

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

---

**M.G., Appellant**

**and**

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

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 09-2265  
Issued: August 17, 2010**

*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 10, 2009 appellant filed a timely appeal from the June 1, 2009 schedule award decision 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 14 percent permanent impairment of his left arm, for which he received a schedule award.

**FACTUAL HISTORY**

On July 22, 2006 appellant, then a 41-year-old mailhandler, injured his left elbow while removing jammed mail from the catch pan of a flats machine. He stopped work on June 23, 2006 and returned to work on June 30, 2006.<sup>1</sup> Appellant underwent surgery for repair

---

<sup>1</sup> The record reveals that appellant had a prior claim for his left shoulder and cervical strain. He received a schedule award for 12 percent impairment of the left arm. OWCP Claim No. xxxxxx988.

of a left distal biceps rupture on April 19, 2007.<sup>2</sup> The Office accepted his claim for a left open olecranon fracture with contusion of the elbow and forearm. Appellant filed a claim for a schedule award.

In a June 26, 2008 report, Dr. David Weiss, an osteopath, reviewed appellant's history of injury and medical treatment. He noted that in rating impairment, he used the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*) to find 15 percent loss of the left arm. Dr. Weiss listed appellant's complaint of intermittent left elbow pain with stiffness and numbness of the left fourth and fifth digits that caused difficulties with activities of daily living. While appellant was able to perform his mailhandler duties, he experienced difficulty with certain household tasks. He rated his pain as 6 out of 10 according to the Visual Analogue Scale. On examination, appellant had a well-healed surgical scar, no effusion or tenderness over the distal triceps at its insertion and over the posterior olecranon. Dr. Weiss provided range of motion measurements which included flexion-extension of 0-145/145 degrees with pain, pronation of 0-80/80 degrees and supination of 0-80/80 degrees. He noted grip strength on Jamar testing of 58 kilograms of force in the right hand and 48 kilograms in the left hand and manual muscle testing, which was graded 5/5 triceps and biceps on the left. Dr. Weiss noted that Semmes-Weinstein monofilament testing revealed a diminished light touch sensibility over the ulnar nerve distribution in the left forearm and hand and two-point discrimination testing which was six millimeters. Regarding atrophy, he noted that appellant's upper arm circumference measured 34.5 centimeters on the left versus 35.5 on the right. In the lower arms, circumference was 30 centimeters on the left and 31 on the right.

Dr. Weiss diagnosed the following left arm conditions: status post avulsion fracture, status post triceps tear at the elbow, status post exploration and distal triceps reinsertion and debridement and chronic left ulnar nerve dysfunction at the cubital tunnel. In rating impairment, he found sensory and motor loss involving the ulnar nerve. Under Table 16-15, the maximum impairment for sensory loss involving the ulnar nerve was seven percent. Dr. Weiss advised that the class of sensory deficit under Table 16-10 was Grade 2, or 80 percent. He multiplied 7 percent times 80 percent to find 6 percent sensory loss to the arm.<sup>3</sup> Dr. Weiss rated loss of strength with reference to Table 16-34 for loss of grip or pinch strength and allowed 10 percent impairment to the left arm.<sup>4</sup> He combined the sensory and motor impairments to total 15 percent impairment of the left arm.

On August 20, 2008 an Office medical adviser reviewed the medical records and noted that a February 1, 2007 EMG revealed no evidence of ulnar neuropathy. He found that the range of motion of the left elbow was normal and muscle strength testing of the triceps and biceps were graded 5/5, which was normal. The medical adviser noted that appellant's grip strength on the right was 58 kilograms and 48 kilograms on the left. He noted that the two-point discrimination of six millimeters was borderline abnormal. Regarding the forearm circumference, the Office

---

<sup>2</sup> A February 1, 2007 electromyography (EMG) scan revealed no evidence of peripheral neuropathy, cervical radiculopathy, brachial plexopathy or ulnar neuropathy.

<sup>3</sup> A.M.A., *Guides* 482, 492.

<sup>4</sup> *Id.* at 509.

medical adviser explained that it was one centimeter less on the left than on the right and was within the range of measuring error.

