

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY M. MARKS and U.S. POSTAL SERVICE,
POST OFFICE, Suitland, MD

*Docket No. 02-2350; Oral Argument Held May 15, 2003;
Issued June 18, 2003*

Appearances: *Mary M. Marks, pro se; Jim C. Gordon, Jr., Esq.,*
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 20 percent permanent impairment to the right upper extremity.

The case has been before the Board on prior appeals. In a February 20, 2001 decision, the Board affirmed the decisions of the Office of Workers' Compensation Programs dated October 29, 1998, January 25 and February 8, 1999.¹ The Board found that the Office had properly determined appellant's pay rate for compensation purposes. The Board also determined that the Office had properly denied waiver of an overpayment of compensation in the amount of \$1,206.22.

Although the history of the case can be found in the Board's prior appeals, the relevant facts regarding the current appeal will be summarized here. Appellant filed a claim in March 1985 for a right shoulder condition causally related to her federal employment as a mail clerk. The Office accepted the claim for a right shoulder strain, right shoulder tendinitis and acromioclavicular arthritis. By decision dated December 28, 1988, the Office issued a schedule award for a 10 percent permanent impairment to the right upper extremity. On April 15, 1992 appellant filed a claim for carpal tunnel syndrome. The Office accepted that appellant sustained right carpal tunnel syndrome. By decision dated May 14, 1996, appellant received an award for an additional 10 percent permanent impairment to the right upper extremity. The period of the award was 31.20 weeks commencing April 28, 1996.

Appellant continued to receive compensation for temporary total disability. On September 25, 2001 she underwent right carpal tunnel release surgery. In a letter dated July 15,

¹ Docket No. 99-2221.

2002, the Office advised appellant that it proposed to terminate her compensation based on the medical evidence of record. The Office also notified appellant that the evidence did not establish entitlement to an additional schedule award. By decision dated August 30, 2002, the Office terminated compensation benefits.² The Office also finalized its preliminary determination that appellant was not entitled to an additional schedule award.

The Board finds that appellant has not established more than a 20 percent permanent impairment to her right upper extremity.

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 As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.⁵

In this case, appellant did not submit any new and probative medical evidence with respect to the degree of permanent impairment in the right arm. By letter dated August 17, 2001, the Office requested that appellant's attending orthopedic surgeon, Dr. Robert Neviaser, submit a report regarding appellant's degree of permanent impairment to the right upper extremity. As noted above, appellant underwent carpal tunnel surgery on September 25, 2001. In a form report received by the Office on October 5, 2001, Dr. Neviaser indicated that appellant had wrist and hand pain. He did not provide an opinion as to the degree of permanent impairment to the right upper extremity, and checked a box "no" as to whether he used the A.M.A., *Guides* in his evaluation. Moreover, he reported that the date of maximum medical improvement was "unknown."

The Board finds that Dr. Neviaser's report does not support entitlement to an additional schedule award in this case. To support a schedule award, the attending physician must include a detailed description of the impairment.⁶ Dr. Neviaser did not provide a detailed description of the impairment in this case. He did not provide an opinion as to permanent impairment based on

² By order dated May 12, 2003, the Board granted the Director's motion to set aside that portion of the August 30, 2002 decision terminating appellant's compensation. The termination issue is therefore not before the Board at this time.

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. *George Lampo*, 45 ECAB 441 (1994).

⁵ FECA Bulletin No. 01-05 (January 29, 2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995).

the A.M.A., *Guides* and he clearly indicated that appellant had not yet reached maximum medical improvement. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.⁷

The Board finds that appellant did not submit any probative medical evidence supporting a permanent impairment to the right arm greater than the 20 percent previously received. Accordingly, the Board finds that the Office properly determined that appellant was not entitled to an additional schedule award in this case.

The decision of the Office of Workers' Compensation Programs dated August 30, 2002 is affirmed.

Dated, Washington, DC
June 18, 2003

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Albert Valverde*, 36 ECAB 233, 237 (1984).