

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

J.G., Appellant)
and) Docket No. 08-554
U.S. POSTAL SERVICE, POST OFFICE,) Issued: August 18, 2008
Pittsburgh, PA, Employer)

)

Appearances:
Appellant, pro se
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 December 18, 2007 appellant filed a timely appeal from a September 20, 2007 merit decision of the Office of Workers' Compensation Programs granting him a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has more than a 15 percent permanent impairment of each upper extremity.

FACTUAL HISTORY

This case is before the Board for the second time. On July 15, 2007 the Board set aside June 2 and August 15, 2006 decisions of the Office granting appellant schedule awards for an

eight percent permanent impairment of each upper extremity and denying further merit review.¹ The Board found that the evidence was insufficient to establish the extent of his permanent impairment of the upper extremities as the Office medical adviser did not explain how he utilized Tables 16-15, 16-10 and 16-11 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*) in reaching his impairment rating.

On September 7, 2006 appellant underwent a right elbow exploration and debridement of the extensor carpi radialis brevis tendon with drilling and repair. In a progress report dated January 2, 2007, Dr. Daniel F. Murphy, a Board-certified orthopedic surgeon, found that appellant had good strength of the right elbow with full range of motion. He noted that appellant experienced "mild tenderness at the incision" but was "neurovascularly intact." Dr. Murphy opined that appellant had reached maximum medical improvement and had a 10 percent permanent impairment of the right upper extremity.

Appellant requested an increased schedule award. On April 3, 2007 an Office medical adviser determined that appellant had a 15 percent impairment of each upper extremity. He classified appellant's sensory and motor impairment of the bilateral ulnar nerve as Grade 3. The Office medical adviser found that, pursuant to Tables 16-15, 16-10 and 16-15 on pages 482, 484 and 492 of the A.M.A., *Guides*, appellant had a 15 percent impairment, which he obtained by multiplying 40 percent by 38 percent.

On July 12, 2007 the Office informed appellant that the Office medical adviser failed to consider his September 7, 2006 right elbow surgery when providing his impairment rating. It further noted that the Board had remanded the case for clarification from the Office medical adviser.

On July 12, 2007 a claims examiner requested that the Office medical adviser further explain how he calculated the percentage of impairment in accordance with the Board's instructions. The claims examiner requested that he address the extent of appellant's permanent impairment on the right side following his September 6, 2006 surgery. On July 12, 2007 the Office medical adviser again concluded that appellant had a 15 percent permanent impairment of the right upper extremity and a 15 percent permanent impairment of the left upper extremity. He determined that appellant did not have an increased impairment due to his September 7, 2006 surgery. The Office medical adviser referenced his April 3, 2007 report and noted that he calculated the extent of appellant's upper extremity impairment using Tables 16-15, 16-10 and 16-11 on pages 492, 482 and 484 of the A.M.A., *Guides*. He discussed the findings by appellant's attending physician of dysesthesias around the elbow extending through the forearms medially due to ulnar nerve changes and decreased hand strength.

¹ Docket No. 07-327 (issued July 15, 2007). The Office accepted that on January 14, 2003 appellant, a 55-year-old processing clerk, sustained bilateral medial epicondylitis. Appellant underwent surgery for left elbow chronic ulnar neuritis and cubital tunnel syndrome on September 23, 2003 and surgery for right elbow chronic medial epicondylitis on October 23, 2003. On February 16, 2005 he underwent surgery for cubital tunnel syndrome with an ulnar nerve compression of the left elbow and on June 13, 2005 he underwent surgery for cubital tunnel syndrome with an ulnar nerve compression of the right elbow.

By decision dated September 20, 2007, the Office granted appellant a schedule award for a 15 percent permanent impairment of each upper extremity. It noted that the amount included the eight percent for each upper extremity previously awarded. The period of the award ran for 43.61 weeks from May 17, 2007 to March 17, 2008.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,² and its implementing federal regulation,³ 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 A.M.A., *Guides* as the uniform standard applicable to all claimants.⁴ 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, 2001.⁵

ANALYSIS

On prior appeal the Board remanded the case for the Office medical adviser to explain his use of Tables 16-15, 16-10 and 16-11 on pages 482, 484 and 492 of the A.M.A., *Guides*. The Board noted that he generally referenced the listed tables but did not sufficiently describe how he calculated the impairment rating.

On April 3, 2007 the Office medical adviser concluded that appellant had a Grade 3 motor and sensory deficit of the ulnar nerve bilaterally. Citing to Tables 16-15, 16-10 and 16-11 of the A.M.A., *Guides*, he determined that he had a 15 percent upper extremity impairment. The Office medical adviser calculated the impairment by multiplying 40 percent by 38 percent. On January 2, 2007 he found that appellant had no additional impairment from his September 7, 2006 surgery. The Office medical adviser reiterated that he had a 15 percent impairment of each upper extremity as provided in the prior report. It is not clear, however, whether he followed the grading scheme and procedure set forth in Tables 16-10 and 16-11 of the A.M.A., *Guides* for determining an impairment of the upper extremity due to sensory deficit and motor loss from peripheral nerve injuries.⁶ The proper procedure under the A.M.A., *Guides* is to identify the involved nerve root and obtain the maximum upper extremity impairment value for that nerve root due to sensory deficits, motor deficits or both using Table 16-15.⁷ The evaluator should then grade the impairment using Table 16-10 for sensory deficits and pain and Table 16-11 for motor impairments. The maximum impairment of the identified nerve due to sensory deficit,

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ 20 C.F.R. § 10.404(a).

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁶ A.M.A., *Guides* 482, 484, Tables 16-10, 16-11.

⁷ *Id.*

motor deficit, or both is then multiplied by the graded impairment found in Tables 16-10 and 16-11.⁸ The Office medical adviser did not clearly identify the involved nerve root under Table 16-15.⁹ He calculated appellant's impairment by multiplying 38 percent by 40 percent. The Office medical adviser noted that he experienced motor and sensory loss of the ulnar nerve; however, the ulnar nerve values provided in Table 16-15 do not correspond to either 38 percent or 40 percent. He explained his finding that appellant had a Grade 3 impairment due to sensory and motor loss which yields a deficit range of 26 to 60 percent for sensory loss and 26 to 50 percent for motor loss.¹⁰ The Office medical adviser did not identify the percentage that he used in reaching his impairment rating. The Board is thus unable to confirm the impairment rating determination. The case will be remanded for the Office to obtain a probative opinion on the degree of appellant's permanent impairment of each upper extremity in accordance with the A.M.A., *Guides*. After such further development as it deems necessary, it should issue an appropriate decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 20, 2007 is set aside and the case is remanded for further proceedings consistent with this decision by the Board.

Issued: August 18, 2008
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

⁸ *Id.*

⁹ *Id.* at 492, Table 16-15.

¹⁰ *Id.* at 482, 484, Tables 16-10, 16-11.