

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

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C.N., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
St. Louis, MO, Employer )

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**Docket No. 08-1991**  
**Issued: September 24, 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 July 15, 2008 appellant filed a timely appeal of the December 18, 2007 and May 6, 2008 schedule award of the Office of Workers' Compensation Programs. 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 three percent impairment of the right upper extremity and a five percent impairment of the left upper extremity, for which she received a schedule award.

**FACTUAL HISTORY**

On August 23, 2005 appellant, then a 56-year-old clerk, filed an occupational disease claim alleging that on February 18, 2003 she became aware of her carpal tunnel syndrome. On March 1, 2005 she realized that her condition was caused by her federal employment. By letter dated October 25, 2005, the Office accepted appellant's claim for bilateral lesion of the ulnar nerve, bilateral carpal tunnel syndrome and ganglion/cyst of the right synovium tendon.

On February 1, 2006 Dr. S. Vic Glogovac, an attending Board-certified orthopedic surgeon, performed left cubital and left carpal tunnel release. On March 8, 2006 he performed right cubital and carpal tunnel release. Dr. Glogovac released appellant to return to limited-duty work on June 12, 2006 using only her left hand. Appellant stopped work on June 19, 2006.

On February 7 and June 19, 2007 appellant filed claims for a schedule award. In a January 26, 2007 medical report, Dr. Glogovac stated that she had reached maximum medical improvement.

By letter dated September 5, 2007, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. John A. Gragnani, a Board-certified physiatrist, for a second opinion medical examination, who was asked to determine if she sustained any permanent impairment due to her accepted employment-related injuries.

In a September 19, 2007 report, Dr. Gragnani stated that appellant sustained bilateral cubital tunnel and carpal tunnel syndromes, a right wrist ganglion cyst and right trigger thumb that were surgically treated. He determined that appellant sustained a two percent impairment of the right upper extremity and a five percent impairment of the left upper extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001). Dr. Gragnani's range of motion measurements for the right elbow indicated 138 degrees of flexion, 2 degrees of extension, 80 degrees of supination and 90 degrees of pronation. Regarding the left elbow, he determined that 134 degrees of flexion represented a one percent impairment, 4 degrees of extension represented a zero percent impairment and 80 degrees of supination and 90 degrees of pronation each represented a zero percent impairment (A.M.A., *Guides* 472, 474, Figures 16-34, 16-37, respectively). Regarding the right wrist, Dr. Gragnani determined that 54 degrees of flexion constituted a two percent impairment and 62 degrees of extension, 28 degrees of radial deviation and 32 degrees of ulnar deviation each constituted a zero percent impairment (A.M.A., *Guides* 467, 469, Figures 16-28, 16-31, respectively). Regarding the left wrist, he determined that 52 degrees of flexion and 54 degrees of extension each represented a two percent impairment and that 24 degrees of radial deviation and 40 degrees of ulnar deviation each represented a zero percent impairment (A.M.A., *Guides* 467, 469, Figures 16-28, 16-31, respectively). Dr. Gragnani stated that there was no additional impairment for motor or sensory loss and pain as Jamar dynametric measurements were a bit erratic but indicated adequate grip strength. He combined the four percent impairment of the left wrist and the one percent impairment of the left elbow to calculate a five percent impairment of the left upper extremity (A.M.A., *Guides* Combined Values Chart, 604). Dr. Gragnani added the loss of range of motion impairment ratings for the right wrist to determine that appellant sustained a two percent impairment of the right upper extremity. He concluded that appellant reached maximum medical improvement in June 2007.

On September 24, 2007 Dr. David O. Zimmerman, an Office medical adviser, reviewed the medical evidence of record and agreed with Dr. Gragnani's findings that appellant sustained a two percent impairment of the right upper extremity and a five percent impairment of the left upper extremity based on the A.M.A., *Guides*. He stated that appellant reached maximum medical improvement on June 30, 2007.

Based on appellant's inquiries as to why Dr. Gragnani did not provide an impairment rating for her right elbow, the Office requested that Dr. Zimmerman rate this body part. In an October 3, 2007 report, Dr. Zimmerman determined that Dr. Gragnani's finding of 138 degrees of flexion and 2 degrees of extension each represented a two tenths percent impairment and 80 degrees of supination and 90 degrees of pronation each represented a zero percent impairment, resulting in a four tenths percent impairment of the right elbow (A.M.A., *Guides* 472, 474 Figures 16-34, 16-37, respectively). He stated that the four tenths percent impairment of the right elbow represented a one percent impairment of the right upper extremity at the elbow level. Dr. Zimmerman combined the one percent impairment of the elbow with his previous finding of a two percent impairment of the right upper extremity to determine that appellant sustained a three percent impairment of the right upper extremity (A.M.A., *Guides* 604).

By decision dated December 18, 2007, the Office granted appellant a schedule award for an eight percent impairment of the bilateral upper extremities representing, a three percent impairment of the right upper extremity and a five percent impairment of the left upper extremity.

