

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

SHARON L. MEURER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Commack, NY, Employer**

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**Docket No. 05-352
Issued: May 4, 2005**

Appearances:
Paul Kalker, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 23, 2004 appellant filed a timely appeal of the September 1, 2004 merit decision of the Office of Workers' Compensation Programs, which granted appellant a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has more than 14 percent impairment of the right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

This case was previously on appeal before the Board.¹ Appellant, a letter carrier, slipped and fell in the performance of duty on August 9, 1999. The Office accepted her claim for right elbow epicondylitis and authorized surgery, which appellant underwent on May 10, 2002. The

¹ Docket No. 04-152 (issued April 29, 2004). The Board's decision is incorporated herein by reference.

Office placed appellant on the periodic compensation rolls and she received appropriate wage-loss compensation.

In a decision dated May 20, 2002, the Office terminated appellant's wage-loss compensation on the basis that injury-related disability had ceased. She requested reconsideration and the Office denied modification by decision dated September 6, 2002. The Office also granted appellant a schedule award on September 6, 2002. The award was for a 4 percent impairment of the right upper extremity and it covered 12.48 weeks, beginning May 19, 2002 and continuing through August 14, 2002. Pursuant to an order of the Board,² the Office reissued its September 6, 2002 decisions on September 24, 2003.

By decision dated April 29, 2004, the Board reversed the Office's decision terminating wage-loss compensation as the Office failed to meet its burden of proof. The Board also set aside the September 24, 2003 schedule award because there was an unresolved conflict of medical opinion regarding the extent of appellant's right upper extremity impairment. The Board instructed the Office to refer appellant for an impartial medical evaluation.

In a report dated August 17, 2004, Dr. Edmund A.C. Stewart, a Board-certified orthopedic surgeon and impartial medical examiner, found that appellant had 20 percent impairment of the right upper extremity due to sensory and motor dysfunction and loss of range of motion in the elbow and forearm. He noted that appellant reached maximum medical improvement approximately one year following her surgical procedure or around June 2001.

On August 27, 2004 the Office medical adviser reviewed Dr. Stewart's report and found that appellant had 14 percent impairment of the right upper extremity due to a combination of loss of range of motion and motor and sensory deficits. While he did not take issue with Dr. Stewart's medical opinion, the Office medical adviser noted certain mathematical errors in Dr. Stewart's calculations, which accounted for the six percent difference in their respective impairment ratings.

On September 1, 2004 the Office granted a schedule award for 14 percent impairment of the right upper extremity. Appellant had previously received an award for 4 percent impairment; therefore, the Office paid only an additional 10 percent. The award covered a period of 31.2 weeks from August 15, 2002 to March 21, 2003.

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.³ 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

² Docket No. 03-367 (issued May 29, 2003).

³ The Act provides that for a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks compensation. 5 U.S.C. § 8107(c)(1).

standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.⁴ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁵

ANALYSIS

The Board previously determined that a conflict of medical opinion existed between Dr. Anthony J. Puglisi, a Board-certified orthopedic surgeon and Office referral physician, and Dr. Neal L. Hochwald, a Board-certified orthopedic surgeon, who performed the May 10, 2000 surgery. The two doctors disagreed regarding the extent of appellant's permanent impairment due to her August 9, 1999 employment injury. On remand, the Office referred appellant to Dr. Stewart for an impartial medical examination. The Board finds that the Office properly relied on the impartial medical examiner's August 17, 2004 findings.⁶

With respect to appellant's loss of range of motion in the right elbow, Dr. Stewart noted that she lacked 15 degrees of flexion and 45 to 50 degrees of extension. As the Office medical adviser properly noted, this represented five percent impairment for loss of extension and one percent impairment due to loss of flexion for a total impairment of six percent.⁷ Dr. Stewart's physical examination also revealed full supination of the right forearm, however, pronation of the forearm was diminished some three to five degrees. The Office medical adviser correctly noted that a loss of five degrees pronation represented one percent upper extremity impairment.⁸ The one percent impairment for loss of pronation was properly added to the six percent impairment for loss of elbow flexion and extension for a total upper extremity impairment of seven percent for loss of range of motion.⁹

Both the Office medical adviser and Dr. Stewart agreed that appellant had eight percent impairment of the right upper extremity due to combined motor and sensory deficits.¹⁰ Dr. Stewart concluded that appellant's range of motion impairment and the motor and sensory

⁴ 20 C.F.R. § 10.404 (1999).

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); FECA Bulletin No. 01-05 (issued January 29, 2001).

⁶ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

⁷ See Figure 16-34, A.M.A., *Guides* 472.

⁸ See Figure 16-37, A.M.A., *Guides* 474.

⁹ See Example 16-47, A.M.A., *Guides* 473.

¹⁰ See Table 16-15, A.M.A., *Guides* 492. A Grade 4 sensory/motor deficit represents a 1-25 percent deficit under Tables 16-10, and 16-11 A.M.A., *Guides* 482, 484. The maximum combined motor and sensory deficit based on the ulnar nerve (below midforearm) is 40 percent according to Table 16-15, A.M.A., *Guides* 492. Under Tables 16-10, 16-11 and 16-15, a Grade 4 rating (20 percent) and an ulnar nerve motor/sensory deficit (40 percent) results in 8 percent impairment (20 percent x 40 percent = 8 percent).

deficits represented a total right upper extremity impairment of 20 percent. It is not clear how Dr. Stewart reached his final upper extremity impairment rating. The Office medical adviser combined the 7 percent range of motion impairment and the 8 percent impairment for motor and sensory deficits using the Combined Values Chart, A.M.A., *Guides* 604, and properly determined that appellant had a combined upper extremity impairment of 14 percent.¹¹ Inasmuch as the Office medical adviser's August 27, 2004 impairment rating conforms to the A.M.A., *Guides* (5th ed. 2001), his finding constitutes the weight of the medical evidence.¹² Appellant has not submitted any credible medical evidence indicating that she has greater than 14 percent impairment of the right upper extremity. As appellant previously received an award for 4 percent impairment of the right upper extremity, the Office properly awarded only an additional 10 percent impairment.¹³

CONCLUSION

The Board finds that appellant failed to establish that she has more than 14 percent impairment of her right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the September 1, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ See Chapter 16, §16.5b, A.M.A., *Guides* 481.

¹² See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

¹³ See *Mike E. Reid*, 51 ECAB 543, 547-48 (2000).