

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

W.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsburgh, PA Employer**

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**Docket No. 08-2272
Issued: May 21, 2009**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 18, 2008 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated March 27, 2008. 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 11 percent impairment of his left upper extremity for which he has received a schedule award.

FACTUAL HISTORY

This case has previously been before the Board on appeal on three occasions. On August 3, 2004 appellant, then a 51-year-old letter carrier, filed a traumatic injury claim alleging that he sustained a laceration to his left forearm in the performance of duty. The Office accepted appellant's claim for laceration of the left forearm with tendon involvement. By decision dated March 21, 2006, it granted appellant a schedule award for 11 percent impairment of his left upper extremity. Appellant requested review by the Board and in a decision dated September 19,

2006,¹ the Board found that the medical evidence required additional development and remanded the claim to the Office. The Office referred appellant to Dr. Stanley R. Askin, a Board-certified orthopedic surgeon, to resolve a conflict of medical opinion evidence and by decision dated December 11, 2006 denied appellant's claim for an additional schedule award. The Board reviewed this decision on July 24, 2007² and issued an order remanding case instructing the Office to determine if Dr. Askin was properly selected to act as the impartial medical examiner. The Office issued a decision on July 31, 2007 finding that appellant had no more than 11 percent impairment of his left upper extremity for which he had received a schedule award. Appellant requested review by the Board and the Board issued a second order remanding case on January 31, 2008³ finding that the case must be referred to a second impartial medical examiner carefully selected in accordance with the Office's procedures. The facts and the circumstances of the case as set out in the Board's prior decisions are adopted herein by reference.

The Office referred appellant for an impartial medical examination with Dr. William Kirkpatrick, a Board-certified orthopedic surgeon, on February 19, 2008. In a report dated March 5, 2008, Dr. Kirkpatrick reviewed appellant's history of injury and medical history. He noted that appellant had 80 degrees of pronation and 50 degrees of supination with no atrophy and full active digital range of motion in the left hand. Dr. Kirkpatrick found that appellant reached maximum medical improvement on February 1, 2005. He noted that appellant had no sensory dysfunction or sensory loss in the left forearm. Dr. Kirkpatrick found that appellant had one percent impairment due to loss of range of motion in supination. He also found a loss of strength in the left upper extremity. Dr. Kirkpatrick stated:

“Using a Jamar Dynamometer, his normal strength on the right in the 3rd position was 73 PSI compared to 52 PSI on the left. The A[merican] M[edical] A[ssociation,] *Guide[s to the Evaluation of Permanent Impairment]* specifies that little evidence exists of a significant difference in grip strength between the dominant and nondominant hand. Therefore using 73 PSI as his normal strength, a strength loss index can be calculated as per [p]age 509 of the [fifth] [e]dition. The strength loss index percent equals (normal strength -- limited strength)/normal strength. Therefore (73-52)/73 equals a strength loss index percent of 28 percent. According to Table 16-34 on [p]age 509 of the [fifth] [e]dition, a 28 percent strength loss index percent represents a 10 percent upper extremity impairment.”

The Office medical adviser reviewed this report on March 22, 2008, correlated Dr. Kirkpatrick's findings with the A.M.A., *Guides* and agreed with his assessment. By decision dated March 27, 2008, the Office found that the weight of the medical evidence established that

¹ Docket No. 06-989 (issued September 19, 2006).

² Docket No. 07-571 (issued July 24, 2007).

³ Docket No. 07-2092 (issued January 31, 2008).

appellant had no more than 11 percent impairment of his left upper extremity for which he had received a schedule award.⁴

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing regulations⁶ 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 regulations as the appropriate standard for evaluating schedule losses.⁷ 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.⁸

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background must be given special weight.⁹

ANALYSIS

The Office referred appellant for an impartial medical examination with Dr. Kirkpatrick, a Board-certified orthopedic surgeon, to determine the extent of his permanent impairment in the left upper extremity for schedule award purposes. Dr. Kirkpatrick completed a report on March 5, 2008 and reviewed both appellant's history of injury and his medical history. He provided his findings on physical examination and noted that appellant had 80 degrees of pronation and 50 degrees of supination with no atrophy and full active digital range of motion in the left hand. Dr. Kirkpatrick noted that appellant had no sensory dysfunction or sensory loss in the left forearm. He found that appellant reached maximum medical improvement on February 1, 2005. Dr. Kirkpatrick concluded that appellant had one percent impairment due to

⁴ On appeal, appellant's attorney requested that the Board increased appellant's schedule award based on the December 22, 2005 report of appellant's physician, Dr. George Rodriguez, Board-certified in physical medicine and rehabilitation. The Board reviewed this report in the September 19, 2006 decision and found that it was of diminished probative value. As the Board has previously considered this report, it is not necessary to address this report in this decision. Docket No. 06-989 (issued September 19, 2006).

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.*

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

⁹ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

loss of range of motion in supination of 50 degrees.¹⁰ He also found that appellant had an impairment due to loss of strength based on grip strength testing. Dr. Kirkpatrick concluded that appellant had a 28 percent strength loss or 10 percent upper extremity impairment.¹¹ The Office medical adviser reviewed this report on March 22, 2008, correlated Dr. Kirkpatrick's findings with the A.M.A., *Guides* and agreed with his assessment.

Dr. Kirkpatrick provided a detailed and comprehensive report based on a proper factual background. He specifically noted that appellant had no sensory deficits on physical examination and that his only findings were a loss of supination and a loss of grip strength. Dr. Kirkpatrick provided citations to the A.M.A., *Guides* in support of his impairment rating. As the properly selected impartial medical examiner his report is entitled to special weight and is sufficient to resolve the conflict of medical opinion evidence and establish that appellant has no more than 11 percent impairment of his left upper extremity for which he has received a schedule award.

CONCLUSION

The Board finds that the weight of the medical evidence establishes that appellant has no more than 11 percent impairment of his left upper extremity for which he has received a schedule award.

¹⁰ A.M.A., *Guides* 474, Figure 16-37.

¹¹ *Id.* at 509, Table 16-34.

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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