

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

DIANE M. MITCHELL, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**

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**Docket No. 05-1924
Issued: January 3, 2006**

Appearances:
Diane M. Mitchell, pro se
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 September 16, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 28, 2005 and an August 31, 2005 decision which denied further merit review of his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit decisions.

ISSUES

The issues are: (1) whether appellant has more than two percent permanent impairment of the right upper extremity and four percent permanent impairment of the left upper extremity; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On February 25, 2002 appellant, then a 44-year-old clerk, filed an occupational disease claim for bilateral carpal tunnel syndrome as a result of performing her duties. Appellant did not stop work but returned to a light-duty job. The Office accepted the claim for bilateral carpal

tunnel syndrome and left shoulder tendinitis and authorized bilateral carpal tunnel releases, which were performed on November 13, 2003 and March 4, 2004.

Appellant came under the treatment of Dr. Tariq B. Iftikhar, a Board-certified orthopedic surgeon, who submitted a report dated April 30, 2003. He noted a history of injury and advised that appellant had not responded to conservative treatment and would require decompression surgery. Dr. Iftikhar noted that an electromyogram (EMG) dated September 11, 2003 revealed mild carpal tunnel syndrome. He performed a right median nerve decompression and neurolysis and diagnosed right carpal tunnel syndrome. In a report dated February 9, 2004, Dr. Iftikhar advised that appellant was progressing well post right carpal tunnel release but experienced a lack of full strength in the hand. On March 4, 2004 he performed a left median nerve decompression and neurolysis and diagnosed left carpal tunnel syndrome. In reports dated March 12 and April 14, 2004, Dr. Iftikhar noted that appellant was progressing well post left carpal tunnel release and experienced no motor deficit. Dr. Iftikhar advised on May 14, 2004 that the physical examination of appellant's left shoulder revealed localized tenderness with limited active range of motion and tenderness over the biceps tendon. He indicated that appellant returned to a light-duty position.

Appellant submitted reports from Dr. Iftikhar dated June 14 and August 9, 2004. He noted that a magnetic resonance imaging (MRI) scan of the left shoulder revealed a full thickness tear of the rotator cuff. Appellant advised that appellant experienced limited mobility and tenderness. In a report dated October 4, 2004, Dr. Iftikhar noted that appellant's left shoulder remained symptomatic and recommended surgical intervention.

On November 4, 2004 appellant filed a claim for a schedule award.

By a letter dated November 10, 2004, the Office requested that Dr. Iftikhar determine the extent of permanent impairment of appellant's right and left upper extremities in accordance with the A.M.A., *Guides*.

In a report dated November 15, 2004, Dr. Iftikhar opined that the bilateral carpal tunnel release surgeries were successful. He noted that the right carpal tunnel examination was unremarkable. Dr. Iftikhar noted that findings upon physical examination of the left shoulder revealed flexion of 150 degrees, extension of 150 degrees, abduction and adduction was 150 degrees, external rotation was 65 degrees, internal rotation was 65 degrees, supination and pronation was normal and overall strength was 3+/5. He noted that the left hand grip was 42 pounds and the right hand grip was 48 pounds. Dr. Iftikhar noted some weakness of the shoulder and advised that appellant reached maximal medical improvement with regard to all conditions.

In a report dated January 17, 2005, an Office medical adviser determined that appellant was entitled to a schedule award for a two percent permanent impairment of the right upper extremity¹ and a four percent impairment for the left upper extremity² for grip strength deficit

¹ A.M.A., *Guides* 509, Table 16-31, 16-34.

² *Id.*

based on the fifth edition of the A.M.A., *Guides*.³ He noted that the date of maximum medical improvement for the right upper extremity was February 13 and June 4, 2004 for the left upper extremity. The medical adviser indicated that Dr. Iftikhar found no specific motor or sensory deficit and only noted a decreased grip strength deficit which measured with the dynamometer was 21.8 kilograms (kg) of the right and 19.1 kg on the left.

In a decision dated March 28, 2005, the Office granted appellant a schedule award for a two percent permanent impairment of the left upper extremity and a four percent impairment for the right upper extremity.⁴

In a letter dated April 16, 2005, appellant requested a review of the written record. In a letter dated May 6, 2005, appellant withdrew her request for a review of the written record and requested reconsideration.

In a decision dated August 31, 2005, the Office denied appellant's reconsideration request on the grounds that her letter neither raised substantive legal questions nor included new and relevant evidence and was insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing regulation⁶ sets 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 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.

