

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

E.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Addison, TX, Employer**

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**Docket No. 08-2121
Issued: May 11, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 28, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 11, 2008 regarding a schedule award. 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 a 20 percent permanent impairment to her right arm.

FACTUAL HISTORY

There are two claims that have been administratively combined in this case. According to a July 12, 2007 statement of accepted facts (SOAF), the Office accepted a November 1, 1999 claim for bilateral carpal tunnel syndrome, bilateral medial and lateral epicondylitis, bilateral synovitis and tenosynovitis, cervical radiculopathy and psychogenic pain. An August 30, 2004

occupational disease claim was accepted for right shoulder impingement syndrome and right shoulder myalgia and myositis.

In a report dated February 21, 2007, an attending physician, Dr. Robert Helsten, a pain management specialist, noted in his history that appellant had undergone a resection of her distal right clavicle on March 2, 2006. The range of motion for the right shoulder showed the following: 134 degrees flexion, 63 degrees extension, 55 degrees internal rotation, 70 degrees external rotation, 22 degrees adduction and 83 degrees abduction. Dr. Helsten opined that appellant had an 11 percent permanent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.) for loss of range of motion and 10 percent for the distal clavicle resection. The 11 percent and 10 percent were combined under the A.M.A., *Guides* for 20 percent right arm impairment.

By report dated May 11, 2007, Dr. Helsten indicated that appellant had right wrist surgery on September 28, 2006 and left wrist surgery on December 5, 2006 for carpal tunnel syndrome. He stated the surgeries relieved the parasthesias to the fingers. Dr. Helsten reported appellant's impairments were determined by wrist range of motion and he opined that she had one percent bilateral arm impairment under the A.M.A., *Guides*. He submitted a June 29, 2007 report with regard to cervical radiculopathy. Dr. Helsten stated that appellant's diagnosis most closely fit diagnosis-related estimates (DRE) Cervical Category II under the A.M.A., *Guides*.¹

The Office requested an Office medical adviser review the medical evidence and provide an opinion regarding the extent of permanent impairment. In a report dated July 20, 2007, the Office medical adviser concurred with Dr. Helsten that appellant had a 20 percent permanent impairment to the right arm based on the reported loss of range of motion and the distal clavicle resection. The medical adviser noted that Dr. Helsten did not provide wrist range of motion, and the cervical spine was not a member of the body under the Federal Employees' Compensation Act.

Appellant submitted reports from Dr. Ed Wolski, a pain management specialist. In an August 27, 2007 report, Dr. Wolski indicated that appellant was not able to tolerate working light duty, and her shoulder, hand and wrist pain were being aggravated. He stated that appellant was being taken off work due to worsening pain.

By letter dated September 14, 2007, the Office advised appellant that the medical evidence did not establish her condition had reached maximum medical improvement, and therefore a schedule award was not appropriate at that time. In a report dated December 20, 2007, Dr. Wolski opined that appellant had reached maximum medical improvement. The record indicates that appellant returned to a light-duty job on December 29, 2007.

By decision dated May 6, 2008, the Office issued a schedule award for a 20 percent right arm permanent impairment. The period of the award was 62.40 weeks commencing December 29, 2007. The decision indicated that the award ended on October 29, 2008. By

¹ Dr. Helsten also stated that he had provided a previous impairment rating on May 11, 2007 for the right elbow and bilateral carpal tunnel syndrome of six percent. The May 11, 2007 report in the record did not discuss right elbow impairment.

decision dated July 11, 2008, the Office issued a corrected decision with the period of the award ending on March 9, 2009. The percentage of impairment remained 20 percent and the period of the award was 62.40 weeks commencing December 29, 2007.

LEGAL PRECEDENT

Section 8107 of the Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³

ANALYSIS

The Office determined that appellant had a 20 percent right arm permanent impairment, based on the February 21, 2007 report from Dr. Helsten and the Office medical adviser's July 20, 2007 report. With respect to right shoulder loss of range of motion, the impairment is determined in accord with the figures provided in section 16.4i of the A.M.A., *Guides*. One hundred and thirty-four degrees of flexion is three percent impairment, while sixty-three degrees of extension is zero percent impairment.⁴ Twenty-two degrees of adduction is one percent impairment, eighty-three degrees of abduction results in five percent impairment.⁵ Finally, 55 degrees of internal rotation is two percent arm impairment, while 70 degrees of external rotation is zero percent impairment.⁶ Adding these impairments for loss of range of motion results in an 11 percent right arm impairment. Under Table 16-27, a resection of the distal clavicle is 10 percent arm impairment.⁷ According to the A.M.A., *Guides*, the impairments for loss of motion and the resection arthroplasty are combined (not added) under the Combined Values Chart.⁸ Combining 11 percent and 10 percent results in a 20 percent right arm permanent impairment based on the right shoulder loss of range of motion and resection of the distal clavicle.

With respect to any additional impairment to the wrist or elbow, there is no probative medical evidence of record. Dr. Helsten referred to a one percent wrist impairment based on loss

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

³ A. George Lampo, 45 ECAB 441 (1994).

⁴ A.M.A., *Guides* 476, Figure 16-40.

⁵ *Id.* at 477, Figure 16-43.

⁶ *Id.* at 479, Figure 16-46.

⁷ *Id.* at 506, Table 16-27.

⁸ *Id.* at 505. The Combined Values Chart is designed to account for the effects of multiple impairments with a summary value.

of range of motion, but the medical evidence did not contain wrist range of motion measurements or a detailed description of a wrist permanent impairment. Similarly, he noted right elbow impairment, without providing a detailed explanation sufficient to establish a ratable impairment under the A.M.A., *Guides*.⁹ As to a cervical radiculopathy, the DRE categories for the cervical spine under Table 15-5 are not applicable under the Act.¹⁰ Neither the Act nor its regulations provide for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of “organ” under the Act.¹¹

The Board accordingly finds that the evidence of record does not establish more than a 20 percent right arm impairment. On appeal appellant asserts, without further explanation, that she should be paid \$2,500.00 for each percentage of impairment. It is well established that a schedule award is paid in accord with the compensation schedule at 5 U.S.C. § 8107(c). A claimant receives the appropriate number of weeks of compensation, based on the maximum number of weeks for the relevant member or function of the body. For the arm, the maximum number of weeks of compensation is 312 weeks. Since appellant’s impairment was 20 percent, she is entitled to 20 percent of 312 weeks, or 62.40 weeks of compensation.

The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.¹² In this case, Dr. Wolski advised that appellant had reached maximum medical improvement in a December 20, 2007 report. The Office began the schedule award on December 29, 2007, the date she returned to a light-duty job.¹³ The Board finds that the award properly ran for 62.40 weeks from December 29, 2007.

CONCLUSION

The medical evidence of record does not establish more than a 20 percent right arm impairment.

⁹ To support a schedule award, the attending physician must include a detailed description of the impairment. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995).

¹⁰ *Id.* at 392, Table 15-5. This table provides impairments to the whole person based on cervical disorders.

¹¹ See *James E. Jenkins*, 39 ECAB 860 (1988); 5 U.S.C. § 8101(20).

¹² *Albert Valverde*, 36 ECAB 233, 237 (1984).

¹³ Using this date is beneficial to appellant, since she is not entitled to both compensation for wage loss and a schedule award during the same period. *Marie J. Born*, 27 ECAB 623 (1976).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 11, 2008 is affirmed.

Issued: May 11, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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