

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

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**B.N., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Elyria, OH, Employer**

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**Docket No. 08-1419  
Issued: December 1, 2008**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
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 April 17, 2008 appellant, through her attorney, filed a timely appeal of the March 27, 2008 decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has more than 10 percent impairment of her left upper extremity for which she has received a schedule award.

**FACTUAL HISTORY**

On March 12, 2001 appellant, then a 48-year-old letter carrier, filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome due to repetitive movements of her wrists in the performance of duty. The Office accepted her claim for bilateral carpal tunnel syndrome on March 28, 2001. Appellant underwent an authorized surgical release on April 10, 2001. She requested a schedule award on September 13, 2001. By decision dated

April 24, 2001, the Office granted appellant a schedule award for 10 percent impairment of her left upper extremity due to the sensory impairment of the median nerve.

On October 24, 2002 appellant filed an additional occupational disease claim alleging that she developed damage to her ulnar nerve following the work-related left carpal tunnel surgery. On January 13, 2003 the Office accepted appellant's claim for ulnar neuritis of the left elbow. It authorized an anterior transportation of the ulnar nerve of the left elbow on June 6, 2003. Appellant underwent this surgery on June 24, 2003.

Appellant requested a schedule award on December 29, 2003. The Office referred her for a second opinion examination with Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon. In an October 13, 2004 report, Dr. Ghanma found that appellant had permanent impairment of the left upper extremity of two percent due to loss of range of motion. He recommended further electrodiagnostic testing to evaluate her sensory and motor complaints.

By decision dated April 14, 2005, the Office denied appellant's claim for an additional schedule award for her left upper extremity. Appellant requested an oral hearing on April 24, 2005. By decision dated June 9, 2006, a hearing representative set aside the April 14, 2005 decision and remanded the case for additional development of the medical evidence to include appellant's prior condition of carpal tunnel syndrome.

The Office referred appellant for a second opinion evaluation with Dr. Alan H. Wilde, a Board-certified orthopedic surgeon, who opined on August 17, 2006 that appellant had not yet reached maximum medical improvement as she had not undergone electrodiagnostic testing to determine the source of her left elbow complaints. By decision dated October 10, 2006, the Office denied appellant's claim for an additional schedule award on the grounds that she had not reached maximum medical improvement. Appellant, through her attorney, requested an oral hearing on October 13, 2006. By decision dated June 25, 2007, the hearing representative found that the case was not in posture for decision and remanded the claim for additional development of the medical evidence and for appellant's claims to be combined.

The Office referred appellant for a second opinion with Dr. Karl V. Metz, a Board-certified orthopedic surgeon. In an August 30, 2007 report, Dr. Metz provided the following range of motion measurements of appellant's left elbow: flexion 140 degrees, extension minus 10 degrees, supination 25 degrees, pronation 80 degrees. He also provided appellant's sensory assessments of her fingers. Appellant's ring and little fingers were 2/5, and the middle finger 3/5 which Dr. Metz found were 5 percent impairment of her hand. Her left wrist revealed 60 degrees of extension; 60 degrees of flexion, radial deviation 15 degrees and ulnar deviation 30 degrees. Dr. Metz found that both Phalen's and Tinel signs were negative and noted that appellant guarded both active and passive range of motion, especially the little finger and least for the middle finger. Appellant's nerve conduction studies were normal but for a mildly prolonged sensory latency due to her surgeries. Dr. Metz stated that appellant had mild residuals of her carpal tunnel syndrome. He concluded that appellant had nine percent impairment of her left upper extremity. The Office medical director reviewed this report on October 16, 2007 and correlated Dr. Metz's reports with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He agreed with the impairment rating of nine percent of the left upper extremity.

By decision dated October 22, 2007, the Office denied appellant's request for an additional schedule award. Appellant, through her attorney, requested an oral hearing on October 25, 2007. By decision dated March 27, 2008, the hearing representative affirmed the Office's October 22, 2007 decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> 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 to 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>3</sup> Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.<sup>4</sup>

### **ANALYSIS**

The medical evidence addressing appellant's left upper extremity permanent impairment for schedule award purposes is the August 30, 2007 report from Dr. Metz, a Board-certified orthopedic surgeon and Office referral physician, who examined appellant and reviewed her electrodiagnostic studies. Dr. Metz found that appellant had nine percent permanent impairment of her left upper extremity due to loss of range of motion of the left elbow including 10 degrees of extension of the elbow, one percent impairment,<sup>5</sup> supination of 25 degrees and two percent impairment.<sup>6</sup> Appellant also had loss of radial deviation in her wrist for one percent impairment.<sup>7</sup>

Dr. Metz also had appellant rate her sensory impairments in her ring, little and middle fingers and noted that her ring and little fingers were 2/5 and middle finger was 3/5. Dr. Metz found this was five percent impairment of her hand. The Office medical adviser stated that in accordance with Figure 16-8,<sup>8</sup> which addresses the total sensory loss of the fingers, appellant had

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> *Id.*

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

<sup>5</sup> A.M.A., *Guides*, 472, Figure 16-34.

<sup>6</sup> *Id.* at 474, Figure 16-37.

<sup>7</sup> *Id.* at 469, Figure 16-31.

<sup>8</sup> *Id.* at 449, Figure 16-8.

five percent impairment of her hand due to sensory loss. The Board is unable to determine how Dr. Metz and the Office medical adviser reached this impairment rating. The table referenced by the Office medical adviser discusses only total sensory losses. He did not report a total sensory loss. The Office medical adviser merely noted that appellant reported a reduction of sensation which she rated between two and four out of five. This finding is not in accordance with the A.M.A., *Guides* which states, “Only unequivocal and permanent sensory deficits are given permanent impairment ratings. Sensory impairment is rated according to the sensory quality and the distribution of the sensory loss.”<sup>9</sup> The A.M.A., *Guides* provide that sensory quality is based on two-point discrimination tests.<sup>10</sup> There is no evidence that Dr. Metz performed two-point discrimination tests on appellant. As the rating of appellant’s sensory deficits in her fingers is not in accordance with the A.M.A., *Guides* the case requires additional development regarding the extent of impairment to her left upper extremity. On remand, the Office should further develop the medical evidence to determine the extent of her permanent impairment due to her accepted conditions. After this and such other development as it deems necessary, the Office should issue a *de novo* decision on appellant’s schedule award.

### CONCLUSION

The Board finds the case not in posture for decision as the medical evidence does not conform with the A.M.A., *Guides* and the Office did not therefore reach an appropriate impairment rating for schedule award purposes.

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<sup>9</sup> *Id.* at 466.

<sup>10</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 27, 2008 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: December 1, 2008  
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