ANALYSIS

The Office based its schedule award decision on the November 15, 2004 report of Dr. Iftikhar and the January 17, 2005 report of its Office medical adviser. The Board has carefully reviewed the Office medical adviser's report and notes that, while the doctor found a two percent ratable impairment for the right upper extremity and a four percent ratable impairment for the left upper extremity, it is not clear to what extent he considered the medical evidence of record in reaching his opinion. The Office medical adviser did not address

³ A.M.A., *Guides* (5th ed. 2001).

⁴ The Board notes that the medical adviser granted appellant a schedule award for a two percent impairment of the right upper extremity and a four percent impairment of the left upper extremity; however, the Office, in its decision dated March 28, 2005, granted appellant a four percent impairment of the right upper extremity and a two percent impairment of the left upper extremity. This appears to be a typographical error.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

Dr. Iftikhar's findings with regard to flexion, extension, abduction, adduction, supination and pronation for the accepted condition of left shoulder tendinitis. Dr. Iftikhar's report of November 15, 2004 noted that the carpal tunnel examination was essentially unremarkable; however, he provided range of motion findings for the accepted left shoulder tendinitis of flexion of 150 degrees for a 2 percent impairment,⁷ extension of 150 degrees for a 27 percent impairment,⁸ abduction was 150 degrees for a 1 percent impairment;⁹ adduction was 150 degrees for a 16 percent impairment,¹⁰ external rotation was 65 degrees for a 0 percent impairment,¹¹ internal rotation was 65 degrees for a 1 percent impairment,¹² and supination and pronation were normal.¹³ These findings would allow for an additional impairment rating greater than the two percent impairment for the right upper extremity and four percent impairment for the left upper extremity. The Board notes that, although the A.M.A., *Guides* provide that in a carpal tunnel schedule award case there generally will be no ratings based on loss of motion,¹⁴ in this case, the loss of motion figures for the left shoulder were attributed to the separately accepted injury of left shoulder tendinitis, unrelated to the carpal tunnel syndrome, and indicate additional impairment of the affected member.

The Board further notes that the medical adviser did not otherwise adequately explain how he reached his impairment determination in accordance with the relevant standards of the A.M.A., *Guides*.¹⁵ The Office medical adviser noted that Dr. Iftikhar found full wrist, hand and finger range of motion, and found no specific motor or sensory deficit and only noted a decreased grip strength deficit which measured with the dynamometer was 21.8 kg of the right and 19.1 kg on the left. The medical adviser determined that appellant had a two percent permanent impairment of the right upper extremity four percent impairment for the left upper extremity based on a grip strength deficit in accordance with the A.M.A., *Guides*. However, the Board notes that in a carpal tunnel schedule award case, there generally will be no ratings based on loss of grip strength.¹⁶ Office procedures¹⁷ contemplate that upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies should be calculated

⁷ A.M.A., *Guides* 476, Figure 16-40.

⁸ *Id.*

⁹ A.M.A., *Guides* 477, Figure 16-43.

¹⁰ *Id.*

¹¹ A.M.A., *Guides* 479, Figure 16-46.

¹² *Id.*

¹³ A.M.A., *Guides* 474, Figure 16-37.

¹⁴ See A.M.A., *Guides* 494-95, (5th ed.)

¹⁵ See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

¹⁶ See A.M.A., *Guides*, *supra* note 14.

¹⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808 (August 2002).

using section 16.5d and Tables 16-10, 16-11 and 16-15.¹⁸ Under the fifth edition of the A.M.A., *Guides*, schedule awards for carpal tunnel syndrome are predicated on motor and sensory impairments only.¹⁹

Proceedings under the Act are not adversary in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.²⁰ Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.

The case will be returned to the Office for development on the extent of impairment to appellant's upper extremities.

Following such further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's schedule award claim.²¹

CONCLUSION

The Board finds that this matter is not in posture with regard to the schedule award.

¹⁸ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002). Page 495 of the A.M.A., *Guides* sets forth the procedures for evaluating impairment due to carpal tunnel syndrome in situations where there has been surgical decompression.

¹⁹ *Robert V. Disalvatore*, 54 ECAB ___ (Docket No. 02-2256, issued January 17, 2003) (where the Board found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory impairments only); *John E. Hesser*, Docket No. 03-1359 (issued December 31, 2003) (where the Board found that in a carpal tunnel schedule award case, there generally will be no ratings based on loss of motion or grip strength as schedule awards for carpal tunnel syndrome are predicated on motor and sensory impairments only).

²⁰ *John W. Butler*, 39 ECAB 852 (1988).

²¹ The Board notes that it is unnecessary to address the second issue in this case in view of the disposition of the first issue.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2005 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development in accordance with this decision of the Board.

Issued: January 3, 2006
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