By letter dated February 29, 2008, appellant requested reconsideration. In a February 2, 2008 report, Dr. Robert P. Poetz, a Board-certified osteopath, diagnosed bilateral cubital tunnel syndrome, status post bilateral cubital tunnel release, bilateral carpal tunnel syndrome and status post bilateral carpal tunnel release, right thumb AI stenosing tenosynovopathy and status post release AI pulley of the right thumb. He determined that appellant sustained a 17 percent impairment of the right upper extremity, which represented a 10 percent impairment of the whole person. Dr. Poetz further determined that appellant sustained a 22 percent impairment of the left upper extremity, which represented a 13 percent impairment of the whole person. He stated that, although appellant suffered from significant weakness, her grip strength could not be adequately measured with a dynamometer due to her inability to use her left thumb and bilateral hand pain. Dr. Poetz noted that decreased strength could not be considered in the presence of loss of range of motion and painful conditions based on section 16.8a on page 508 of the A.M.A., *Guides*.

Dr. Poetz' range of motion measurements for the right thumb indicated that 30 degrees of flexion of the metaphalangeal (MP) joint represented a three percent impairment and resulted in a one percent impairment of the hand (A.M.A., *Guides* 457, 438, Figure 16-15, Table 16-1). Regarding the right wrist, he reported 44 degrees of flexion which represented a three percent impairment, 34 degrees of extension which represented a five percent impairment, 20 degrees of radial deviation which represented a zero percent impairment and 25 degrees of ulnar deviation which represented a one percent impairment, resulting in a nine percent impairment (A.M.A., *Guides* 467, 469, Figures 16-28, 16-31). Regarding the right elbow, Dr. Poetz determined that 102 degrees of flexion constituted a six percent impairment, 0 degrees of extension constituted a one percent impairment, 59 degrees of pronation constituted a one percent impairment and 75 degrees of supination constituted a zero percent impairment, resulting in a seven percent impairment (A.M.A., *Guides* 472, 474, Figures 16-34, 16-37). He added the impairment ratings for the hand, wrist and elbow to calculate a 17 percent impairment of the right upper extremity which represented a 10 percent impairment of the whole person (A.M.A., *Guides* 439, Table 16-3). Dr. Poetz determined that the left thumb had zero degrees of flexion at the MP joint which represented a six percent impairment, resulting in a two percent impairment of the hand (A.M.A., *Guides* 457, 438, Figure 16-15, Table 16-1). Regarding the left wrist, he reported 40

degrees of flexion which represented a three percent impairment, 38 degrees of extension which represented a four percent impairment, 20 degrees of radial deviation which represented a zero percent impairment and 20 degrees of ulnar deviation which represented a two percent impairment, resulting in a nine percent impairment (A.M.A., *Guides* 467, 469, Figures 16-28, 16-31). The left elbow had 91 degrees of flexion which constituted an 8 percent impairment, 0 degrees of extension which constituted a 0 percent impairment, 55 degrees of pronation which constituted a 2 percent impairment and 60 degrees of supination which constituted a 1 percent impairment, resulting in an 11 percent impairment (A.M.A., *Guides* 472, 474, Figures 16-34, 16-37). Dr. Poetz added the impairment ratings for the left hand, wrist and elbow to calculate a 22 percent impairment of the left upper extremity which represented a 13 percent impairment of the whole person (A.M.A., *Guides* 439, Table 16-3). He combined the 10 percent impairment of the whole person pertaining to the right upper extremity and the 13 percent impairment of the whole person pertaining to the left upper extremity to calculate a 22 percent impairment of the whole person (A.M.A., *Guides*, 604, Combined Values Chart).

On March 22, 2008 Dr. Zimmerman reviewed Dr. Poetz' February 2, 2008 report. He stated that Dr. Poetz' finding that appellant had moderately severe range of motion limitations in all planes of motion in all joints that were measured was not credible. Dr. Zimmerman stated that range of motion limitations in the absence of an intervening medical event, do not worsen by approximately 25 percent in all planes and joints in less than four months based on subsection 2.5c on page 19 of the A.M.A., *Guides*. He, thus, concluded that appellant's schedule award should not be revised.

By decision dated May 6, 2008, the Office denied modification of the December 18, 2007 decision. It found that Dr. Zimmerman's March 22, 2008 opinion constituted the weight of the medical evidence in finding that appellant had no more than a three percent impairment of the right upper extremity and a five percent impairment of the left upper extremity.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulations<sup>2</sup> set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.<sup>3</sup> However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>4</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

<sup>4</sup> *See supra* note 2.

The standards for evaluation of the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.<sup>5</sup> Chapter 16 of the fifth edition of the A.M.A., *Guides* provide a detailed grading scheme and procedure for determining impairments of the upper extremities due to pain, discomfort, loss of sensation or loss of strength.<sup>6</sup>

### ANALYSIS

The Office accepted that appellant sustained bilateral lesion of the ulnar nerve and carpal tunnel syndrome and ganglion/cyst of the right synovium tendon. On December 18, 2007 appellant received a schedule award for a three percent impairment of the right upper extremity and a five percent impairment of the left upper extremity. The Board finds that she did not meet her burden of proof to establish that she sustained impairment greater than that already awarded.

