

FACTUAL HISTORY

On February 7, 2003 appellant, a 60-year-old rural carrier, filed a traumatic injury claim alleging that on February 6, 2003 she injured her upper left arm while pulling a bag of mail.¹ The Office accepted the claim for left elbow tendinitis and forearm tendinitis.²

In a report dated January 14, 2005, Dr. John A. Sklar, an examining Board-certified physiatrist, concluded that appellant had a one percent impairment of the left upper extremity due to pain based upon the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.).³ A physical examination revealed no objective verifiable impairment, normal left upper extremity range of motion, no sensory loss, decreased strength due to pain “which is not a ratable strength deficit” and “some tenderness to palpation in the left biceps and left upper extremity.”

In a November 7, 2005 report, Dr. Ronald Blum, a Board-certified orthopedic surgeon and an Office medical adviser, reviewed the medical evidence and adopted Dr. Sklar’s rating for a one percent impairment of her left upper extremity due to pain based on the A.M.A., *Guides*. The Office medical adviser noted appellant’s accepted conditions were left lateral epicondylitis and left elbow strain. He listed January 14, 2005 as the date of maximum medical improvement. Utilizing section 18.3d, page 573, the Office medical adviser found a one percent impairment of the left upper extremity. He explained that Chapter 16.8a on page 508 of the A.M.A., *Guides*,⁴ provides that a decrease in strength cannot be rated in the presence of decreased motion, painful conditions, deformities, or in the absence “of parts that prevent effective application of maximal force in the region being evaluated.” The Office medical adviser concluded that this was the reason that Dr. Sklar recommended not using the loss of strength determination.

On December 22, 2005 appellant filed a claim for a schedule award.

The Office issued a schedule award on May 12, 2006 for a one percent permanent loss of the left upper extremity. The period of the award ran from January 14 to February 4, 2005, for a total of 3.12 weeks of compensation.

¹ This was assigned claim number 16-2051767.

² The Board notes that appellant filed an occupational disease claim on August 19, 2004 attributing her severe carpal tunnel syndrome to her employment. The Office accepted the claim for left carpal tunnel syndrome on September 24, 2004 and authorized left carpal tunnel surgery, which was performed on December 14, 2004. This was assigned claim number 16-208115. A cover sheet for both claims indicate that the Office combined the two claims with 16-2051767 as the master file number. On May 22, 2006 appellant filed a schedule award claim for her carpal tunnel syndrome. The Office has not yet issued a final decision regarding appellant’s request for a schedule award for her carpal tunnel syndrome claim. As there is no final Office decision on this issue, the Board may not address this issue for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

³ A.M.A., *Guides*.

⁴ *Id.* at 508, Chapter 16.8a.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act⁵ and section 10.404 of the implementing federal regulation,⁶ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*⁷ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁸

ANALYSIS

Appellant sustained a left elbow tendinitis and forearm tendinitis in the performance of duty and subsequently filed a claim for a schedule award for permanent impairment.

Dr. Blum, the Office medical adviser, determined that appellant had a one percent impairment of her left upper extremity based on Dr. Sklar's finding of a one percent impairment for ratable pain pursuant to section 18.3dC, at page 573 of the A.M.A., *Guides*. He noted that appellant had full range of motion in the left upper extremity with no sensory deficits but had generalized weakness secondary to pain. Dr. Blum added that, accordingly, Dr. Sklar recommended against using loss of strength in computing appellant's impairment rating because decreased strength cannot be used in the fact of, among other things, painful conditions. The A.M.A., *Guides* state under the above subsection, titled How to Rate Pain-Related Impairment, at page 573:

“If the individual appears to have pain-related impairment that has increased the burden of his or her condition slightly, the examiner may increase the percentage ... by up to three percent.

Employing the above formula, which is also depicted in charts at Figure 18-1, Dr. Sklar found that appellant had a one percent upper extremity impairment based on pain. Dr. Blum adopted Dr. Sklar's findings in a November 7, 2005 impairment evaluation. The Board finds that appellant has a one percent impairment based on pain based on the A.M.A., *Guides*.

The Board finds that there is no other medical evidence of record, based upon a correct application of the A.M.A., *Guides*, to establish that appellant has more than a one percent permanent impairment of the left upper extremity for which she received a schedule award. Accordingly, the Board finds that appellant has no more than a one percent permanent impairment of the left upper extremity.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁸ 20 C.F.R. § 10.404.

On appeal, appellant alleged that she has greater than a one percent permanent impairment of the left upper extremity. However, the evidence does not support a greater impairment. The Board notes that this does not preclude appellant from submitting relevant medical evidence to the Office in support of any request for an additional schedule award.

CONCLUSION

The Board finds that appellant has no more than a one percent permanent impairment to her left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 12, 2006 is affirmed.

Issued: January 17, 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