

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

M.M., Appellant)
and) Docket No. 06-1918
U.S. POSTAL SERVICE, POST OFFICE,) Issued: February 14, 2007
Pittsburgh, PA, Employer)

)

Appearances:

Thomas 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 15, 2006 appellant filed a timely appeal from the March 6, 2006 Office of Workers' Compensation Programs' hearing representative decision, which affirmed a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant has more than a seven percent permanent impairment of her left upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On October 22, 2003 appellant, then a 52-year-old bulk mail technician filed an occupational disease claim alleging that she sustained a left wrist condition in the performance of duty. She did not stop work. The Office accepted appellant's claim for left wrist synovitis and

tenosynovitis and radial styloid tenosynovitis of the left wrist.¹ She received appropriate compensation benefits.

On June 9, 2005 the Office received appellant's claim for a schedule award.

In a January 27, 2005 report, Dr. David Weiss, an osteopath, noted appellant's history of the injury and treatment and referenced the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). He conducted a physical examination and indicated that appellant had a well-healed transverse surgical scar over the radial styloid measuring three centimeters in length of the left hand. Appellant was nontender over the first dorsal compartment but had tenderness over the abductor pollicis longus and extensor pollicis brevis. Range of motion of the left wrist joint revealed dorsiflexion of 0-75/75 degrees, palmar flexion of 0-50/75 degrees, radial deviation of 0-20/20 degrees and ulnar deviation of 0-20/35 degrees. Dr. Weiss opined that utilizing Figure 16-31² appellant had a range of motion deficit of the left wrist for ulnar deviation of two percent and range of motion deficit for left wrist flexion pursuant to Figure 16-28 of two percent.³ He referred to Table 16-34⁴ and indicated that appellant had a left lateral pinch deficit of 10 percent and a combined left upper extremity deficit of 14 percent. Dr. Weiss utilized Figure 18-1⁵ to find that appellant had three percent impairment for pain. He determined that appellant had a total impairment of 17 percent for the left upper extremity. Dr. Weiss opined that she reached maximum medical improvement on January 27, 2005.

In a June 30, 2005 report, the Office medical adviser applied the findings of Dr. Weiss to the fifth edition of the A.M.A., *Guides*. He determined that appellant had seven percent impairment of her left arm and reached maximum medical improvement on January 27, 2005. The Office medical adviser disagreed with Dr. Weiss calculation of 17 percent and explained that a weakness award could not be combined with findings for loss of range of motion.⁶ He determined that, according to Figure 16-28,⁷ 50 degrees of flexion was equal to two percent. According to Figure 16-31⁸ 20 degrees of ulnar deviation was equal to two percent impairment. The Office medical adviser also included an impairment of three percent for pain according to Figure 18-1,⁹ and found total impairment of seven percent to the left upper extremity as a result of the accepted work injury.

¹ Appellant filed a claim for a recurrence on June 4, 2004, which was also accepted by the Office.

² A.M.A., *Guides* 469.

³ *Id.* at 467.

⁴ *Id.* at 509.

⁵ *Id.* at 574.

⁶ *Id.* at 508, 16.8a.

⁷ *Id.* at 467.

⁸ *Id.* at 469.

⁹ *Id.* at 574.

On August 12, 2005 the Office granted appellant a schedule award for a seven percent impairment of the left upper extremity. The award covered a period of 21.84 weeks from January 27 to June 28, 2005.

On August 17, 2005 appellant's representative requested a hearing, which was held on December 20, 2005.

By decision dated March 6, 2006, the Office hearing representative affirmed the August 12, 2005 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹⁰ 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.¹¹ 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.¹² The Act's implementing regulation has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule award losses.¹³

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.¹⁴ However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment.

ANALYSIS

In support of her claim for a schedule award, appellant submitted a January 27, 2005 report from Dr. Weiss, an osteopath. He noted appellant's history of the injury and treatment and utilized the A.M.A., *Guides*. Dr. Weiss indicated that appellant's range of motion of the left wrist joint which revealed dorsiflexion of 75 degrees, which is zero percent impairment,¹⁵ palmar flexion of 50 degrees, which is two percent impairment,¹⁶ radial deviation of 20 degrees which is

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ 5 U.S.C. § 8107.

¹² *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

¹³ 20 C.F.R. § 10.404.

¹⁴ See *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

¹⁵ A.M.A., *Guides* 467, Figure 16-28.

¹⁶ *Id.*

zero percent impairment,¹⁷ and ulnar deviation of 20 degrees which is two percent impairment.¹⁸ Dr. Weiss correctly determined that appellant had a range of motion deficit of the left wrist for ulnar deviation of two percent and range of motion deficit for left wrist flexion of two percent for a total of four percent impairment for loss of range of motion. He referred to Table 16-34¹⁹ and indicated that appellant had a left lateral pinch deficit of 10 percent. Dr. Weiss combined this finding with the range of motion impairment to find left upper extremity impairment of 14 percent. However, the Board notes that pinch deficit is not to be included with an impairment rating that was based on restricted motion, pain or deformities as noted at page 508 of the fifth edition of the A.M.A., *Guides*.²⁰ In addition, Dr. Weiss determined that appellant should be allotted an additional three percent for her pain-related impairment. However, according to section 18.3(b) of the A.M.A., *Guides*, “examiners should not use this chapter to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.²¹ Office procedures provide that Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain (Chapters 13, 16 and 17).²² Thus, the impairment rating of Dr. Weiss is of diminished probative value as it did not conform with the protocols of the A.M.A., *Guides*.

The Office medical adviser utilized the fifth edition of the A.M.A., *Guides*, to the loss of range of motion findings provided by Dr. Weiss. He concurred with Dr. Weiss as to the impairment rating for loss of range of motion. However, with regard to impairment for lost pinch strength, the Office medical adviser correctly explained that a weakness award could not be combined with loss of range of motion findings.²³ The Office medical adviser also included an impairment of three percent for pain according to Figure 18-1,²⁴ and opined that appellant had a total impairment of seven percent to the left upper extremity as a result of the accepted work injury. However, as noted above, Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain.²⁵ The Board finds that appellant has a total impairment of four percent to her left arm. Appellant has not submitted any credible medical evidence conforming to the A.M.A., *Guides* indicating that she has any greater permanent impairment of the left arm.

¹⁷ *Id.* at 469, Figure 16-31.

¹⁸ *Id.*

¹⁹ *Id.* at 509.

²⁰ See *Patricia J. Horney*, 56 ECAB ____ (Docket No. 04-2013, issued January 14, 2005).

²¹ A.M.A., *Guides* 571 (5th ed. 2001) Section 18.3b.

²² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

²³ A.M.A., *Guides* 508 at 16.8a.

²⁴ *Id.* at 574.

²⁵ See *supra* notes 21 and 22.

CONCLUSION

The Board finds that appellant has no more than a seven percent impairment of her left upper extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 6, 2006 is affirmed, as modified.

Issued: February 14, 2007
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