

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

R.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Gardena, CA, Employer**

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**Docket No. 07-859
Issued: November 5, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 7, 2007 appellant filed a timely appeal from the November 3, 2006 merit decision of the Office of Workers' Compensation Programs, finding an additional one percent impairment of the right upper extremity, for a total of five percent impairment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

ISSUE

The issue is whether appellant has more than five percent impairment of the right upper extremity.

FACTUAL HISTORY

On December 17, 2003 appellant, then a 36-year-old part-time flexible letter carrier, filed a traumatic injury claim alleging a dog attack on December 16, 2003. He was bitten on his upper right arm and left ring finger. Appellant stopped work and returned with restrictions on May 10, 2004. The Office accepted the claim for partial amputation of the left fourth finger and

right upper extremity marcerated triceps with multiple deep and superficial lacerations. It paid appropriate compensation.

On March 6, 2006 Dr. Jin Xiao, Board-certified in occupational medicine, diagnosed a pit bull attack to left ring finger and right upper arm, status post right upper arm skin graft, right wrist pain, resolved right shoulder adhesive capsulitis and status post left ring finger amputation at the distal interphalangeal (DIP) joint. He rated appellant's impairment, as follows:

“Partial amputation to [DIP] joint of the left right finger: Based on Figure 16-5, page 443 of the guide, the amputation is 40 percent digit impairment corresponding to 4 percent of hand impairment ([T]able 15-1,¹ page 438) and 4 percent impairment of the upper extremity ([T]able 15-2,² page 439).

“Scars to the right upper arm: Based on criteria stated in page 176 and [T]able 8-2, page 178 of the guide, the condition is Class I corresponding to approximately 1 percent of impairment of the whole person (there is difference in impairment rating as compared with findings on January 13, 2005 because the size and depth of the scar were reduced by plastic surgery in April 2005).

“Partial loss of triceps muscle in the right arm: Based on the criteria stated in [T]able 15-11,³ page 484 and [T]able 15-15,⁴ page 492 of the guide, his condition is Grade 4 corresponding to 4.5 percent impairment of the upper extremity (10 percent motor deficit times maximum 45 percent impairment due to combined motor and sensory deficit).

“The total impairment calculated using the [C]ombined [V]alue [C]hart on page 604: 6 percent impairment of the whole person (4 percent and 4.5 percent impairment of upper extremity is converted to 9.5 percent upper extremity impairment, which is then combined with 1 percent impairment of the whole person due to scar).”

In a report dated April 25, 2006, an Office medical adviser reviewed Dr. Xiao's March 6, 2006 report and concluded that appellant had a four percent impairment to the right upper extremity. She utilized Tables 16-10 and 16-11 to determine appellant had a Grade 4 or 10 percent sensory deficit and used Table 16-15 to determine he had 45 percent impairment due to the radial nerve. The Office medical adviser then multiplied 10 percent by 45 percent to find a 5 percent impairment.⁵

¹ This appears to be a typographical error as the physician noted the correct page number for Table 16-1.

² This appears to be a typographical error as the physician noted the correct page number for Table 16-2.

³ This appears to be a typographical error as the physician noted the correct page number for Table 16-11.

⁴ This appears to be a typographical error as the physician noted the correct page number for Table 16-15.

⁵ The Office medical adviser determined that appellant was actually entitled to 4.5 percent for the right upper extremity but rounded it up to 5 percent.

By decision dated June 7, 2006, the Office granted appellant a schedule award for a four percent impairment of the right upper extremity. The award covered a period of 24.96 weeks from March 2 to August 23, 2006.

On July 6, 2006 appellant requested a telephonic hearing before an Office hearing representative, which took place on October 12, 2006.

In a decision dated October 12, 2006, the Office hearing representative set aside the June 7, 2006 decision and remanded the case for further development.

In an October 30, 2006 report, the Office medical adviser reported that appellant had five percent impairment of the right upper extremity. She again referred to Tables 16-10 and 16-11 to determine that appellant had a Grade 4 or 10 percent sensory deficit and used Table 16-15 to determine that he had 45 percent impairment due to the radial nerve. The medical adviser then multiplied 10 percent by 45 percent to find 5 percent impairment.

By decision dated November 3, 2006, the Office granted appellant a schedule award for an additional one percent impairment of the right arm, for a total of five percent impairment of the right upper extremity based on the medical adviser's opinion. The award covered a period of 3.12 weeks from August 24 to September 14, 2006.⁶

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁷ and its implementing federal regulations,⁸ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) as the uniform standard applicable to all claimants.⁹ Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹⁰

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.¹¹ The Act identifies members such as the arm, leg,

⁶ There is no evidence following the October 12, 2006 hearing representative's decision, that the Office issued a final decision on a schedule award for the left upper extremity. As the Office has not issued a final decision on a schedule award for the left upper extremity, it is not before the Board on this appeal. See 20 C.F.R. § 501.2(c).

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ *Id.* at § 10.404(a).

