

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

D.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 12-1806
Issued: February 4, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 29, 2012 appellant filed a timely appeal from a March 26, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 23 percent right arm permanent impairment and a 10 percent left arm permanent impairment.

FACTUAL HISTORY

On September 14, 1991 appellant, then a 35-year-old letter sorting machine clerk, filed an occupational claim (Form CA-2) alleging carpal tunnel syndrome as a result of repetitive activity in her federal employment. OWCP accepted the claim for bilateral carpal tunnel syndrome.

¹ 5 U.S.C. § 8101 *et seq.*

Appellant worked in a light-duty position, stopped working in April 2006 and returned to a light-duty position on March 1, 2008.

In a report dated August 15, 2008, the attending orthopedic surgeon, Dr. Kenneth Lippman, reviewed a history of treatment and results on examination. He opined that appellant had a 25 percent right arm impairment and a 20 percent left arm impairment. Dr. Arnold T. Berman, an OWCP medical adviser, reviewed the evidence on December 15, 2008. He opined that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*), appellant had a 23 percent right arm impairment and a 10 percent left arm impairment based on sensory deficit.

By decision dated January 28, 2009, OWCP granted schedule awards for a 23 percent right arm and 10 percent left arm permanent impairment. The period of the awards was 102.96 weeks commencing August 15, 2008 to August 5, 2010.

On October 31, 2011 appellant submitted a claim for compensation (Form CA-7) for an additional schedule award. The record indicates that on August 8, 2011 appellant submitted a July 26, 2011 report from Dr. Inder Singh, an internist, who stated that she still had pain and numbness in her hands and wrist.

By decision dated December 5, 2011, OWCP found appellant was not entitled to an additional schedule award.

On December 13, 2011 appellant submitted a November 9, 2011 report from Dr. Lippman who stated that appellant was seen in 2008 and was currently being treated by Dr. Singh. Dr. Lippman provided results on examination and stated that the findings were consistent with carpal tunnel syndrome. He opined that appellant had a 20 percent impairment of each arm and that he had completed a "figure 15-2 worksheet."²

In a report dated March 21, 2012, Dr. Morley Slutsky, an OWCP medical adviser, stated that he could not determine how Dr. Lippman rated the degree of impairment. He noted that, under the sixth edition of the A.M.A., *Guides*, Table 15-23 was the relevant table for compression neuropathy. Further, the maximum impairment allowed under this table was nine percent. Dr. Slutsky stated that a peripheral neuropathy table would be used only if Table 15-23 could not be applied and that Dr. Lippman did not show how he utilized the table to rate impairment.

By decision dated March 26, 2012, OWCP found appellant was not entitled to an additional schedule award. It found the medical evidence was insufficient to warrant greater impairment to either upper extremity.

² The record does not contain the worksheet completed by Dr. Lippman.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations⁴ 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, FECA does not 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.⁵ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses. OWCP procedures provide that, effective May 1, 2009, all schedule awards are to be calculated under the sixth edition of the A.M.A., *Guides*.⁶ Any recalculations of previous awards which result from hearings or reconsideration decisions issued on or after May 1, 2009, should be based on the sixth edition of the A.M.A., *Guides*. A claimant who has received a schedule award calculated under a previous edition and who claims an increased award, will receive a calculation according to the sixth edition for any decision issued on or after May 1, 2009.⁷

A claimant seeking compensation under FECA has the burden to establish the essential elements of her claim.⁸ With respect to a schedule award, it is appellant's burden of proof to establish an increased schedule award.⁹ A claimant may seek an increased schedule award if the evidence establishes that she sustained an increased impairment causally related to an employment injury.¹⁰ The medical evidence must include a detailed description of the permanent impairment.¹¹

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.¹² In Table 15-23, grade modifier levels (ranging from 0 to 4) are described for the categories test findings, history and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ See *Ronald R. Kraynak*, 53 ECAB 130 (2001); *August M. Buffa*, 12 ECAB 324 (1961).

⁶ FECA Bulletin No. 09-03 (issued March 15, 2009); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010).

⁷ *Id.*

⁸ *John W. Montoya*, 54 ECAB 306 (2003).

⁹ *Edward W. Spohr*, 54 ECAB 806, 810 (2003).

¹⁰ See *Rose V. Ford*, 55 ECAB 449 (2004).

¹¹ See *Vanessa Young*, 55 ECAB 575 (2004).

¹² A.M.A., *Guides* 448-50.

default rating value may be modified up or down by one percent based on functional scale, an assessment of impact on daily living activities.¹³

ANALYSIS

Appellant received a schedule award on January 28, 2009 for impairment of 23 percent to the right arm and 10 percent to the left arm. She seeks an increased schedule award. It is appellant's burden of proof to establish increased impairment as determined under the sixth edition of the A.M.A., *Guides*.

Appellant submitted a November 9, 2011 report from Dr. Lippman who stated that she had 20 percent impairment to each arm. This report is of diminished probative value as Dr. Lippman provided no explanation as to how this rating was calculated. Dr. Lippman did not identify any tables under the sixth edition of the A.M.A., *Guides* or otherwise explain his determination. A medical report that does not describe the basis for the impairment rating or refer to specific tables in the A.M.A., *Guides* is of diminished probative value.¹⁴ It is well established that carpal tunnel impairments are determined under Table 15-23, as noted by Dr. Slutsky. Dr. Lippman did not discuss the application of this table or other provisions of the sixth edition of the A.M.A., *Guides*.

On appeal, appellant stated that she still had pain and referred to Dr. Lippman's report. As noted, however, Dr. Lippman did not provide a reasoned medical opinion sufficient to establish an increase in impairment to either arm.

Appellant may request at any time an increased schedule award based on new medical evidence showing a progression of an employment-related condition resulting in an increased permanent impairment.

CONCLUSION

The Board finds that appellant has not established more than 23 percent right arm or 10 percent left arm permanent impairment.

¹³ *Id.*

¹⁴ See *Mary L. Henninger*, 52 ECAB 408 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 26, 2012 is affirmed.

Issued: February 4, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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