

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

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**GAYLE A. ANCRUM, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Johns Island, SC, Employer**

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**Docket No. 04-423  
Issued: May 6, 2004**

*Appearances:*  
*Gayle A. Ancrum, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On December 8, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated September 11, 2003, finding that she had no more than a three percent permanent impairment of her right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award.

**ISSUE**

The issue is whether appellant has more than a three percent permanent impairment of her right upper extremity for which she received a schedule award.

**FACTUAL HISTORY**

On August 31, 2000 appellant, then a 41-year-old distribution/window clerk, filed a notice of traumatic injury alleging that she struck her right hand on a metal bar while in the performance of her federal duties. The Office accepted appellant's claim for right wrist contusion and right wrist tendinitis on April 27, 2001.

Appellant's attending physician, Dr. L. William Mulbry, Jr., a Board-certified orthopedic surgeon, performed an arthroscopy on July 10, 2001 and debrided a triangular fibrocartilage central tear. He noted that appellant had a Grade 3 scapholunate tear, a dynamic scapholunate instability. On February 5, 2002 Dr. Mulbry found that appellant had reached maximum medical improvement and found that she had a 10 percent permanent impairment of her right wrist.

Appellant requested a schedule award on April 2, 2002. On April 24, 2002 the Office medical adviser reviewed Dr. Mulbry's reports and concluded that his findings were not presented in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The Office requested additional findings from Dr. Mulbry on April 29, 2002. In a letter dated July 12, 2002, the Office referred appellant for a "referee" examination with Dr. Scott A. Stegbauer, a Board-certified orthopedic surgeon.<sup>1</sup>

In a report dated August 20, 2002, Dr. Stegbauer provided appellant's history of injury and performed a physical examination. He found that appellant had no loss of range of motion and concluded that in accordance with the fourth edition revised of the A.M.A., *Guides*, appellant had a three percent permanent impairment due to scarring and internal problems. Dr. Stegbauer awarded three percent permanent impairment due to weakness, atrophy, pain and discomfort. In a note dated August 20, 2002, the Office medical adviser reviewed Dr. Stegbauer's report and found that appellant was entitled to a three percent permanent impairment due to "weakness, atrophy, pain or discomfort."

By decision dated October 3, 2002, the Office granted appellant a schedule award for a three percent permanent impairment of her right shoulder.<sup>2</sup> Appellant requested an oral hearing by letter dated October 16, 2002. Appellant testified at her oral hearing on June 24, 2003. By decision dated September 11, 2003, the hearing representative affirmed the Office's October 3, 2002 decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employee's Compensation Act<sup>3</sup> and its implementing regulation<sup>4</sup> 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, the Act 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

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<sup>1</sup> The Board notes that there was no conflict of medical opinion between appellant's attending physician and the Office's physician and that Dr. Stegbauer is in fact a second opinion referral physician for the Office. See 5 U.S.C. § 8123(a).

<sup>2</sup> The three percent permanent impairment awarded by the Office for the right shoulder should have been for the right upper extremity. The Office hearing representative's September 11, 2003 decision corrected the award to a three percent permanent impairment of the right upper extremity.

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>5</sup> Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.<sup>6</sup>

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>7</sup>

### ANALYSIS

In this case, appellant's attending physician, Dr. Mulbry, a Board-certified orthopedic surgeon, opined that appellant had reached maximum medical improvement on February 5, 2002 and found that she had a 10 percent permanent impairment of her right wrist. However, Dr. Mulbry did not provide the specific physical findings, upon which he based his impairment ratings and did not correlate those findings with the A.M.A., *Guides*. Therefore, the Office medical adviser properly found that additional medical evidence was necessary to determine appellant's permanent impairment for schedule award purposes.

The Office then referred appellant to Dr. Stegbauer to determine her permanent impairment. He noted appellant's history of injury and performed a physical examination noting appellant's range of motion as follows: dorsiflexion, 60 degrees; palmar flexion, 60 to 80 degrees; ulnar deviation, 35 degrees; radial deviation, 20 degrees and no loss of either pronation or supination. He further stated: "I would base her impairment on her loss of motion because I really cannot find much else and in looking at the [f]ourth [e]dition of the [A.M.A., *Guides*] on loss of motion I would give zero percent for radial or ulnar deviation and zero percent for flexion extension and zero percent for pronation and supination." Dr. Stegbauer also stated: "Since she did have surgery at the wrist, there was some scarring and there is some internal problems [sic] and would come with a three percent impairment of the upper extremity, which is a permanent finding. I think that any surgery does rate a loss due to the internal scarring and the surgical affects." Finally, in the form report provided by the Office, Dr. Stegbauer indicated that appellant had a three percent impairment of function of the arm due to weakness, atrophy, pain or discomfort.

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<sup>5</sup> *Id.*

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

<sup>7</sup> *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

Applying the appropriate edition of the A.M.A., *Guides* to the range of motion figures determined by Dr. Stegbauer, 60 degrees of dorsiflexion and 60 degrees of palmar flexion are not considered to be ratable impairments.<sup>8</sup> Likewise, 30 degrees of ulnar deviation and 20 degrees of radial deviation are not considered to be ratable impairments.<sup>9</sup> Therefore, appellant was not entitled to a schedule award for loss of range of motion.

In regard to the three percent impairment rating for “internal problems” or weakness, atrophy, pain or discomfort, neither Dr. Stegbauer nor the district medical adviser, provided any findings relating to these conditions in sufficient detail so that others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations and such appropriate application of the A.M.A., *Guides* could be made. Therefore, the medical evidence is insufficient to establish the extent of appellant’s permanent impairment due to her accepted employment injury.

In this case, the Office undertook development of the medical evidence by referring appellant to Dr. Stegbauer. As proceedings before the Office are not adversarial in nature and the Office is not a disinterested arbiter; in a case where the Office “proceeds to develop the evidence and to procure medical evidence, it must do so in a fair and impartial manner.”<sup>10</sup> As Dr. Stegbauer’s report lacks the necessary detailed physical findings and an application of the appropriate edition of the A.M.A., *Guides* to those findings in order to determine appellant’s permanent impairment, on remand the Office must refer appellant to an appropriate physician to determine the extent of the permanent impairment of her right upper extremity and issue an appropriate decision.

### CONCLUSION

The Board finds that the case is not in posture for a decision as the medical evidence is not sufficient to establish appellant’s permanent impairment due to her accepted employment injury. The Office must undertake additional development of the medical evidence to determine appellant’s permanent impairment in accordance with the Act and the A.M.A., *Guides*. After such development as the Office deems necessary, the Office should issue an appropriate decision.

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<sup>8</sup> A.M.A., *Guides*, 467, Figure 16-28.

<sup>9</sup> A.M.A., *Guides*, 469, Figure 16-31.

<sup>10</sup> *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 11, 2003 decision of the Office of Workers' Compensation Programs is set aside and remanded for additional development consistent with this decision of the Board.

Issued: May 6, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member