Dr. Gragnani, an Office referral physician, and Dr. Zimmerman, an Office medical adviser, agreed that appellant sustained five percent impairment of the left upper extremity. Regarding the left elbow, the physicians determined that 134 degrees of flexion represented a one percent impairment, 4 degrees of extension represented a zero percent impairment and 80 degrees of supination and 90 degrees of pronation each represented a zero percent impairment (A.M.A., *Guides* 472, 474, Figures 16-34, 16-37, respectively). Regarding the left wrist, they determined that 52 degrees of flexion and 54 degrees of extension each represented a two percent impairment and that 24 degrees of radial deviation and 40 degrees of ulnar deviation each represented a zero percent impairment (A.M.A., *Guides* 467, 469, Figures 16-28, 16-31, respectively). Drs. Gragnani and Zimmerman combined the four percent impairment of the left wrist and the one percent impairment of the left elbow to calculate a five percent impairment of the left upper extremity (A.M.A., *Guides* Combined Values Chart, 604). Dr. Gragnani stated that there was no additional impairment for motor or sensory loss and pain as Jamar dynametric measurements were a bit erratic but indicated adequate grip strength. The Board finds that Dr. Gragnani and Dr. Zimmerman properly utilized the A.M.A., *Guides* and provided rationale for rating a five percent impairment of the left upper extremity.

The Board further finds that Dr. Zimmerman properly utilized the A.M.A., *Guides* to find that appellant sustained a three percent impairment of the right upper extremity based on Dr. Gragnani's range of motion measurements. Dr. Zimmerman determined that 138 degrees of flexion and 2 degrees of extension each represented a two tenths percent impairment and 80 degrees of supination and 90 degrees of pronation each represented a zero percent impairment, resulting in a four tenths percent impairment of the right elbow (A.M.A., *Guides* 467, 469, 472, 474, Figures 16-28, 16-31, 16-34, 16-37). He stated that the four tenths percent impairment of the right elbow represented a one percent impairment of the right upper extremity at the elbow level. Dr. Zimmerman combined the one percent impairment of the elbow with his previous

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<sup>5</sup> See Paul A. Toms, 28 ECAB 403 (1987).

<sup>6</sup> A.M.A., *Guides*, Chapter 16, The Upper Extremities, pp. 433-521 (5<sup>th</sup> ed. 2001).

finding of a two percent impairment of the right upper extremity to determine that appellant sustained a three percent impairment of the right upper extremity (A.M.A., *Guides* 604).

The Board finds that the opinions of Dr. Gragnani and Dr. Zimmerman represent the weight of the medical evidence of record. Appellant has no more than a three percent impairment of the right upper extremity and a five percent impairment of the left upper extremity.

Dr. Poetz' opinion that appellant sustained a 17 percent impairment of the right upper extremity which represented a 10 percent impairment of the whole person and a 22 percent impairment of the left upper extremity which represented a 13 percent impairment of the whole person, resulting in a 22 percent impairment of the whole person is insufficient to establish that she is entitled to an additional schedule award for both upper extremities. He stated that appellant sustained bilateral cubital tunnel syndrome, status post bilateral cubital tunnel release, bilateral carpal tunnel syndrome and status post bilateral carpal tunnel release, right thumb A1 stenosing tenosynovopathy and status post release A1 pulley of the right thumb. Dr. Poetz' impairment ratings for both upper extremities are based not only on his range of motion measurements for appellant's bilateral wrists and elbows, but also for her bilateral thumbs. He determined that 30 degrees of flexion of the right thumb at the MP joint constituted a three percent impairment which represented a one percent impairment of the right hand. (A.M.A., *Guides*, 457, 438, Figure 16-15, Table 16-1) Dr. Poetz further determined that zero degrees of flexion of the left thumb at the MP joint constituted a six percent impairment of the left thumb which represented a two percent impairment of the left hand (A.M.A., *Guides*, 457, 438, Figure 16-15, Table 16-1). The Board notes that appellant's claim has not been accepted for either a right or left thumb condition. Moreover, Dr. Poetz has not explained how these conditions are causally related to appellant's accepted employment-related injuries. Further, the Board has held that, schedule awards are not granted for whole person impairment.<sup>7</sup> The Board finds, therefore, that Dr. Poetz's opinion is not sufficient to establish appellant's claim for an additional schedule award for both upper extremities.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she has more than a three percent impairment of the right upper extremity and a five percent impairment of the left upper extremity, for which she received a schedule award.

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<sup>7</sup> See *Terry E. Mills*, 47 ECAB 309 (1996); *James E. Mills*, 43 ECAB 215 (1991).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 6, 2008 and December 18, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 24, 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