

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

LONNIE K. CUTTILL, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bedford Park, IL, Employer**

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**Docket No. 05-1814
Issued: March 3, 2006**

Appearances:

*Lonnie K. Cuttill, 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 August 30, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated October 22, 2004. 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 met his burden of proof to establish that he sustained more than a 40 percent permanent impairment of his right upper extremity for which he received a schedule award.

FACTUAL HISTORY

On November 17, 2000 appellant, then a 41-year-old letter carrier, filed a traumatic injury claim alleging that on November 16, 2000 he injured his right hand as he was flipping a

double bundle of mail.¹ The Office accepted appellant's claim for right ulnar neuropathy, bilateral wrist tendinitis and right wrist arthroscopy.² The Office also authorized a right cubital tunnel release.³

On August 29, 2001 appellant filed a Form CA-7 to claim a schedule award.

By decision dated November 9, 2001, the Office granted a schedule award for 37.44 weeks from September 10 to November 3, 2001 based upon a 12 percent permanent impairment of the right upper extremity.

Appellant stopped work on July 25, 2002 and underwent reexploration, decompression and external neurolysis of the right ulnar nerve at the elbow and anterior submuscular transposition of the right ulnar nerve at the elbow. He returned to limited-duty work on August 8, 2002. On October 25, 2002 appellant underwent right shoulder arthroscopic surgery, debridement of biceps tendon and rotator cuff and subacromial arthroplasty. He returned to work on November 4, 2002. The Office paid compensation for wage loss for the surgery recovery periods.

On October 21, 2003 appellant filed a claim for a schedule award. He submitted an October 1, 2003 report from Dr. David J. Fletcher, Board-certified in occupational medicine, who determined that appellant had reached maximum medical improvement. He noted that appellant had loss of function of 40 percent of the right upper extremity based upon the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (hereinafter A.M.A., *Guides*). Dr. Fletcher opined that this was based upon a loss of function, surgery, and neurological changes and explained that appellant's discomfort was diffuse rather than localized. He also noted that appellant's range of motion in his wrist was decreased compared to the opposite side, that he had weakness and ongoing neurological complaints of the whole person and had reached maximum medical improvement.

In an October 27, 2003 report, Dr. Fletcher noted appellant's history of injury and treatment, which included two surgeries on the right wrist, two surgeries on his right elbow and another surgery on his shoulder. He also noted that appellant had grip strength on the left of 98 pounds, as opposed to 42 pounds on the right, with the left arm being 57.2 percent stronger than

¹ The record reflects a prior claim under No. 102011560 which was accepted for internal derangement of the right wrist, right carpal tunnel syndrome, and ganglion cyst of the right wrist and No. 102011561, which was accepted for right shoulder impingement syndrome and right rotator cuff tear. These files were combined by the Office on September 20, 2002 under master file No. 100504794. On January 24, 2001 appellant filed an occupational disease claim, alleging that the repetitive motion of extending, contracting and constant fine manipulation of his position, caused his right cubital tunnel condition.

² The arthroscopy was performed on February 5, 2001.

³ Appellant accepted a limited-duty position on November 20, 2000 comprised of only carrying one bundle at a time, intermittent weight of 30 pounds and continuous weight of 10 pounds. The position was also modified again on November 28, 2000 to comply with appellant's restrictions. Appellant worked intermittently and stopped work on March 16, 2001 prior to his surgery. He returned to limited duty on March 21, 2001 and received compensation for wage loss.

the right.⁴ Dr. Fletcher advised that appellant had supination on the left of 73.1 pounds as opposed to 24.7 pounds on the right, with supination strength being 66.3 percent stronger on the left arm, with slight atrophy on the right.⁵ He also noted that the right hand lost “sensory” as it moved “from thumb to little finger.” Dr. Fletcher indicated that the left arm measured 11 3/4 inches as opposed to 11 1/16 inches on the right. He placed appellant on permanent restrictions and determined that appellant had a 41 percent impairment of the whole person.⁶

