

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

D.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Little Rock, AR, Employer**

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**Docket No. 05-1715
Issued: September 8, 2006**

Appearances:
D.S., 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 12, 2005 appellant filed a timely appeal from the February 14, 2005 merit decision of the Office of Workers' Compensation Programs, which denied an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the schedule award issue.

ISSUE

The issue is whether appellant is entitled to an additional schedule award for the permanent impairment to her upper extremities.

FACTUAL HISTORY

On February 22, 1984 appellant, then a 34-year-old distribution clerk, filed a claim alleging that her thumb condition was a result of her federal employment.¹ The Office accepted her claim for bilateral trigger thumb and bilateral carpal tunnel syndrome and authorized

¹ OWCP File No. A16-0079032.

surgeries. On July 21, 1987 the Office issued a schedule award for an eight percent impairment of the right upper extremity and a six percent impairment of the left. On March 25, 1993 the Office issued a schedule award for an additional 3 percent impairment of the right upper extremity (11 percent total) and an additional 7 percent impairment of the left upper extremity (13 percent total).² On October 28, 1997 the Office issued a schedule award for an additional 10 percent impairment of the left upper extremity (23 percent total). On July 2, 1998 the Office issued a schedule award for an additional 1 percent impairment of the left upper extremity (24 percent total). On August 5, 1999 the Office issued a schedule award for an additional 23 percent impairment of the right upper extremity (34 percent total) and an additional 21 percent impairment of the left upper extremity (45 percent total).³

On January 23, 2002 appellant filed a claim alleging that her neck, right shoulder and right arm condition were causally related to her federal employment.⁴ The Office accepted this claim for brachia neuritis or radiculitis not otherwise specified.

On August 7, 2002 appellant filed a claim for a schedule award. Her neurosurgeon, Dr. Jim J. Moore, described his findings and calculated her impairment on March 10, 2003, as follows:

“This patient then demonstrates neurologic compromise bilaterally in the hands. Based on Table 16-15 the patient has significant compromise of median nerve below the mid forearm, radial palmar digital of thumb, ulnar palmar digital of thumb, radial palmar digital of index finger, ulnar palmar digital of index finger, radial palmar digital middle finger, ulnar palmar digital of middle finger, radial palmar digital of ring finger which in a combined motor and sensory deficit translates to 45 percent maximum. I would provide the patient 40 percent to the median on the right and 40 percent to the median on the left. So far as the ulnar this demonstrates involvement in the ulnar primal digital of the ring finger, radial palmar digital of the little finger, ulnar palmar digital of the little finger translating to maximum of 40 percent combined motor and sensory. I would assess this individual’s compromise at 30 percent on the right and 30 percent on the left. Whole person translation based upon Table 16-3 reveals 18 percent right for the ulnar and 24 percent right for the median. This is true as well on the left at 18 percent ulnar, 24 percent median. The combined value for the ulnar is 38 percent right, 38 percent left, for the median, 42 percent right, 42 percent left. Right and left combined values again based upon the [C]ombined [V]alues [C]hart translates to 64 percent permanent partial to the body as a whole.”

² On the prior appeal of this case, the Board found that appellant had submitted no medical evidence establishing a greater loss than this. Docket No. 94-2211 (issued November 4, 1996).

³ The Office medical adviser reported a 34 percent impairment to both upper extremities for motor and sensory deficits of the median and ulnar nerves. Because appellant also had loss of shoulder motion on the left, impairment for the left upper extremity was 45 percent.

⁴ OWCP File No. 162032016.

An Office medical adviser reviewed Dr. Moore's calculations and determined that appellant's impairment, properly calculated, was 28 percent for each upper extremity.

In a decision dated December 16, 2003, the Office denied an additional schedule award. It found that appellant had already received schedule awards totaling 34 percent for the right upper extremity and 45 percent for the left. As Dr. Moore's March 10, 2003 report supported no more than a 28 percent impairment in either extremity, there was no basis for the payment of additional compensation.

In a decision dated February 14, 2005, an Office hearing representative affirmed the denial of an additional schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act⁵ 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁶

ANALYSIS

Appellant has already received schedule awards totaling 34 percent for the right and left upper extremities due to motor and sensory deficits of the median and ulnar nerves.⁷ To establish entitlement to an additional award, the medical evidence must show that impairment due to the accepted employment injuries has increased.

Dr. Moore identified the affected nerves as the median nerve below the midforearm and ulnar nerve below the midforearm. Table 16-15, page 492, of the fifth edition of the A.M.A., *Guides* provides that the median nerve below the midforearm can cause, at most, a maximum 45 percent impairment of the upper extremity. In such a case, there would be a complete, 100 percent loss of the nerve, or a nerve with no motor or sensory function. Dr. Moore graded that appellant's loss of nerve function as 40 percent on both the right and left. When the severity of the deficit is multiplied by the maximum impairment value of the affected nerve,⁸ Dr. Moore's report supports that appellant has an 18 percent impairment of the right and left upper extremity due to combined motor and sensory loss of the median nerve below the midforearm ($0.40 \times 0.45 = 0.18$).

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001).

⁷ See note 3.

⁸ A.M.A., *Guides* 481.

Table 16-15, page 492, provides that the ulnar nerve below the midforearm can cause, at most, a maximum 40 percent impairment of the upper extremity. Again, in such a case, there would be no motor or sensory function. Dr. Moore graded the deficit of this nerve at 30 percent on both the right and left. His report supports that appellant has a 12 percent impairment of the right and left upper extremity due to combined motor and sensory loss of the ulnar nerve below the midforearm ($0.30 \times 0.40 = 0.12$).

When more than one nerve structure is involved, the respective upper extremity impairment values are combined, not added.⁹ Using the Combined Values Chart,¹⁰ the 18 percent impairment caused by the median nerve combines with the 12 percent impairment caused by the ulnar nerve for a total impairment of 28 percent for each upper extremity.¹¹

Because this is less than the 34 percent rating appellant previously received for median and ulnar nerve deficits in each upper extremity, Dr. Moore's March 10, 2003 report does not support that her impairment has increased or that she is entitled to an additional schedule award. The Board will therefore affirm the Office's February 14, 2005 decision denying appellant's claim for an additional schedule award.

CONCLUSION

The Board finds that appellant is not entitled to an additional schedule award for the permanent impairment to her upper extremities. The medical evidence submitted to support her claim establishes that impairment due to median and ulnar nerve deficits has decreased since the schedule award appellant received on August 5, 1999.

⁹ *Id.*

¹⁰ *Id.* at 604.

¹¹ Dr. Moore went on to convert appellant's upper extremity impairment to a "whole person" impairment, but the Act does not authorize payment of schedule awards for the permanent impairment of the whole person. *Ernest P. Govednick*, 27 ECAB 77 (1975). Payment is authorized only for the permanent impairment of specified members, organs or functions of the body. Dr. Moore's rating for impairment to the body as a whole is therefore not relevant to appellant's claim.

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 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