

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

JUDY A. MADDOX, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 05-1920
Issued: June 14, 2006**

Appearances:
Judy A. Maddox, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 15, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated August 10, 2005 granting her a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has more than a four percent permanent impairment of the left upper extremity and a four percent permanent impairment of the right upper extremity for which she received a schedule award.

FACTUAL HISTORY

On April 30, 1999 appellant, then a 47-year-old flat sorting machine operator, filed an occupational disease claim alleging that she sustained tendinitis due to factors of her federal

employment. The Office accepted her claim for bilateral tendinitis of the wrists.¹ Appellant stopped work on April 22, 1999 and returned to modified duty on July 6, 1999.²

Appellant filed a claim for a schedule award on October 15, 2004. By letter dated October 21, 2004, the Office requested that her attending physician submit a report regarding the extent of permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

In a report dated February 10, 2005, Dr. Robert E. Means, Jr., an orthopedic surgeon, described appellant's complaints of "continued pain, swelling, stiffness and limited function of both hands and wrist." On physical examination, he found no hand atrophy but "positive synovial swelling" and decreased sensation at the C6 dermatome on the left and C7 and C8 dermatomes on the right. Dr. Means listed detailed range of motion measurements for the wrists and fingers of both hands. He further measured grip strength. Dr. Means concluded that, based on the A.M.A., *Guides*, appellant had a 76 percent permanent impairment of "the upper extremities extrapolated to the whole body...."

On April 20, 2005 an Office medical adviser reviewed Dr. Means' report and noted appellant's complaints of pain. He found that an electromyogram (EMG) revealed slowing of the ulnar nerve bilaterally "with associated numbness on examination." The Office medical adviser determined that the maximum impairment of the arm due to a sensory deficit of the ulnar nerve above the midforearm was seven percent according to Table 16-15 on page 493 of the A.M.A., *Guides*. He classified appellant's pain as Grade 4, or 25 percent, which he multiplied by the 7 percent maximum ulnar nerve impairment to find a 1.75 bilateral upper extremity impairment, which he rounded up to 2 percent.³ The Office medical adviser further found that appellant had a two percent impairment due to pain for each upper extremity according to Figure 18.1 on page 574 of the A.M.A., *Guides*. He combined the two percent sensory impairment of the ulnar nerve with the two percent impairment due to pain and concluded that she had a four percent impairment of each upper extremity.⁴ The Office medical adviser found that appellant reached maximum medical improvement on November 4, 2004.

By decision dated August 10, 2005, the Office granted appellant a schedule award for a four percent permanent impairment of the right upper extremity and a four percent permanent impairment of the left upper extremity. The period of the award ran for 24.96 weeks from November 4, 2004 to April 27, 2005.

¹ By decision dated June 21, 1999, the Office denied appellant's claim on the grounds that she had not established fact of injury. In a decision dated September 22, 1999, the Office vacated its June 21, 1999 decision and accepted the claim for tendinitis of the wrists due to repetitive motion at work.

² By decision dated November 28, 2001, the Office found that appellant's actual earnings as a modified flat sorting machine operator effective July 6, 1999 fairly and reasonably represented her wage-earning capacity and reduced her compensation to zero.

³ A.M.A., *Guides* 482, Table 16-10.

⁴ *Id.* at 604.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,⁵ and its implementing federal regulation,⁶ 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 for all claimants, the Office has adopted the A.M.A., *Guides* (5th ed. 2001) as the uniform standard applicable to all claimants.⁷ Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁸

Regarding loss of strength, the A.M.A., *Guides* states in relevant part:

“[I]mpairment due to loss of strength could be combined with the other impairments, only if based on unrelated etiologic or pathomechanical causes. *Otherwise, the impairment ratings based on objective anatomic findings take precedence.* Decreased strength *cannot* be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts (e.g., thumb amputation) that prevent effective application of maximal force in the region being evaluated.”⁹ (Emphasis in the original.)

FECA Bulletin No. 01-05, issued January 29, 2001 and section 18.3(b) of the A.M.A., *Guides* provide that Chapter 18 should not be used to rate pain-related impairment when conditions are adequately rated in the other chapters of the A.M.A., *Guides*.¹⁰ The bulletin provides that Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain, identifying those as Chapters 13, 16 and 17.

ANALYSIS

The Office accepted appellant's claim for bilateral tendinitis. She filed a claim for a schedule award on October 15, 2004. In support of her claim, appellant submitted a report dated February 10, 2005 from Dr. Means, who listed clinical findings of synovial swelling and decreased sensation. He further found that she had a loss of grip strength and provided detailed range of motion measurements for the bilateral wrists and fingers. Dr. Means determined that appellant had a 76 percent permanent impairment of “the upper extremities extrapolated to the whole body....” The Board notes, however, that the Act does not provide an award for a whole

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ 20 C.F.R. § 10.404(a).

⁸ See FECA Bulletin No. 01-05 (issued January 29, 2001).

⁹ *Id.* at 508, section 16.8a.

¹⁰ *Id.* at 571, section 18.3b; *supra* note 8.

body impairment.¹¹ Additionally, Dr. Means improperly included grip strength calculations in determining appellant's impairment. The A.M.A., *Guides*, provides that decreased strength "cannot be rated in the presence of decreased motion."¹² Consequently, as Dr. Means found that appellant had decreased motion of the wrists and fingers, it was inappropriate for him to utilize the values for loss of strength in evaluating her impairment.

An Office medical adviser reviewed Dr. Means' report and noted that an EMG revealed ulnar nerve dysfunction. He multiplied the maximum allowed under the A.M.A., *Guides* for a sensory impairment of the ulnar nerve, 7 percent, by 25 percent for Grade 4 pain, and found that appellant had a 2 percent impairment of each upper extremity due to sensory loss of the ulnar nerve.¹³ The Office medical adviser further found that she had an additional two percent impairment due to pain according to Figure 18.1 on page 574 of the A.M.A., *Guides*. He combined the two percent impairment due to sensory loss with the two percent impairment due to pain and concluded that appellant had a four percent permanent impairment of each upper extremity. FECA Bulletin No. 01-05 and the A.M.A., *Guides* at section 18.3(b), however, provide that Chapter 18 should not be used to rate pain-related impairment when conditions are adequately rated in the other chapters of the A.M.A., *Guides*.¹⁴ In assessing the impairment due to pain, the Office medical adviser did not provide any explanation why application of Chapter 16 of the A.M.A., *Guides* failed to adequately rate her upper extremity sensory impairment. Additionally, he did not evaluate Dr. Means' range of motion measurements in determining the extent of appellant's upper extremity impairment or provide any explanation for this omission.

As neither Dr. Means nor the Office medical adviser provide an impairment rating that conforms to the methodologies as outlined in FECA Bulletin No. 01-05 and the A.M.A., *Guides*, the case is not in posture for decision. Consequently, the case is remanded to the Office for further development to determine the extent of appellant's impairment of the upper extremities. Following such further development as deemed necessary, the Office shall issue an appropriate merit decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹¹ *Tania R. Keka*, 55 ECAB ____ (Docket No. 04-177, issued February 27, 2004).

¹² *Id.* at 508.

¹³ *Id.* at 492, 482, Tables 16-15, 16-10.

¹⁴ *Id.* at 571, section 18.3(b).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 10, 2005 is set aside and the case is remanded for further proceedings in accordance with the decision of the Board.

Issued: June 14, 2006
Washington, DC

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

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