

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

M.S., Appellant)

and)

U.S. POSTAL SERVICE, NEW JERSEY)
INTERNATIONAL & BULK MAIL CENTER,)
Jersey City, NJ, Employer)

**Docket No. 07-377
Issued: April 20, 2007**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 27, 2006 appellant timely appealed the February 6, 2006 merit decision of the Office of Workers' Compensation Programs, which affirmed a schedule award for permanent impairment of the right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the schedule award.

ISSUE

The issue is whether appellant has greater than 25 percent impairment of the right upper extremity.

FACTUAL HISTORY

Appellant, a 70-year-old retired distribution clerk, has an accepted traumatic injury claim for right shoulder strain, right shoulder impingement syndrome and partially torn right rotator cuff, which arose on July 6, 1997. She was restricted to limited-duty work following her July 6, 1997 injury. Appellant retired effective February 2, 2000.

Appellant filed a claim for a schedule award on April 5, 2003. In a report dated December 19, 2002, Dr. David Weiss, a Board-certified orthopedist, found a 36 percent impairment of the right upper extremity. His overall rating included impairments to the right fifth finger, right hand, wrist, elbow and right shoulder.

The district medical adviser reviewed the record and found that appellant had 24 percent impairment of the right upper extremity. In his October 28, 2003 report, he explained that he did not include impairments to the right hand or sensory deficits because they were unrelated to the accepted condition. The district medical adviser rated appellant based on loss of range of motion in the right shoulder (3 percent) and for motor deficits involving the right biceps (15 percent) and triceps (7 percent) muscles, for a combined right upper extremity impairment of 24 percent.

On January 7, 2004 the Office granted a schedule award for 25 percent impairment of the right upper extremity. The award covered 78 weeks from December 19, 2002 to June 16, 2004. The schedule award was reissued on August 19, 2005 because the Office mailed the January 7, 2004 decision to an incorrect address.

Appellant requested a hearing, which was held on December 16, 2005. The Office hearing representative subsequently issued a February 6, 2006 decision affirming the 25 percent right upper extremity impairment previously awarded.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act 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.¹ 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 under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.² Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).³

ANALYSIS

The Board finds that the case is not in posture for decision. The district medical adviser excluded from his October 28, 2003 impairment rating all conditions that were unrelated to the accepted injury of July 6, 1997. On appeal, appellant's counsel correctly noted that the impairment rating should include not only those conditions accepted by the Office as job related,

¹ The Act provides that, for a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1) (2000).

² 20 C.F.R. § 10.404 (2006).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

but also any preexisting permanent impairment of the same member or function.⁴ The case is remanded to the Office for a determination of whether the impairments Dr. Weiss attributed to appellant's right finger, hand, wrist and elbow preexisted the July 6, 1997 employment injury. If such is the case, then the Office should obtain an impairment rating that accounts for both preexisting and injury-related permanent impairment of the right upper extremity. After such further development of the record as the Office deems necessary, a *de novo* decision shall be issued concerning appellant's entitlement to a schedule award.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further consideration consistent with this opinion.

Issued: April 20, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁴ *Michael C. Milner*, 53 ECAB 446, 450 (2002); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3 (October 1990).