

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

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**DEBBIE S. DAVIS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Coppell, TX, Employer**

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**Docket No. 06-219  
Issued: July 3, 2006**

*Appearances:*  
*Debbie S. Davis, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 7, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated September 7, 2005 which granted schedule awards for a 28 percent impairment of the right upper extremity and a 28 percent impairment of the left upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish that she has more than a 28 percent impairment of the right upper extremity and a 28 percent impairment of the left upper extremity for which she received a schedule award.

**FACTUAL HISTORY**

On July 23, 1997 appellant, then a 46-year-old mail processor, filed a Form CA-2, occupational disease claim, alleging that factors of her federal employment caused pain in both hands. By decision dated August 5, 1998, the Office accepted that appellant sustained bilateral

tendinitis. In August and September 2000, she underwent cubital tunnel surgery on the left and right respectively. On June 9, 2000 the Office granted a schedule award for 28 percent right and 28 percent left upper extremity impairment. She sustained a recurrence of disability on July 11, 2004. On July 12, 2004 Dr. Paul Phillips, a Board-certified orthopedic surgeon, performed left carpal tunnel and left trigger thumb releases. Appellant was placed on the periodic compensation rolls and on January 3, 2005 Dr. Phillips performed a right trigger thumb release.

Appellant returned to limited duty, eight hours a day, on May 2, 2005. On May 4, 2005 she filed a schedule award claim and submitted an April 14, 2005 report in which Dr. Joseph H. Kay, Board-certified in physical medicine and rehabilitation, provided an impairment rating utilizing the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).<sup>1</sup> In an April 18, 2005 report, Dr. Louis D. Zegarelli, a Board-certified osteopath specializing in family practice,<sup>2</sup> evaluated appellant for lumbar spine complaints and left leg paresthesias. The Office advised appellant to obtain an impairment rating utilizing the fifth edition of the A.M.A., *Guides*. She submitted a May 19, 2005 report in which Dr. Zegarelli provided range of motion findings for her wrists, elbows, thumbs and second digits, and sensory and motor function deficits, which he analyzed in accordance with Chapter 16 of the fifth edition of the A.M.A., *Guides*. He concluded that appellant had total upper extremity impairments of 20 percent on the right and 12 percent on the left.

In an August 31, 2005 report, an Office medical adviser noted that appellant had previously received awards for a 28 percent permanent impairment for each upper extremity. He reviewed Dr. Zegarelli's May 19, 2005 report and agreed that appellant had a 20 percent right upper extremity impairment but found that she had a 13 percent left upper extremity impairment. The Office medical adviser concluded, however, that, as appellant had previously received awards for 28 percent impairments of each upper extremity, she was not entitled to any increased schedule award. By decision dated September 7, 2005, the Office found that the medical evidence did not support that appellant was entitled to an increased schedule award.

### **LEGAL PRECEDENT**

Under section 8107 of the Federal Employees' Compensation Act<sup>3</sup> and section 10.404 of the implementing federal regulation,<sup>4</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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

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<sup>1</sup> *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

<sup>2</sup> Dr. Zegarelli is also self-described as a fellow of the American Academy of Disability Evaluating Physicians.

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

A.M.A., *Guides* has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>5</sup>

Chapter 16 provides the framework for assessing upper extremity impairments.<sup>6</sup> Section 16.5b of the A.M.A., *Guides* describes the methods for evaluating upper extremity impairments due to peripheral nerve disorders and provides that the severity of the sensory or pain deficit and motor deficit should be classified according to Tables 16-10a and 16-11a respectively. The values for maximum impairment are then to be discerned, utilizing the appropriate table for the nerve structure involved. The grade of severity for each deficit is then to be multiplied by the maximum upper extremity impairment value for the nerve involved to reach the proper upper extremity impairment for each function. Mixed motor and sensory or pain deficits for each nerve structure are then to be combined.<sup>7</sup> The A.M.A., *Guides* provides that, in evaluating the hand, the total range of motion percentages should be combined with the percentages for sensory loss.<sup>8</sup> Office procedures further provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment.<sup>9</sup>

### ANALYSIS

The Board finds that appellant does not have greater than a 28 percent impairment of each upper extremity. Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.<sup>10</sup> The Office properly referred Dr. Zegarelli's May 19, 2005 report to the Office medical adviser. Based on Dr. Zegarelli's physical findings, the Office medical adviser assessed appellant's upper extremity impairments in accordance with the A.M.A., *Guides*.

Both Dr. Zegarelli and the Office medical adviser provided a basis for their impairment ratings and referenced the specific figures and tables in the A.M.A., *Guides* on which they relied. Their analysis for range of motion deficits of the wrist, thumb, right index finger and sensory loss under the appropriate tables and figures of Chapter 16 of the A.M.A., *Guides* demonstrates that appellant has a 21 percent right upper extremity impairment and a 12 percent left upper

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<sup>5</sup> See *Joseph Lawrence, Jr.*, *supra* note 1; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

<sup>6</sup> A.M.A., *Guides* 433-521.

<sup>7</sup> *Id.* at 481.

<sup>8</sup> *Janae J. Triplette*, 54 ECAB 792 (2003).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

<sup>10</sup> See *Thomas J. Fragale*, 55 ECAB \_\_\_\_ (Docket No. 04-835, issued July 8, 2004). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, *id.*

extremity impairment.<sup>11</sup> In June 2000 appellant was granted schedule awards for bilateral impairments of 28 percent. As the current medical evidence establishes that appellant's impairments are 21 percent and 12 percent for the right and left respectively, she is not entitled to an additional schedule award.

**CONCLUSION**

The Board finds that appellant has failed to establish that she is entitled to a schedule award greater than the 28 percent right upper extremity and 28 percent left upper extremity previously awarded.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 7, 2005 be affirmed.

Issued: July 3, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>11</sup> The Board notes that the reports of Dr. Zegarelli and the Office medical adviser contained immaterial differences in their analysis. A careful review of the appropriate figures and tables (Figures 16-12, 16-15, 16-21, 16-23, 16-25, 16-28, 16-31; Tables 16-1, 16-8, 16-9) demonstrates that appellant has impairments of 21 percent on the right and 12 percent on the left. A.M.A., *Guides* 438-69.