

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

KENNETH A. PATTERSON, Appellant

and

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

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**Docket No. 04-1100
Issued: August 23, 2004**

Appearances:
Kenneth A. Patterson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On March 17, 2004 appellant filed a timely appeal of a December 11, 2003 merit decision of the Office of Workers' Compensation Programs, granting him a schedule award for a one percent impairment of the right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit schedule award decision.

ISSUE

The issue is whether appellant has more than one percent impairment of the right upper extremity for which he received a schedule award.

FACTUAL HISTORY

On March 9, 2001 appellant, a 48-year-old postmaster, filed an occupational disease claim alleging that his carpal tunnel syndrome was employment related. The Office accepted the claim for right carpal tunnel syndrome and carpal tunnel release of the right median nerve was performed on April 29, 2002.

In a November 5, 2002 report, Dr. Marcia L. Hixson, an attending Board-certified orthopedic surgeon, reported that appellant noted “no further paresthesias in his hand, but feels that his grip strength is decreased.” She then concluded that he had a nine percent impairment of his right upper extremity based upon slight wrist loss of motion and loss of strength. A physical examination revealed grip strength in the right hand as 120 pounds and range of motion in the right wrist as 20 degrees ulnar deviation, 50 degrees of extension, 10 degrees radial deviation and 45 degrees flexion.

Appellant filed a claim for a schedule award on November 18, 2002.

An Office medical adviser reviewed Dr. Hixson’s evaluation and noted that she did not follow the method of estimating permanent impairment due to carpal tunnel syndrome that was clearly defined in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Referring to the classification and procedure set forth in Table 16-11, page 484, of the A.M.A., *Guides* the Office medical adviser rated appellant at Grade 2 based on strength which corresponded to a 14 percent motor loss. Using Table 16-15 for neurological weakness for the median nerve below the forearm he determined that appellant had a 10 percent nerve deficit. He then multiplied the 2 percentages and found that appellant had 1 percent impairment of the upper extremity impairment (10 percent x 14 percent = 1 percent). The Office medical adviser noted that, according to the fifth edition of the A.M.A., *Guides*, decreased motion cannot be used in combination with entrapment/compression neuropathy impairments.

On December 11, 2003 the Office issued a schedule award for a one percent permanent impairment of the right upper extremity. The period of the schedule award was from November 5 to 26, 2002.

LEGAL PRECEDENT

Section 8107 of the Federal Employees’ Compensation Act 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.¹ The Act, 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 implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.² Effective February 1, 2001, schedule awards are determined in accordance with the fifth edition of the A.M.A., *Guides*.³

¹ The Act provide that for a total or 100 percent loss of use of an arm, an employee shall receive 312 weeks of compensation. 5 U.S.C. § 8107(c)(1).

² A.M.A., *Guides* (5th ed. 2001); 20 C.F.R. § 10.404 (2003); see *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002)

³ FECA Bulletin No. 01-05 (issued January 29, 2001).

ANALYSIS

In this case, the Office based its December 11, 2003 schedule award on the review of the Office medical adviser who stated that appellant had a one percent loss of strength based upon a review of Dr. Hixson's November 5, 2002 report.

Dr. Hixson noted that appellant complained of decreased grip strength in his right hand. She found range of motion on flexion was 50 degrees and extension was 45 degrees. In calculating the loss of motion and slight loss of strength, Dr. Hixson concluded that appellant had a nine percent impairment of the right upper extremity. The physician did not explain how she arrived at her impairment calculation or refer to the A.M.A., *Guides*.

In reviewing Dr. Hixson's November 5, 2002 report, the Office medical adviser applied Table 16-11, page 484 to find appellant had a Grade 2 impairment due to motor and grip strength data of the A.M.A., *Guides* and calculated the motor deficit percentage to be 14, based upon grip strength. Next, the Office medical adviser utilized Table 16-15 to determine that appellant had a 10 percent nerve deficit. He then multiplied the 2 percentages and found that appellant had 1 percent impairment of the upper extremity impairment (10 percent x 14 percent = 1 percent). According to Table 16-11, page 484 a Grade 2 impairment corresponds to a motor deficit of 51 to 75 percent while a Grade 4 impairment corresponds to a motor deficit of 1 to 25 percent. The Office medical adviser, however, did not provide any explanation for his selection of Grade 2 as the appropriate level of impairment or how he arrived at motor loss deficit of 14 percent. Accordingly, the Board finds that the case will be remanded to the Office to obtain a complete report, including an explanation as to why a particular grade muscle function is appropriate as well as how the percentage for the grade is arrived at. After such development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for decision as it is unclear how the Office medical adviser arrived at his schedule award calculation.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 11, 2003 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: August 23, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member