¹⁰ *Id.* at § 10.404(a); see *Thomas P. Lavin*, 57 ECAB ____ (Docket No. 05-1229, issued February 3, 2006); *Jesse Mendoza*, 54 ECAB 802 (2003).

¹¹ *George E. Williams*, 44 ECAB 530 (1993); *William Edwin Muir*, 27 ECAB 579 (1976).

hand, foot, thumb and finger; functions such as loss of hearing and loss of vision; and organs to include the eye. Section 8107(c)(22) of the Act provides for the payment of compensation for permanent loss of any other important external or internal organ of the body as determined by the Secretary of Labor.¹² The Secretary of Labor has made such a determination, and pursuant to the authority granted in section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to the schedule.¹³

ANALYSIS

The Office accepted the claim for partial amputation of the left fourth finger and right upper extremity, marcerated triceps with multiple deep and superficial lacerations as a result of the dog bite on December 16, 2005.

In a March 6, 2006 report, Dr. Xiao utilized Table 8-2 to conclude that appellant had a one percent whole person impairment due to scarring of the right upper arm. To rate the impairment of appellant's right upper extremity, he utilized the tables located on pages 484 and 492 to determine that appellant had a Grade 4, 10 percent, sensory deficit and a 45 percent impairment due to combined motor and sensory loss. Dr. Xiao then multiplied 10 percent by 45 percent to find a 4.5 percent impairment of the right upper extremity.

In an October 30, 2006 report, the Office medical adviser found a four percent impairment of the right upper extremity. She utilized Tables 16-10 and 16-11 to determine that appellant had a Grade 4 or 10 percent sensory deficit and used Table 16-15 to determine that he had 45 percent impairment of the radial nerve. The medical adviser then multiplied 10 percent by 45 percent to find a 5 percent impairment.

The Board finds that Dr. Xiao and the Office medical adviser properly applied the applicable standards of the A.M.A., *Guides* to determine that appellant had a five percent impairment of the right upper extremity. Both Dr. Xiao and the Office medical adviser calculated appellant's impairment rating using the same method and arrived at the same impairment rating for the right upper extremity. The Board will affirm this award. There is no other probative medical evidence of record establishing that he sustained any greater impairment.

The Board notes that Dr. Xiao also found scarring of the right upper arm. The Board notes that the evidence of record is insufficient to establish that appellant is entitled to a schedule award for disfigurement or scarring to his right arm in accordance with the fifth edition of the A.M.A., *Guides*. No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.¹⁴ If there is permanent disability involving the loss or loss of use, of a member or function of the body so specified or involving disfigurement, the employee is entitled to basic compensation for the disability.¹⁵ The Board

¹² 5 U.S.C. § 8107(c)(22).

¹³ 20 C.F.R. § 10.404; *Henry B. Floyd, III*, 52 ECAB 220 (2001).

¹⁴ *George E. Williams*, *supra* note 11; *William Edwin Muir*, *supra* note 11.

¹⁵ 5 U.S.C. § 8107(a).

notes that section 8107(c)(21) of the Act provides that compensation shall be awarded for serious disfigurement of the face, head or neck of a character likely to handicap an individual in securing or maintaining employment, not to exceed \$3,500.00, in addition to any other compensation payable under the schedule.¹⁶

Appellant's claim was accepted for partial amputation of the left fourth finger and right upper extremity marcerated triceps with multiple deep and superficial lacerations as a result of the dog bite on December 16, 2005. Dr. Xiao, opined that appellant had whole person impairment due to scarring on his right arm.¹⁷ He generally referenced a provision in the A.M.A., *Guides* for rating skin disorders.¹⁸ However, disfigurement of the skin, except for disfigurement covered under 5 U.S.C. § 8107(c)(21), is not ratable a impairment. The Board has held that permanent impairment for loss or loss of use, of the skin is not covered under the schedule award provisions of the Act.¹⁹ Dr. Xiao did not otherwise explain how appellant has greater impairment under the A.M.A., *Guides*.

As noted above, the Office evaluates schedule award claims pursuant to the standards set forth in the A.M.A., *Guides*. Appellant has the burden of proof to submit medical evidence supporting that he has impairment of a schedule member of the body.²⁰ As such evidence has not been submitted, he has not established entitlement to a schedule award for scarring of disfigurement to his right arm.

CONCLUSION

The Board finds that appellant has no more than five percent impairment of the right upper extremity.

¹⁶ 5 U.S.C. § 8107(c)(21).

¹⁷ The Board also notes, that while the A.M.A., *Guides*, provides for impairment to the individual member and to the whole person, the Act does not provide for permanent impairment for the whole person. *N.M.*, 58 ECAB ____ (Docket No. 06-2054, issued January 12, 2007); *Janae J. Triplette*, 54 ECAB 792 (2003).

¹⁸ A.M.A., *Guides*, Table 8-2 at 178 (5th ed. 2001). Table 8-2 appears in the chapter eight, entitled "The Skin."

¹⁹ *Ann L. Tague*, 49 ECAB 453 (1998).

²⁰ *See Annette M. Dent*, 44 ECAB 403 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 3, 2006 is affirmed.

Issued: November 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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