

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

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**J.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Conway, AR, Employer**

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**Docket No. 15-277  
Issued: March 20, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 19, 2014 appellant timely appealed the September 18, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 greater than five percent impairment of the left upper extremity.

**FACTUAL HISTORY**

Appellant, a 51-year-old letter carrier, has an accepted claim for left lateral epicondylitis, which arose on or about May 10, 2011. OWCP authorized a June 5, 2013 surgical procedure

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<sup>1</sup> 5 U.S.C. §§ 8101-8193 (2006).

performed by Dr. Robert F. McCarron, a Board-certified orthopedic surgeon.<sup>2</sup> Appellant received wage-loss compensation for temporary total disability through July 19, 2013. He resumed full-time work as a letter carrier effective July 30, 2013.

On May 2, 2014 appellant filed a claim for a schedule award (Form CA-7). OWCP acknowledged receipt of the claim on May 7, 2014, and further advised that appellant should have his physician submit an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2008).

In a June 11, 2014 report, Dr. McCarron noted that appellant was one year postsurgery for left elbow lateral epicondylitis and had reached maximum medical improvement (MMI). Appellant's subjective complaints included pain, weakness, and stiffness. On physical examination, Dr. McCarron noted full motion of the left elbow. He also noted that recent grip strength testing demonstrated 50 pounds of force on the left side and 120 pounds on appellant's dominant right-hand side. Dr. McCarron indicated that this represented a deficit of between 31 and 60 percent on the left side. Utilizing the fourth edition of the A.M.A., *Guides* (1993), he found 20 percent impairment of the left upper extremity.

OWCP referred appellant to Dr. W. Brent Sprinkle, a Board-certified physiatrist, who examined him on August 26, 2014 and found five percent impairment of the left upper extremity. Dr. Sprinkle rated appellant based on the diagnosis of lateral epicondylitis, status postsurgical release with residual symptoms. He applied Table 15-4, Elbow Regional Grid, A.M.A., *Guides* 398-99 (6<sup>th</sup> ed. 2008).

On September 10, 2014 OWCP's district medical adviser (DMA), Dr. Daniel D. Zimmerman, reviewed Dr. Sprinkle's report and concurred with his five percent left upper extremity impairment rating. The DMA further noted that appellant reached MMI as of August 26, 2014.

By decision dated September 18, 2014, OWCP granted a schedule award for five percent impairment of the left arm. The award covered a period of 15.6 weeks from August 26 through December 13, 2014. OWCP explained that the award was based on the recent opinions of Dr. Sprinkle and the DMA. It further explained that Dr. McCarron's June 11, 2014 impairment rating of 20 percent was unacceptable because he based it on an earlier version of the A.M.A., *Guides* (4<sup>th</sup> ed. 1993) which was no longer applicable under FECA.

### **LEGAL PRECEDENT**

Section 8107 of FECA 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.<sup>3</sup> FECA, 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

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<sup>2</sup> Dr. McCarron performed a release of the extensor tendon, left elbow lateral epicondyle.

<sup>3</sup> For complete loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>4</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).<sup>5</sup>

### ANALYSIS

The Board finds that OWCP properly determined that Dr. McCarron's June 11, 2014 impairment rating was unacceptable. It previously advised appellant to have his physician submit an impairment rating in accordance with the sixth edition of the A.M.A., *Guides* (2008). Dr. McCarron, however, rated appellant under the fourth edition of the A.M.A., *Guides* (1993) which is no longer accepted for rating purposes by OWCP. OWCP, therefore, reasonably referred appellant to Dr. Sprinkle for an evaluation under the A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

Dr. Sprinkle was aware that OWCP had accepted appellant's claim for left lateral epicondylitis, and that he had undergone an authorized left elbow lateral epicondyle extensor tendon release. His August 26, 2014 physical examination of both upper extremities revealed normal strength and sensation intact. Appellant's reflexes were noted to be full and symmetric. Dr. Sprinkle also found no instability, no significant loss of range of motion, and gross asymmetry. With respect to appellant's elbows, there was normal range of motion bilaterally, no significant erythema, edema or swelling, and no evidence of ligamentous instability. However, Dr. Sprinkle noted there was tenderness over the left lateral epicondyle, but none on the right side. He also reviewed x-rays of appellant's elbow, which were normal. Dr. Sprinkle diagnosed status post lateral epicondylitis and surgical release with residual symptoms, which represented Class of Diagnosis 1 (CDX) impairment under Table 15-4, A.M.A., *Guides* 399 (6<sup>th</sup> ed. 2008) with a default (c) rating of five percent impairment of the upper extremity. He next calculated a net adjustment of zero. Dr. Sprinkle assigned a grade modifier of zero for Clinical Studies (GMCS) based on appellant's normal elbow x-ray.<sup>6</sup> For Functional History (GMFH), he assigned a grade modifier of two based on a *QuickDASH* score of 45.<sup>7</sup> For Physical Examination (GMPE), Dr. Sprinkle assigned a grade modifier of one for minimal palpatory findings.<sup>8</sup> Because the net adjustment was 0, the default (c) rating of five percent represented

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<sup>4</sup> 20 C.F.R. § 10.404 (2014).

<sup>5</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (February 2013).

<sup>6</sup> See A.M.A., *Guides* 410, Table 15-9 (6<sup>th</sup> ed. 2008).

<sup>7</sup> The *QuickDASH* consists of 11 questions regarding one's upper extremity symptoms (pain/tingling/difficulty sleeping) and the ability to perform certain activities such as opening a tight or new jar or using a knife to cut food. See A.M.A., *Guides* 485, Table 15-39 (6<sup>th</sup> ed. 2008). Based on the individual responses, a score is calculated from 0 to 100. The *QuickDASH* score is then used to determine an appropriate grade modifier based on functional history. See A.M.A., *Guides* 406, Table 15-7 (6<sup>th</sup> ed. 2008).

<sup>8</sup> See A.M.A., *Guides* 408, Table 15-8 (6<sup>th</sup> ed. 2008).

appellant's final left upper extremity impairment rating.<sup>9</sup> Dr. Zimmerman, the DMA, concurred with Dr. Sprinkle's five percent left upper extremity impairment rating.

Appellant questioned Dr. Sprinkle's five percent impairment rating, noting there was a large difference between his August 26, 2014 rating and Dr. McCarron's 20 percent rating. He also noted that Dr. Sprinkle saw him for only 10 minutes, whereas Dr. McCarron had been seeing him for over three years. Additionally, appellant stated that Dr. Sprinkle seemingly worked for OWCP. He reportedly announced from the outset of the second opinion examination that appellant would not be getting 20 percent for the arm.

The Board finds that Dr. Sprinkle's August 26, 2014 left upper extremity impairment rating is consistent with the A.M.A., *Guides* (6<sup>th</sup> ed. 2008). Appellant has not demonstrated impairment of the left upper extremity in excess of five percent. Accordingly, OWCP's September 18, 2014 schedule award shall be affirmed.

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

### **CONCLUSION**

Appellant has not established that he has greater than five percent impairment of the left upper extremity.

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<sup>9</sup> Net Adjustment (0) = (GMFH 2-CDX 1) + (GMPE 1-CDX 1) + (GMCS 0-CDX 1). See A.M.A., *Guides* 409-12, Section 15.3d (6<sup>th</sup> ed. 2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 18, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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