

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

E.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
North Metro, GA, Employer)

**Docket No. 09-1035
Issued: December 7, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 9, 2009 appellant filed a timely appeal from the February 6, 2009 Office of Workers' Compensation Programs' decision, which affirmed the Office's July 8, 2008 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant has established that she sustained more than one percent permanent impairment of her left upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On July 19, 2007 appellant, then a 44-year-old part-time flexible city carrier, filed a traumatic injury claim alleging that, on June 13, 2007, she reached to lift a mail tub and her left arm twisted and caused a pain in her left elbow while in the performance of duty. She did not immediately stop work. The Office accepted appellant's claim for left lateral epicondylitis. Appellant stopped work on September 14, 2007. On January 3, 2008 she underwent debridement of the common extensor with repair of the common extensor. On February 25,

2008 appellant was released to work for four hours per day with restriction of no lifting with left arm. She returned to full duty on April 7, 2008, and was given restrictions on May 2, 2008 comprised of no lifting/pushing/pulling over 20 pounds.¹

In a report dated June 4, 2008, Dr. Alonzo T. Sexton, a Board-certified orthopedic surgeon and treating physician indicated that the work that appellant was performing at the employing establishment was too strenuous for her elbow. He indicated that appellant reached maximum medical improvement for the left elbow.

In a report dated June 13, 2008, Dr. Joseph M. Savitz, Board-certified in physical medicine and rehabilitation, to whom appellant was referred by Dr. Sexton, advised that appellant was referred to him by Dr. Sexton for an impairment evaluation. He noted appellant's history which included a debridement of the common extensor with repair of the common extensor of the left arm on January 3, 2008. Dr. Savitz indicated that appellant continued to have pain in the elbow and was being referred to the pain clinic. He noted that appellant had reached maximum medical improvement and was independent in all activities of daily living. Dr. Savitz also noted that appellant denied having any numbness or tingling and exhibited self-limiting behavior during her functional capacity evaluation. He examined appellant and determined that her surgical sites were healed with no evidence of edema or infection. Dr. Savitz indicated that her motor strength was normal and her sensory strength was normal. Regarding range of motion, he determined that appellant had elbow flexion of 140 degrees for one percent impairment, elbow extension of -5 degrees for one percent impairment, and full supination and pronation. Dr. Savitz referred to Figure 16-34² and advised that appellant had one percent impairment of the left upper extremity or one percent whole person impairment.

In a report dated June 30, 2008, the Office medical adviser applied the findings of Dr. Savitz to the fifth edition of the A.M.A., *Guides* and determined that appellant had one percent impairment of her left arm. In his report, the Office medical adviser noted that appellant had full range of motion of the left elbow with the exception of extension. He advised that the finding of one percent permanent impairment of the left upper extremity was correct. The Office medical adviser noted that June 13, 2008 was the date of maximum medical improvement.

Accordingly, on July 8, 2008 the Office granted appellant a schedule award for a one percent impairment of the right upper extremity. The award covered a period of 3.12 weeks from June 13 to July 4, 2008.

On July 14, 2008 appellant's representative requested a telephonic hearing, which was held on November 13, 2008. Appellant submitted additional medical reports regarding her status and work restrictions but she did not submit further medical evidence addressing permanent impairment of her left arm.

¹ On October 30, 2008 appellant filed a notice of traumatic injury alleging that, on October 23, 2008, she was lifting a mail tray when she felt pain run from her right hand to her right elbow. On January 9, 2009 the Office accepted the claim for right lateral epicondylitis.

² A.M.A., *Guides* 472.

By decision dated February 6, 2009, the Office hearing representative affirmed the Office's July 8, 2008 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act³ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.⁴ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁵ The Act's implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule award losses.⁶

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.⁷ However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment.

ANALYSIS

The Office accepted appellant's claim for left lateral epicondylitis and authorized debridement and repair of the common extensor.

Appellant provided a June 13, 2008 report from Dr. Savitz in support of her claim for a schedule award which found that appellant had one percent impairment of the left arm. In a June 30, 2008 report, the Office medical adviser concurred with Dr. Savitz and his findings. Regarding range of motion, the physicians correctly determined that elbow flexion of 140 degrees was equal to no impairment and elbow extension of -5 degrees yielded one percent impairment. Dr. Savitz reported that appellant had full supination and pronation. He and the Office medical adviser referred to Figure 16-34⁸ which provides for one percent arm impairment for appellant's finding on elbow extension. Although Dr. Savitz also advised that this would translate to a whole person impairment of one percent, the Board notes that schedule awards are

³ 5 U.S.C. §§ 8101-8193.

⁴ *Id.* at § 8107.

⁵ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁶ 20 C.F.R. § 10.404.

⁷ See *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

⁸ A.M.A., *Guides* 472.

not granted for whole person impairment.⁹ The Office medical adviser determined that June 13, 2008 was the date of maximum medical improvement.

The Board finds that Dr. Savitz and the Office medical adviser properly utilized the A.M.A., *Guides* and provided rationale for a one percent impairment of the left upper extremity. The Board finds that the opinions of Dr. Savitz and the Office medical adviser represent the weight of the medical evidence of record and support that appellant has no more than a one percent impairment of the left upper extremity. Although appellant continued to submit medical evidence after the Office issued her schedule award, this evidence did not purport to rate left arm impairment under the A.M.A., *Guides*. Consequently, there is no medical evidence supporting any greater left arm impairment than that for which appellant received a schedule award.

On appeal, appellant requested authorization to see a neurologist. The Board notes that the Office has not rendered a decision related to this request. The only issue before the Board is the schedule award determination of February 6, 2009. The Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision.¹⁰

CONCLUSION

The Board finds that appellant has not established that she sustained more than one percent permanent impairment of her left upper extremity.

⁹ See *Terry E. Mills*, 47 ECAB 309 (1996); *James E. Mills*, 43 ECAB 215 (1991).

¹⁰ See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 6, 2009 is affirmed.

Issued: December 7, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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