Appellant also submitted the September 23, 2003 findings utilized by Dr. Fletcher, which were provided by Dr. Nash H. Naam, Board-certified in surgery.⁷ He noted appellant’s history of injury and treatment, and also noted that appellant related complaints of pain in the right elbow and forearm and numbness in the ulnar side of the right elbow, the forearm, and the right ring and small fingers. Dr. Naam advised that there was no swelling of the upper extremities, no atrophy of the forearm or hand muscles and that the active range of motion of the shoulders, elbows, wrists and fingers was completely normal. He examined the elbows and noted localized tenderness over the ulnar aspect of the right elbow in the cubital groove, a positive Tinel’s sign over the area of the ulnar groove eliciting paresthesias to the forearm and to the ring and small fingers, which he thought, was “surprising.” Dr. Naam noted no tenderness over the forearms, and negative Tinel’s, Phalen’s and median nerve compression tests. He compiled grip strength measurements which included for the right and left positions; position one, 32 pounds and 68 pounds; position two, 38 pounds and 120 pounds; and position three, 50 pounds and 101 pounds. Dr. Naam conducted a full sensory evaluation and determined that two-point discrimination for radial, ulnar, and right thumb, were 6 out of 6, the index was a 5 out of 5, the ring finger was a 5 out of 6, the little finger was a 6 out 7 and the Semmes-Weinstein’s test was 2.44 in all the digits. He opined that appellant was post anterior submuscular transposition of the right ulnar nerve and that appellant had persistent symptoms of pain and numbness involving the right ulnar nerve distribution. Dr. Naam also indicated that some of appellant’s clinical findings and complaints were not physiologic, “such as the numbness that involves the ulnar side of the elbow and the forearm,” and noted these areas were not supplied by the ulnar nerve. He further noted that since the diagnostic findings were completely normal, he concurred with Dr. Fletcher that appellant was not in need of further surgical intervention.

On January 15, 2004 an Office medical adviser opined that appellant had 18 percent impairment of the right upper extremity due to loss of grip strength, 4 percent for strength impairment due to supination/pronation and weakness and 2 percent for right upper extremity impairment for a Grade 3 of pain at the right elbow. He evaluated the right shoulder range of motion and determined that appellant had flexion of 150 degrees, which was equal to 2 percent

⁴ A.M.A., *Guides* 509, Table 16-34.

⁵ *Id.* at 474, Figure 16-37.

⁶ The Office also received various pages of the A.M.A., *Guides* with calculations that appear to be from Dr. Fletcher. In those calculations, he advised that appellant had a 41 percent impairment of the whole person and a 68 percent upper extremity impairment. Dr. Fletcher provided a five percent finding for loss of range of motion of the shoulder.

⁷ Appellant was referred to Dr. Naam by Dr. Fletcher.

pursuant to Figure 16-40.⁸ The Office medical adviser determined that appellant was not entitled to any percentage for extension or adduction, and 2 percent for 142 degrees of abduction pursuant to Figure 16-43.⁹ He also noted that internal rotation was only 15 degrees and that pursuant to Figure 16-46,¹⁰ this would equal 15 degrees. The Office medical adviser added these figures which equated to 8 percent for loss of range of motion and combined these with the 24 percent for the prior surgeries and determined that pursuant to the Combined Values Chart¹¹ this would equate to a total of 29 percent impairment to the right arm, less the previous award of twelve percent. He utilized the measurements from Dr. Naam's September 23, 2003 report and determined that appellant was entitled to an additional 17 percent impairment and noted that the date of maximum medical improvement was October 1, 2003.

On February 3, 2004 the Office found that appellant had a total of 29 percent impairment of the right upper extremity. The award covered a period of 53.04 weeks from October 1, 2003 to October 6, 2004. The Office advised appellant that he was entitled to an additional award of 17 percent, as he had previously received 12 percent in the past.

By letter dated February 17, 2004, appellant requested a review of the written record.

By decision dated May 20, 2004, the Office hearing representative set aside and remanded the Office's February 3, 2004 decision. The Office hearing representative determined that the Office medical adviser did not explain why his report utilized measurements obtained from the occupational therapist, as opposed to the figures reported by the treating physician.¹² The Office hearing representative also noted that the Office medical adviser did not explain why there was a discrepancy of four percent as opposed to five percent for internal rotation and requested a rationalized explanation.

On June 22, 2004 the Office requested that the Office medical adviser provide an explanation regarding a discrepancy between the four percent awarded by Dr. Fletcher for Figure 16-46,¹³ and also requested a rationalized opinion explaining why Dr. Fletcher's measurements were not utilized for the wrist and elbow, but were utilized for the right shoulder.

In a report dated July 2, 2004, the Office medical adviser noted that impairment could not be awarded of the axial skeleton or a person as a whole only of the extremities. He noted that findings for the right shoulder included: flexion of 150 degrees, which was equal to 2 percent; no loss of extension or adduction; abduction was 142 degrees, which was equal to 2 percent;¹⁴

⁸ A.M.A., *Guides* 476, Figure 16-40.

⁹ *Id.* at 477, Figure 16-43.

¹⁰ *Id.* at 479, Figure 16-46.

¹¹ *Id.* at 604.

¹² The record contains a report dated September 23, 2003 from Lori Niemerg, an occupational therapist, who provided measurements. These appear to be the same measurements utilized by Dr. Naam.