The medical adviser noted that Table 16-15 provided a maximum of seven percent impairment for ulnar nerve sensory deficit or pain above the midforearm.<sup>5</sup> In classifying the extent of sensory deficit under Table 16-10, he stated that the examination of Dr. Weiss supported Grade 4 deficit, 25 percent rather than Grade 2. Grade 4 was classified as distorted superficial tactile sensibility (diminished light touch) and the nerve conduction studies revealed no significant ulnar nerve compression. The medical adviser explained that appellant could not work at his current level and function if he lacked protective sensibility under Grade 2. He multiplied 7 percent times 25 percent to find 1.75 percent impairment, which he rounded up to 2 percent sensory loss. The medical adviser also noted that pursuant section 16.8a, Principles of Strength Evaluation, the A.M.A., *Guides* provide that decreased strength cannot be rated in the presence of painful conditions.<sup>6</sup> He concluded that the grip strength impairment rating by Dr. Weiss should not be accepted. The medical adviser explained that the grip strength deficit was inconsistent with the finding on examination that the triceps and biceps strength of the left upper extremity was full at 5/5. He noted that the area of injury was in the region of the triceps, for which the strength testing was normal. The medical adviser found that appellant had two percent impairment to the left arm with a June 26, 2008 date of maximum medical improvement.

On October 9, 2008 the Office requested clarification from the Office medical adviser. It noted that appellant had previously received a schedule award for 12 percent left shoulder impairment. The Office asked whether the prior award would affect his present rating for the left ulnar nerve.

In an October 19, 2008 response, the Office medical adviser noted that the prior 12 percent rating was for a different injury. The additional two percent was for the ulnar nerve sensory loss related to the fracture of the left elbow and forearm. The medical adviser reiterated that grip strength loss should not be accepted. He combined the two percent ulnar sensory loss with the prior 12 percent shoulder impairment, to find a total impairment of 14 percent to the left arm.

In an October 28, 2008 decision, the Office issued a schedule award for an additional 2 percent left arm impairment, or a total of 14 percent impairment. The award covered a period of 6.24 weeks from June 26 to August 8, 2008.

Appellant requested a hearing, which was held on March 18, 2009. Counsel contended that the Office medical adviser misapplied page 506 of the A.M.A., *Guides*. He contended that Dr. Weiss found that appellant was able to provide maximum effort in the grip strength deficit testing despite pain. He also contended that the impairment ratings by Dr. Weiss and the Office medical adviser were in conflict.

---

<sup>5</sup> *Id.* at 492.

<sup>6</sup> *Id.* at 508.

In a June 1, 2009 decision, an Office hearing representative affirmed the October 28, 2008 schedule award decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>7</sup> and its implementing regulations<sup>8</sup> 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.<sup>9</sup>

### **ANALYSIS**

The Office accepted that appellant sustained an open fracture of the olecranon process of the left elbow and forearm.

In support of his schedule award claim, appellant submitted an impairment rating by Dr. Weiss, who set forth findings on physical examination and utilized the A.M.A. *Guides*. Dr. Weiss referred generally to Tables 16-10 and 16-15 in rating sensory loss involving the ulnar nerve. The Board notes that Table 16-15 provides a maximum of seven percent sensory loss for the ulnar nerve above the midforearm. Dr. Weiss indicated that the sensory deficit was classified as Grade 2, or 80 percent. Based on this classification, appellant had six percent sensory loss to the left arm. The Board notes that Dr. Weiss did not explain the factors he considered in making the Grade 2 sensory deficit classification. According to Table 16-10, a Grade 2 sensory deficit is warranted if there is decreased superficial cutaneous pain and tactile sensibility (decreased protective sensibility) with abnormal sensations or moderate pain that may prevent some activities. It is unclear whether Dr. Weiss took into consideration the February 1, 2007 EMG findings, which revealed no evidence of peripheral neuropathy, cervical radiculopathy, brachial plexopathy or ulnar neuropathy. He noted that appellant was able to perform his duties as a mail handler with some limitation in household tasks, with some complaint of pain.

Dr. Weiss rated 10 percent impairment for loss of grip strength pursuant to Table 16-34.<sup>10</sup> In providing this rating, his report does not address the limitations found in the A.M.A., *Guides* at section 16.8a. Under principles applicable to rating grip and pinch strength, the A.M.A., *Guides* do not assign a large role to measurements of weakness based on manual muscle testing because they are functional tests influenced by subjective factors that are difficult to control. Loss of strength may be rated separately in rare cases if the examiner believes the individual's

---

<sup>7</sup> 5 U.S.C. § 8107.

