

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

M.G., Appellant)

and)

U.S. POSTAL SERVICE, PROCESSING &)
DISTRUBUTION CENTER,)
City of Industry, CA, Employer)

**Docket No. 07-1248
Issued: November 13, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 5, 2007 appellant filed a timely appeal from an August 30, 2006 merit decision of the Office of Workers' Compensation Programs granting him a schedule award and a March 22, 2007 nonmerit decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and over the March 22, 2007 nonmerit decision.

ISSUES

The issues are: (1) whether appellant has more than a 26 percent permanent impairment of the left upper extremity and a 5 percent permanent impairment of the right upper extremity for which he received schedule awards; and (2) whether the Office properly denied his request for merit review of his claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

On September 20, 2004 appellant, then a 58-year-old clerk, filed an occupational disease claim alleging that he sustained problems with his upper extremities and knees causally related to factors of his federal employment. The Office accepted the claim, assigned file number 132114176, for bilateral carpal tunnel syndrome, left medial epicondylitis and right trigger finger.¹ Appellant stopped work on February 22, 2005. He underwent a left carpal tunnel release on February 22, 2005, and a right carpal tunnel release on March 23, 2005.

The Office referred appellant to Dr. William C. Boeck, Jr., a Board-certified orthopedic surgeon, for an evaluation to determine the nature and extent of appellant's work-related condition and disability. On February 22, 2006 Dr. Boeck noted his history of bilateral carpal tunnel releases and continuing complaints of pain in the wrists. He listed range of motion findings for the upper extremities and measured arm circumference and grip strength. For the right shoulder, Dr. Boeck measured forward flexion of 160 degrees, backward elevation of 60 degrees, abduction of 120 degrees, adduction of 45 degrees, external rotation of 80 degrees and internal rotation of 60 degrees. For the left shoulder, he measured forward flexion of 150 degrees, backward elevation of 60 degrees, abduction of 120 degrees, adduction of 45 degrees, external rotation of 80 degrees and internal rotation of 60 degrees. Dr. Boeck further listed range of motion findings for the elbows, forearms and wrists. He stated, "Examination of the upper extremities reveals tenderness to palpation over the right shoulder. There is positive right shoulder impingement test. There are normal intrinsic motions in the hands. Muscle strength and sensation appear intact." Dr. Boeck diagnosed resolved epicondylitis and right trigger fingers, status postoperative bilateral carpal tunnel syndrome, left shoulder tendinitis and status post lumbar surgery. He concluded that appellant had a slight limitation in shoulder elevation and range of motion of the wrists, a positive impingement test of the right shoulder and subjective complaints of pain in the wrists radiating to the shoulder on the right side.²

On April 27, 2006 appellant filed a claim for a schedule award. An Office medical adviser reviewed Dr. Boeck's opinion on May 15, 2006 and noted that he "has not calculated impairment ratings." He opined that appellant had no impairment due to his left lateral epicondylitis or right trigger finger and no impairment for loss of motion or weakness of the upper extremities. The Office medical adviser concluded that appellant had a five percent impairment of each upper extremity due to carpal tunnel syndrome and reached maximum medical improvement on February 22, 2006.

On June 8, 2006 an Office medical adviser noted that appellant received a schedule award for a 22 percent impairment of the left upper extremity under file number 132097807. On

¹ The Office accepted that appellant sustained left shoulder strain, left shoulder tendinitis, neck strain and an ulnar lesion of the upper extremities under file number 132067807. By decision dated July 22, 2005, the Board set aside a March 22, 2005 decision denying his request for reconsideration of a schedule award decision under section 8128. *Martin Gaitan*, Docket No. 05-1028 (issued July 22, 2005). By decision dated September 7, 2005, the Office denied modification of its March 2, 2004 decision finding that appellant had no more than a 22 percent permanent impairment of the left upper extremity.

² Based on Dr. Boeck's report, the Office found a conflict in medical opinion on the issue of whether appellant could perform limited-duty employment and further developed the medical evidence.

June 16, 2006 he opined that appellant was entitled to an additional five percent left upper extremity award for carpal tunnel syndrome. The Office medical adviser combined the prior 22 percent award for the left upper extremity with the 5 percent award for residuals of his carpal tunnel syndrome and concluded that appellant had a 26 percent left upper extremity impairment. He also noted that appellant had a five percent right upper extremity impairment.

By decision dated August 30, 2006, the Office granted appellant a schedule award for an additional four percent permanent impairment of the left upper extremity and a five percent impairment of the right upper extremity. The period of the award ran for 28.08 weeks from May 14 to November 26, 2006.

On January 11, 2007 appellant requested reconsideration. He asserted that he continued to experience pain and numbness radiating from his fingers to his shoulders which resulted in significant limitations. In a decision dated May 22, 2007, the Office denied appellant's request for reconsideration under section 8128 on the grounds that the evidence submitted was insufficient to warrant merit review of the August 30, 2006 decision.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act,³ and its implementing federal regulations,⁴ 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.⁵ Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁶

Regarding carpal tunnel syndrome, the A.M.A., *Guides* provide:

“If, after an optimal recovery time, following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present--

(1) Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual CTS [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described earlier.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ 20 C.F.R. § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

(2) Normal sensibility and opposition strength with abnormal sensory and or motor latencies or abnormal EMG [electromyogram] testing of the thenar muscles: a residual CTS is still present and an impairment rating not to exceed five percent of the upper extremity may be justified.