¹³ A.M.A., *Guides* 479.

¹⁴ *Id.* at 477, Figure 16-43.

internal rotation of 15 degrees was equal to 4 percent;¹⁵ and external rotation of 65 degrees was equal to 0 percent.¹⁶ He determined that this was equal to eight percent impairment for loss of range of motion (ROM) of the shoulder and explained the discrepancy of one percent between the values for range of motion of internal rotation, referring to page 478¹⁷ and noted that “impairment values for angles falling between those listed in Figure 16-46 may be adjusted or interpolated proportionally in the corresponding interval.” The Office medical adviser explained that this was a judgment call and should remain at four percent. He noted that there was no documented right shoulder pain or recent documentation of right shoulder strength. Regarding the right elbow, the Office medical adviser noted that “in the absence; of chronic regional pain syndrome, no impairment can be awarded for loss of range of motion with compression neuropathies. No causalgia is present in this case, and therefore no award is given for decreased ROM of the elbow.” He also noted that appellant received a prior award of percent to the right upper extremity for Grade 3 pain at the right elbow. Regarding appellant’s loss of strength impairment, the Office medical adviser noted that for the right wrist and hand, in the absence of chronic regional pain syndrome, no impairment can be awarded for loss of range of motion with compression neuropathies. However, he advised that there were independent accepted conditions that existed at the wrist, and opined that inclusion of wrist range of motion measurements was warranted. The Office medical adviser noted that flexion was equal to 51 degrees was equal to 2 percent,¹⁸ extension of 14 degrees was equal to 8 percent,¹⁹ radial deviation of 15 degrees was equal to 1 percent²⁰ and ulnar deviation of 19 degrees was equal to 2 percent.²¹ He added these for a total of 13 percent due to ROM of the right wrist/hand. The Office medical adviser also awarded appellant four percent to the right upper extremity for Grade 2 pain in the distribution of the posterior interosseous nerve to the wrist (radial nerve).²² He noted the previous calculation of 18 percent to the right upper extremity for loss of grip strength and the 4 percent strength impairment was awarded for supination/pronation weakness. The Office medical adviser also noted that there was no atrophy of the forearm or hand muscles and normal sensation throughout the right hand. He used the Combined Values Chart²³ and opined that appellant was entitled to 40 percent of the right upper extremity. The Office medical adviser noted that previous awards determined that appellant was entitled to an additional award of 11 percent and that the date of maximum medical improvement was October 1, 2003.

¹⁵ *Id.* at 479, Figure 16-46.

¹⁶ *Id.*

¹⁷ *Id.* at 478.

¹⁸ *Id.* at 467, Figure 16-28.

¹⁹ *Id.*

²⁰ *Id.* at 469, Figure 16-31.

²¹ *Id.*

²² *Id.* at 492, Figure 16-15.

²³ *Id.* at 604.

Accordingly, on October 22, 2004, the Office granted appellant a schedule award for an additional 11 percent, for a total of 40 percent impairment of the right arm. The award covered a period of 34.32 weeks from October 7, 2004 to June 4, 2005.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act²⁴ 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.²⁵ 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.²⁶ The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.²⁷

ANALYSIS

In support of her claim, for a schedule award appellant submitted a report from Dr. Fletcher dated October 27, 2003. The Board has carefully reviewed Dr. Fletcher's report and notes that, while the doctor determined that appellant sustained a 41 percent whole person impairment or a 68 percent upper extremity impairment, it is not clear how he made this impairment rating.

Office procedures²⁸ provide that upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.²⁹ Appellant's claim was accepted, in part, for ulnar neuropathy.

Dr. Fletcher determined that appellant had a 41 percent whole man impairment or a 68 percent impairment of the right upper extremity. His report included calculations based upon appellant's loss of grip strength. Dr. Fletcher noted that appellant had grip strength on the left of 98 pounds, as opposed to 42 pounds on the right, with the left arm being 57.2 percent stronger than the right.³⁰ However, as noted above, the A.M.A., *Guides* provides that "in compression neuropathies, additional impairment values are not given for decreased grip strength."³¹ He also

²⁴ 5 U.S.C. §§ 8101-8193.

²⁵ 5 U.S.C. § 8107.

²⁶ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

²⁷ A.M.A., *Guides* (5th ed. 2001); 20 C.F.R. § 10.404.

²⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808 (August 2002).

²⁹ A.M.A., *Guides* 491, 482, 484, 492; *Joseph Lawrence, Jr.*, 53 ECAB 331(2002).

³⁰ *Id.* at 509, Table 16-34.

