.[3] While this section should not be used for any condition that can be adequately rated on the basis of impairment rating methods given in other chapters of the A.M.A., *Guides*, the medical adviser stated that no other methodology for rating impairment was appropriate.[4] The medical adviser provided a probative

[1] 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).

[2] *A. George Lampo*, 45 ECAB 441 (1994).

[3] A.M.A., *Guides* 574, Figure 18-1.

[4] *Id.* at 571. *Cf. J.T.*, 59 ECAB ___ (Docket No. 07-1111, issued October 4, 2007), where the physicians did not explain why the use of Chapter 18 for a pain-related impairment was appropriate.

medical opinion on the issue, and there was no other medical evidence with an opinion of a greater impairment to the left arm under the A.M.A., *Guides*. The Board finds the medical evidence does not establish more than a three percent permanent impairment to the left arm.

On appeal, appellant argues that his award should run from December 1, 2007 to April 28, 2008, because he was still under a physician's care until that date. The period of a schedule award is not determined by the length of medical care. 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 three percent, he is entitled to three percent of 312 weeks, or 9.36 weeks of compensation from the date appellant reaches maximum medical improvement from residuals of the employment injury.[5]

CONCLUSION

The medical evidence does not establish more than a three percent permanent impairment to the left arm.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 10 and March 19, 2008 are affirmed.

Issued: June 11, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

[5] *Albert Valverde*, 36 ECAB 233, 237 (1984). The date of maximum medical improvement was not well developed by the Office in this case. The commencement of the schedule award on the date appellant retired, December 1, 2007, does not represent an adverse determination in view of the subsequent medical evidence showing appellant was pain-free following surgery in February 2008. There is no indication that using a later date would result in additional compensation.