

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

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| R.B., Appellant |) | |
| |) | |
| and |) | Docket No. 09-568 |
| |) | Issued: September 17, 2009 |
| GENERAL SERVICES ADMINISTRATION, |) | |
| FEDERAL SUPPLY DEPOT, Fort Worth, TX, |) | |
| Employer |) | |
| |) | |

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 December 23, 2008 appellant filed a timely appeal from the November 14, 2008 schedule award decision of the Office of Workers' Compensation Programs for an additional three percent left arm impairment. 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 13 percent permanent impairment to his left arm.

FACTUAL HISTORY

The Office accepted that appellant sustained bilateral carpal tunnel syndrome and bilateral ulnar nerve lesion as a result of his federal employment as a supply technician. On April 17, 2003 it granted a schedule award for one percent impairment of the right arm. In a report dated August 18, 2004, Dr. John Sklar, a physiatrist, provided results on examination and found that appellant had bilateral wrist extension of 45 degrees. An Office medical adviser reviewed the medical evidence and, in an October 26, 2004 report, found that appellant had a

three percent permanent impairment to each arm, based on loss of wrist extension. By decision dated November 15, 2004, the Office issued a schedule award for an additional two percent right arm permanent impairment.

In a report dated July 10, 2007, Dr. Patrick Donovan, a physiatrist, provided a history and results on examination. He found appellant had residual weakness and sensory loss in the left arm primarily in a median and ulnar nerve distribution. Dr. Donovan stated that appellant had reached maximum medical improvement. As to the degree of permanent impairment, he identified Table 16-15 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. For the median nerve, Dr. Donovan graded the motor impairment at 10 percent of the maximum 10 percent (for a 1 percent arm impairment), and for the sensory impairment 10 percent of the maximum 39 percent (a 4 percent arm impairment). The ulnar nerve impairment was also graded at 10 percent of the maximum 35 percent for motor deficit (4 percent arm impairment) and maximum 7 percent for sensory deficit (a 1 percent arm impairment). Dr. Donovan concluded that appellant had a 10 percent left arm impairment based on sensory and motor deficits.

An Office medical adviser reviewed the medical evidence and concurred with Dr. Donovan that a 10 percent left arm impairment was established based on motor and sensory deficit. The medical adviser also noted that earlier reports had found a 3 percent impairment for loss of wrist extension motion to the left arm, which should be combined with the 10 percent for a total 13 percent left arm permanent impairment. The medical adviser then deducted 3 percent for a 10 percent arm impairment.¹

By decision dated June 18, 2008, the Office issued a schedule award for a 10 percent permanent impairment to the left arm. The period of the award was 31.20 weeks from July 10, 2007.

Appellant requested a hearing before an Office hearing representative. By decision dated November 6, 2008, the hearing representative stated that, based on a schedule award calculator in the record, appellant had only been paid for a seven percent impairment pursuant to the June 18, 2008 decision. Since appellant had a 13 percent permanent left arm impairment, the Office should pay a schedule award for an additional 6 percent.

The record contains a November 7, 2008 Office memorandum indicating that the schedule award calculator showing a 7 percent permanent impairment was incorrect, and appellant had been paid a schedule award for a 10 percent left arm permanent impairment.

By decision dated November 14, 2008, the Office issued a schedule award for an additional three percent left arm permanent impairment. The period of the award was 9.36 weeks from February 19, 2008.

¹ The medical adviser appeared to believe appellant had already received a schedule award for a three percent left arm impairment, but the record indicates that he had received schedule awards for a three percent right arm impairment.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation 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 13 percent left arm permanent impairment. With respect to sensory and motor deficits, Table 16-15 provides the maximum impairment for the identified nerves.⁴ Once the nerve and the maximum impairment is identified, the impairment is then graded using Table 16-10 (sensory deficit) and Table 16-11 (motor deficit).⁵ Dr. Donovan, the attending physiatrist, identified the median and ulnar nerves and properly graded the impairments in accord with the A.M.A., *Guides*. The maximum impairment for median nerve sensory deficit is 39 percent, and 10 percent of 39 percent is 3.9 percent, rounded to 4. For median nerve motor deficit, the maximum arm impairment is 10 percent, therefore 10 percent of 10 percent is a 1 percent impairment. The maximum for ulnar motor deficit is 35 percent, and grading the impairment at 10 percent results in 3.5 percent impairment, rounded to 4.⁶ As to ulnar sensory deficit, the maximum is 7 percent, and therefore a 10 percent grade results in 1 percent arm impairment. Combining the 5 percent sensory deficit impairment with the 5 percent motor deficit impairments results in a 10 percent arm impairment.

In addition, the record indicates that Dr. Sklar had reported 45 degrees of wrist extension. Under Figure 16-28, this results in a three percent arm impairment.⁷ An Office medical adviser had opined in an October 26, 2004 report that appellant had a three percent left arm impairment, but the Office did not issue a schedule award for the left arm at that time. An Office medical adviser advised in a March 3, 2008 report that the total left arm impairment was 13 percent, based on 10 percent for motor and sensory deficit and 3 percent for loss of range of motion. There is no probative evidence of a greater impairment.

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* 492, Table 16-15.

⁵ *Id.* at 482, Table 16-10, and 484, Table 16-11.

⁶ As the Office's procedure manual explains with respect to hearing loss, the number is rounded up from .50 and down from .49. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2) (September 1994).

⁷ A.M.A., *Guides* 467, Figure 16-28.

On appeal, appellant does not argue that the evidence shows more than a 13 percent permanent arm impairment. He contends that the Office failed to provide him a schedule award for an additional six percent impairment, as directed by the hearing representative. The Board notes, however, that the Office hearing representative had based her decision on a finding that appellant had only received a schedule award for seven percent left arm permanent impairment. The record does contain a February 19, 2008 “scheduled award calculator” that shows a seven percent arm impairment, or 21.84 weeks of compensation.⁸ The record indicates, however, that the Office issued a payment dated March 21, 2008 of \$20,158.63 for a schedule award from July 10, 2007 to February 13, 2008. This represented 31.20 weeks of compensation, or 10 percent of the maximum 312 weeks of compensation. In addition, there is a corrected schedule award calculator dated March 14, 2008 showing a 10 percent permanent impairment. The June 18, 2008 final decision also showed a 10 percent permanent impairment for 31.20 weeks of compensation awarded from July 10, 2007 to February 13, 2008. The record supports that appellant was paid for a 10 percent left arm permanent impairment totaling 31.20 weeks of compensation. The November 14, 2008 decision properly awarded appellant an additional three percent, or 9.36 weeks of compensation. Appellant was compensated for the impairment to his left arm.

CONCLUSION

The Board finds that the medical evidence does not establish more than 13 percent left arm permanent impairment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers’ Compensation Programs dated November 14 and June 18, 2008 are affirmed.

Issued: September 17, 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

⁸ The maximum number of weeks of compensation for an arm impairment is 312 weeks according to 5 U.S.C. § 8107. Seven percent of 312 is 21.84 weeks.