³¹ *Id.* at 492, Table 16-15.

provided copies of pages from the A.M.A., *Guides* and listed percentages but he did not explain his calculations. The Board finds that his report is insufficient as he did not explain how his findings comport with the A.M.A., *Guides*.

The Office medical adviser utilized the A.M.A., *Guides* and the findings provided by Drs. Fletcher and Naam. For the right shoulder, he referred to Figure 16-40³² and determined that flexion of 150 degrees, was equal to 2 percent. He did not find any loss of extension or adduction, but found that appellant had abduction of 142 degrees, which was equal to 2 percent.³³ For internal rotation of 15 degrees, he found that this was equal to 4 percent.³⁴ The Office medical adviser explained the deviation from the five percent provided by Dr. Fletcher was a judgment call. The Board notes, however, that Office procedures provide for rounding to the nearest whole number.³⁵ As 15 degrees for internal rotation is between 4 percent for 20 degrees and 5 percent for 10 degrees in Figure 16-46, this would equate to 4.5 percent which would be rounded to the nearest whole number, 5 percent. The Board will modify the Office's finding on this point. The medical adviser also determined that external rotation of 65 degrees was equal to 0 percent.³⁶ He added the findings for the shoulder which equated to 8 percent impairment for loss of ROM of the shoulder. The Office medical adviser also noted that there was no documented right shoulder pain or recent documentation of right shoulder strength.

Regarding the right elbow, he determined that appellant was not entitled to impairment in the absence of chronic regional pain syndrome. The Office medical adviser also determined that there was no causalgia was present and explained that appellant was not entitled to an award for decreased motion of the elbow.³⁷ Regarding appellant's right wrist and hand, he noted in the absence of chronic regional pain syndrome, no impairment could be awarded for loss of motion with compression neuropathies.³⁸ However, the Office medical adviser explained that there were independent accepted conditions that existed at the wrist, which would allow for inclusion of the wrist ROM measurements. He stated noted that wrist flexion of 51 degrees equated to 2 percent impairment,³⁹ extension of 14 degrees was equal to 8 percent.⁴⁰ The Office medical adviser also determined that for radial deviation of 15 degrees this would equate to 1 percent⁴¹ and ulnar

³² *Id.* at 476.

³³ *Id.* at 477, Figure 16-43.

³⁴ *Id.* at 479, Figure 16-46.

³⁵ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3b (October 1990).

³⁶ *Id.*

³⁷ See *id.* at 494.

³⁸ See *id.* See also FECA Bulletin No. 01-05 (issued January 29, 2001). The Board notes that the A.M.A., *Guides* allow for motor weakness associated with disorders of the peripheral nervous system and various degenerative neuromuscular conditions, which are evaluated according to section 16.5

³⁹ A.M.A., *Guides* 467, Figure 16-28.

⁴⁰ *Id.*

⁴¹ *Id.* at 469, Figure 16-31.

deviation of 19 degrees was equal to 2 percent.⁴² He added these for a total of 13 percent due to lost motion of the right wrist/hand. Additionally, the Office medical adviser determined that appellant was entitled to 4 percent to the right upper extremity for Grade 2 pain in the distribution of the posterior interosseous nerve to the wrist (radial nerve).⁴³ This would equate to a sensory deficit percentage of 61 to 80 percent. This when multiplied by the factor of five for the radial nerve in Table 16-15,⁴⁴ would equal four percent.

The medical adviser also attributed impairment from a previous calculation of 18 percent to the right upper extremity for loss of grip strength and 4 percent loss of strength impairment which was awarded for supination/pronation weakness. However, this was improper as the A.M.A., *Guides* note that decreased strength cannot be rated in the presence of decreased motion that prevent effective application of maximal force in the region being evaluated.⁴⁵ As noted above, appellant was rated for lost motion of the wrist. Medical adviser also did not explain, pursuant to the A.M.A., *Guides*, how four percent for supination/pronation weakness was calculated pursuant to the A.M.A., *Guides*. The Office medical adviser utilized the Combined Values Chart⁴⁶ and opined that appellant was entitled to 40 percent of the right upper extremity. He noted that appellant had previously received awards for 29 percent and determined that appellant was entitled to an additional award of 11 percent and that the date of maximum medical improvement was October 1, 2003.

The Board finds that the medical evidence does not establish that appellant is entitled to a schedule award greater than that which he received.

CONCLUSION

The Board finds that appellant has not established that he has more than 40 percent permanent impairment of is right upper extremity.

⁴² *Id.*

⁴³ *Id.* at 482, Table 16-10.

⁴⁴ *Id.* at 492, Table 16-15.

⁴⁵ *Id.* at 508.

⁴⁶ *Id.* at 604.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 22, 2004 is hereby affirmed as modified.

Issued: March 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