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

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| **STEVE R. HOFFMAN, Appellant** | ) | |
| **and** | ) | **Docket No. 05-1016** |
| | ) | **Issued: October 7, 2005** |
| **U.S. POSTAL SERVICE, POST OFFICE, Columbus, Oh, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

### ***JURISDICTION***

On March 28, 2005 appellant filed a timely appeal from the February 22, 2005 merit decision of the Office of Workers' Compensation Programs which denied his claim for an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this denial.

### ***ISSUE***

The issue is whether appellant has more than a 13 percent impairment of his right upper extremity.

### ***FACTUAL HISTORY***

On June 16, 1988 appellant, then a 36-year-old mail processor, filed a claim alleging that the tardy ulnar nerve palsy in his right elbow was a result of the repetitive nature of his job. The Office accepted his claim for right ulnar neuropathy and approved surgery. On October 4, 1994 appellant received a schedule award for a 13 percent impairment of his right upper extremity. The Office approved a second elbow surgery performed in July 2002.

On June 23, 2003 appellant filed a claim for an increased schedule award. The Office referred him, together with the case record and a statement of accepted facts, to Dr. E. Gregory Fisher, an orthopedic surgeon, for evaluation. In a report dated November 13, 2003, he described his findings and concluded that appellant reached maximum medical improvement in November 2002. Dr. Fisher stated that appellant continued to have chronic pain, numbness and tingling over the ulnar nerve distribution of the forearm and hand with corresponding decreased hand strength due to ulnar nerve irritation. He then rated the impairment, stating as follows:

> "Using the fifth edition of the American Medical Association's *Guides to the Evaluation of Permanent* Impairment, Chapter 16, Tables 10 and 15 respectively for motor and sensory losses is 25 percent. The ulnar nerve combined motor and sensory loss is 40 percent using Table 15. Multiplying 40 percent by 25 percent gives him 10 percent impairment rating to the upper extremity stemming from the allowed conditions from the injury of 1988 to the right upper extremity."

An Office medical adviser reviewed Dr. Fisher's rating and concurred.

In a decision dated January 30, 2004, the Office denied appellant's claim for an increased schedule award. In a decision dated February 22, 2005, an Office hearing representative affirmed.[1]

## ***LEGAL PRECEDENT***

Section 8107 of the Federal Employees' Compensation Act[2] authorizes the payment of schedule awards for the loss or loss of use, of specified members, organs or functions of the body. Such loss or loss of use, is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[3]

## ***ANALYSIS***

The Office accepted appellant's claim for a right ulnar nerve neuropathy. Dr. Fisher, an orthopedic surgeon and Office referral physician, reported that after two surgeries appellant continued to have chronic pain, numbness and tingling over the ulnar nerve distribution of the forearm and hand with corresponding decreased hand strength due to ulnar nerve irritation. Table 16-10, page 482 and Table 16-11, page 484, of the A.M.A., *Guides* sets forth the grading scheme and procedure for calculating impairment of the upper extremity due to peripheral nerve disorders. Impairment is calculated by multiplying the grade of the severity of the sensory or

[1] The hearing representative affirmed the Office's decision without determining for himself whether the rating the Office used to deny appellant's claim was consistent with the procedures set forth in the A.M.A., *Guides*. He simply took for granted that the rating was correct. The Board suggests that a proper review requires an independent determination, something that should prevent unnecessary appeals and their associated costs.

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001). FECA Bulletin No. 01-05 (issued January 29, 2001).

motor deficit by the respective maximum upper extremity impairment value of each nerve structure involved.[4]

In this case, the involved nerve structure is the ulnar nerve and the site of the neuropathy, as appellant's surgeries attest, is at the elbow or above the midforearm. According to Table 16-15, page 492, the maximum upper extremity impairment due to unilateral sensory deficit or pain of the ulnar nerve above the midforearm is seven percent. Dr. Fisher graded appellant's sensory deficit at 25 percent or the maximum allowed under Grade 4: "Distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity."[5] Multiplying 7 percent by 25 percent gives an upper extremity impairment due to sensory deficit or pain of 1.75 percent, which rounds to 2.

According to Table 16-15, page 492, the maximum upper extremity impairment due to unilateral motor deficit of the ulnar nerve above the midforearm is 46 percent. Dr. Fisher also graded appellant's motor deficit at 25 percent or the maximum allowed under Grade 4: "Complete active range of motion against gravity with some resistance."[6] Multiplying 46 percent by 25 percent gives an upper extremity impairment due to motor deficit of 11.5 percent, which rounds to 12.

For a structure with mixed sensory and motor fibers, impairment for each function is determined and then combined using the Combined Values Chart, page 604, to obtain the total upper extremity impairment value.[7] Here, 2 percent combines with 12 percent for a 14 percent total upper extremity impairment due to appellant's accepted ulnar nerve neuropathy. As this is one percent more than the schedule award he previously received, the Board will modify the hearing representative's February 22, 2005 decision and will remand the case for the payment of appropriate additional compensation.

## ***CONCLUSION***

The Board finds that appellant has a 14 percent impairment of his right upper extremity.

[4] A.M.A., *Guides* 481.

[5] *Id*. at 482 (Table 16-10).

[6] *Id*. at 484 (Table 16-11).

[7] *Id*. at 481.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the February 22, 2005 decision of the Office of Workers' Compensation Programs is affirmed, as modified. The case is remanded for further action consistent with this opinion.

Issued: October 7, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board