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>10</sup> *Id.* at 509.

loss of strength represents an impairing factor that has not been considered adequately by other methods in the chapter. Even then, impairment due to loss of strength could be combined with other impairments only if it is based on unrelated etiologic or pathomechanical causes. Otherwise, impairment ratings based on objective anatomic findings take precedence. The A.M.A., *Guides* caution that decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities or absence of parts that prevent effective application of maximal force in the region being evaluated. Dr. Weiss provided a general reference to Table 16-34 in rating loss of strength to appellant's left arm. He did not provide any discussion of those factors or circumstances in this case that warranted measuring loss of grip or pinch strength in view of the cautionary language in the A.M.A., *Guides*.<sup>11</sup> For this reason, Dr. Weiss' rating does not fully comply with the A.M.A., *Guides* and is of diminished probative value.<sup>12</sup>

The Office medical adviser reviewed appellant's history of injury and medical treatment. He explained that EMG and nerve conduction studies performed on February 1, 2007 revealed no evidence of ulnar neuropathy and that appellant had normal range of motion of the left elbow as well as normal muscle strength. The Office medical adviser applied Tables 16-15 and 16-10 to determine impairment for the ulnar nerve above the midforearm due to sensory deficit or pain.<sup>13</sup> Table 16-15 provides for a seven percent maximum impairment for sensory deficit or pain of the ulnar nerve below the midforearm. The medical adviser noted that under Table 16-10<sup>14</sup> sensory deficit was best classified as Grade 4, or 25 percent. He explained the basis for assigning this grade classification with reference to the diagnostic studies and the findings on examination by Dr. Weiss. The medical adviser contrasted the classification descriptions under Grade 4 and Grade 2 and noted that the diagnostic studies did not demonstrate abnormality of the ulnar nerve, which would signify no ulnar nerve compression. He noted that appellant would not be able to work at his current level of functioning if he lacked protective sensibility which was indicative of Grade 2. The medical adviser multiplied the 25 percent sensory deficit allowed for Grade 4 pain in the distribution of the ulnar nerve by the 7 percent maximum impairment allowed under Table 16-15. This yielded 1.75 percent impairment which was rounded to the next whole number, two percent sensory impairment.<sup>15</sup>

Regarding grip strength, he noted that section 16.8a, Principles of Strength Evaluation, states, "Decreased strength cannot be rated in the presence of painful conditions."<sup>16</sup> The Office medical adviser advised against inclusion of the impairment rating for grip strength deficit as it was inconsistent with the finding of full strength of the triceps and biceps of the left arm.

---

<sup>11</sup> *Id.* at 507-08. See *J.G.*, 61 ECAB \_\_\_\_ (Docket No. 09-1128, issued December 7, 2009); *K.W.*, 59 ECAB \_\_\_\_ (Docket No. 07-1547, issued December 19, 2007).

<sup>12</sup> See *J.G.*, 61 ECAB \_\_\_\_ (Docket No. 09-1128, issued December 7, 2009) (an attending physician's report is of diminished probative value where the A.M.A., *Guides* are not properly followed).

<sup>13</sup> A.M.A., *Guides* 482, 492.

<sup>14</sup> *Id.* at 482.

<sup>15</sup> The Office rounds the calculated percentage of impairment to the nearest whole number. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (June 2003).

<sup>16</sup> A.M.A., *Guides* 508.

Further, Dr. Weiss did not provide any commentary as to why such loss could not be adequately rated under other sections of the applicable chapter. The medical adviser found that appellant had two percent left upper arm impairment for sensory loss. He subsequently explained that he combined the 2 percent ulnar nerve impairment with the prior 12 percent award involving the left shoulder to find total impairment of 14 percent to the left arm.<sup>17</sup> The Board finds that the Office medical adviser properly considered the applicable provisions of the A.M.A., *Guides* in rating the extent of impairment. The medical adviser's rating constitutes the weight of medical opinion. Appellant has not submitted any other medical evidence to establishing greater impairment to his arm.<sup>18</sup>

On appeal, counsel addressed reasons for contesting the amount of the schedule award in this case. As noted, the rating of Dr. Weiss is found to be of diminished probative value as he did not fully address certain aspects of the A.M.A., *Guides* in making his rating. Counsel also contends that grip strength can be rated in the presence of pain if the pain does not prohibit the application of maximum effort. Dr. Weiss, however, did address this in the narrative portion of his report or explain why the cautionary language of the A.M.A., *Guides* did not apply in appellant's case. This reduces the probative value of his rating.

### **CONCLUSION**

The Board finds that appellant has no more than 14 percent permanent impairment of his left arm, for which he received schedule awards.

---

<sup>17</sup> *Id.* at 604 (Combined Values Chart).

<sup>18</sup> The Board notes that appellant may file a claim for an increased schedule award based on new exposure or on medical evidence indicating a greater impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 17, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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