(3) Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating.”⁷

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained bilateral carpal tunnel syndrome, left medial epicondylitis and right trigger finger due to factors of his federal employment in file number 13114176. Appellant underwent a left carpal tunnel release on February 22, 2005 and a right carpal tunnel release on March 23, 2005. He had a prior accepted condition of left shoulder strain, left shoulder tendinitis, neck strain and an ulnar lesion under file number 132067807. Appellant received a schedule award for a 22 percent impairment of the left upper extremity under that file number.

The Office referred appellant to Dr. Boeck for a second opinion examination on the issue of whether he had any further employment-related condition and disability. Dr. Boeck diagnosed resolved epicondylitis and right trigger finger, status bilateral carpal tunnel releases and left shoulder tendinitis. He noted appellant’s continued complaints of wrist pain. On examination of the upper extremities, Dr. Boeck found tenderness over the right shoulder and a positive impingement test but normal muscle strength and sensation. He listed range of motion findings for the upper extremities and measured grip strength and arm circumference.

Page 495 of the A.M.A., *Guides* states that, after an optimal recovery time following surgical decompression of carpal tunnel syndrome, three scenarios are possible: if positive clinical findings of median nerve dysfunction are present, the impairment is rated according to sensory or motor deficits; with normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing, an impairment rating not to exceed five percent may be justified; finally, with normal sensibility, opposition strength and nerve conduction studies, there is no objective basis for an impairment rating.⁸

An Office medical adviser reviewed Dr. Boeck’s report and opined that appellant had a five percent impairment of the right and left upper extremity due to his bilateral carpal tunnel syndrome. He combined the prior 22 percent prior award for the left upper extremity award with the 5 percent award due to carpal tunnel syndrome and found a 26 percent impairment of the left upper extremity. The Office medical adviser indicated that appellant had a five percent impairment of the right upper extremity. He did not, however, adequately explain how he

⁷ A.M.A., *Guides* 495.

⁸ *Id.*

derived this impairment rating due to carpal tunnel syndrome. The Office medical adviser apparently applied the second scenario outlined on page 495 of the A.M.A., *Guides* for rating carpal tunnel syndrome, which provides an impairment rating not to exceed five percent for residual carpal tunnel syndrome as demonstrated by normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles. It does not appear, however, that appellant underwent electrodiagnostic testing after his carpal tunnel releases.

The Board further notes that the Office medical adviser failed to consider Dr. Boeck's range of motion measurements for the upper extremities. For the right shoulder, 160 degrees of forward flexion yields a one percent impairment,⁹ 60 degrees extension yields no impairment,¹⁰ 120 degrees abduction yields a two percent impairment,¹¹ 45 degrees adduction yields no impairment,¹² 80 degrees external rotation yields no impairment,¹³ and 60 degrees internal rotation yields a two percent impairment.¹⁴ While a right shoulder condition has not been accepted as employment related, it is well established that in determining the amount of a schedule award for a given member of the body that sustained an employment-related impairment, preexisting impairments of that scheduled member of the body are to be included.¹⁵ Dr. Boeck also provided measurements for the left shoulder which resulted in loss of range of motion. For the left shoulder, 60 degrees of forward flexion yields a two percent impairment,¹⁶ 60 degrees extension, yields no impairment,¹⁷ 120 degrees abduction yields a two percent impairment,¹⁸ 45 degrees adduction yields no impairment,¹⁹ 80 degrees external rotation yields no impairment,²⁰ and 60 degrees internal rotation yields a two percent impairment.²¹ Appellant did not have an impairment of the elbows or forearms due to loss of range of motion.²²

⁹ *Id.* at 476, Figure 16-40.

¹⁰ *Id.*

¹¹ *Id.* at 477, Figure 16-43.

¹² *Id.*

¹³ *Id.* at 479, Figure 16-46.

¹⁴ *Id.*

¹⁵ See *Clary J. Cleary*, 57 ECAB ____ (Docket No. 05-1558, issued May 10, 2006); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(3) (June 2003).

¹⁶ *Id.* at 476, Figure 16-40.

¹⁷ *Id.*

¹⁸ *Id.* at 477, Figure 16-43.

¹⁹ *Id.*

²⁰ *Id.* at 479, Figure 16-46.

²¹ *Id.*

²² *Id.* at 472, 474, Figures 16-34, 16-37.

Accordingly, as the Office medical adviser did not comply with the A.M.A., *Guides* and the Office's procedures, the Board will remand the case for a recalculation of the extent of appellant's left and right upper extremity impairment. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision.²³

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 22, 2007 and August 30, 2006 are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 13, 2007
Washington, DC

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

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

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

²³ In view of the Board's disposition of the merits, the issue of whether the Office properly denied appellant's request for reconsideration under section 8128 is moot.