

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

J.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 09-1167
Issued: February 19, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 31, 2009 appellant filed a timely appeal from a March 20, 2009 merit decision of the Office of Workers' Compensation Programs denying her claim for an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has more than a 27 percent permanent impairment of each upper extremity for which she received schedule awards.

FACTUAL HISTORY

This case is before the Board for the second time. In a decision dated June 14, 2006, the Board set aside an August 10, 2005 Office decision granting appellant a schedule award for a

four percent permanent impairment of each upper extremity.¹ The Board found that the medical opinions from appellant's attending physician and the Office medical adviser failed to conform to the provisions of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*) and remanded the case for further development to determine the extent of any permanent impairment of the upper extremities. The findings of fact and conclusions of law from the prior decision are incorporated by reference.

In a report dated April 27, 2005, Dr. Weerasak W. Lima, a Board-certified orthopedic surgeon, measured extension and flexion of the wrists as 20 degrees, supination as 45 degrees and pronation as 80 degrees. He diagnosed bilateral arthritis of the wrists and recommended continued limited-duty work.

On September 8, 2006 an Office medical adviser determined that appellant had a two percent impairment due to sensory loss of the bilateral upper extremities. Utilizing Dr. Lima's range of motion findings from the April 27, 2005 report, he determined that she had a 24 percent impairment due to loss of range of motion of the wrists and a 2 percent impairment due to loss of supination. The Office medical adviser combined the findings and concluded that appellant had a 27 percent permanent impairment of each upper extremity.²

By decision dated October 3, 2006, the Office granted appellant schedule awards for a 27 percent permanent impairment of the right and left upper extremities.³ It subtracted the four percent previously paid for each upper extremity. The period of the award ran for 143.52 weeks from April 28, 2005 to January 27, 2008.

On November 6, 2008 the Office advised appellant that if she claimed a greater permanent impairment she should submit an impairment evaluation from her attending physician in accordance with the A.M.A., *Guides*. In an impairment evaluation dated November 10, 2008, Dr. Lima diagnosed bilateral traumatic tenosynovitis and arthritis of the hands and wrists. He noted that appellant's symptoms were essentially unchanged since April 2005. Dr. Lima measured range of motion of the right wrist as 0 degrees flexion, 40 degrees extension, 60 degrees supination and 85 degrees pronation. For the left side he measured 20 degrees flexion, 40 degrees extension, 45 degrees supination and 85 degrees pronation. Dr. Lima noted that appellant had a radial deviation deformity bilaterally and stiffness of the fingers. He provided grip strength measurements obtained on three attempts.

¹ Docket No. 05-1920, issued June 14, 2006. On April 30, 1999 appellant, then a 47-year-old flat sorting machine operator, filed an occupational disease claim alleging that she sustained tendinitis due to factors of her federal employment. The Office accepted her claim for bilateral tendinitis of the wrists. Appellant stopped work on April 22 and returned to modified work on July 6, 1999. By decision dated November 28, 2001, the Office determined that she had no loss of wage-earning capacity based on its finding that her actual earnings as a modified flat sorting machine operator effective July 6, 1999 fairly and reasonably represented her wage-earning capacity.

² The Office medical adviser also recommended that the Office expand appellant's claim to include bilateral tardy ulnar nerve palsies and a bilateral aggravation of post-traumatic arthritis of the wrists.

³ Appellant retired in October 2006.

On November 17, 2008 Dr. Lima opined that appellant had no impairment due to loss of range of motion of the fingers. Citing Figures 16-28, 16-34 and 16-37 of the A.M.A., *Guides*, relevant to determining impairments due to loss of range of motion of the wrist and forearm, he concluded that appellant had a 57 percent permanent impairment of each upper extremity due to her wrist impairment.

On December 5, 2008 the Office referred appellant to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated January 7, 2009, Dr. Hanley noted that x-rays obtained in March 1999 revealed advanced degenerative disc disease. He diagnosed “[a]ggressive synovial based arthritis of both wrists, right greater than left with tenosynovitis of the hands but without loss of motion.” Dr. Hanley attributed the majority of appellant’s problems with her hands to preexisting “progressive underlying rheumatological disease” that might have been aggravated by her employment. For the right wrist, he found that 10 degrees dorsiflexion constituted an eight percent impairment,⁴ 30 degrees volar flexion constituted a five percent impairment,⁵ 0 degrees ulnar deviation constituted a five percent impairment⁶ and 15 degrees radial deviation constituted one percent impairment.⁷ For the left wrist, Dr. Hanley found that 45 degrees dorsiflexion constituted three percent impairment,⁸ 40 degrees volar flexion constituted three percent impairment,⁹ 0 degrees ulnar deviation constituted five percent impairment¹⁰ and five degrees radial deviation constituted one percent impairment.¹¹ He found that appellant had full elbow pronation on both sides but 50 degrees supination, which he found equaled one percent impairment.¹² Dr. Hanley combined the impairments for loss of range of motion and concluded that appellant had an 18 percent impairment of the right upper extremity and a 12 percent impairment of the left extremity due to loss of range of motion. He found that she had no ulnar neuropathy or ulnar motor atrophy and further noted that under the A.M.A., *Guides* grip strength testing was not valid given her loss of range of motion.

On February 5, 2009 an Office medical adviser reviewed the findings by Dr. Lima and Dr. Hanley. He found that appellant did not have more than the 27 percent permanent impairment for each upper extremity previously awarded. The Office medical adviser related that Dr. Lima’s finding of a 57 percent impairment of each upper extremity “would indicate [his] determination was based on a combination of weakness, decreased wrist motion and flexion extension, radial and ulnar deviation as well as supination and pronation.” He discussed

⁴ A.M.A., *Guides* 467, Figure 16-28.

⁵ *Id.*

⁶ *Id.* at 469, Figure 16-31.

⁷ *Id.*

⁸ *Id.* at 467, Figure 16-28.

⁹ *Id.*

¹⁰ *Id.* at 469, Figure 16-31.

¹¹ *Id.*

¹² *Id.* at 474, Figure 16-37.

Dr. Hanley's January 7, 2009 report and noted that "he made a recommendation for a schedule award based upon loss of range of motion, and he stated that there were no other methodologies to provide a rating."

In a supplemental report dated February 23, 2009, the Office medical adviser explained that Dr. Lima improperly rated appellant for a loss of strength in the presence of decreased motion and painful conditions. He stated:

"If I would have utilized Dr. Hanley's physical examination findings of January 17, 2009 I would have been in agreement with his calculations of 18 percent for the right and 12 percent for the left upper extremity. However, the calculations that I made were based upon Dr. Lima's examination, and her use of the A.M.A. *Guides*, as stated, was not appropriate based primarily on [his] strength measurements for the impairment calculation rather than [his] range of motion measurements as referenced on page 474, Figure 16-37 and page 469, Figure 16-31.

"It is certainly possible that the examination could have changed from Dr. Lima's examination of November 10, 2008 and Dr. Hanley's examination of January 7, 2009. However, these differences in range of motion were not significant. The most important and only significant difference is related to the strength measurements.

"Therefore, based upon the above, I would not make any recommendations of a change from my previous recommendations of 27 percent impairment of each upper extremity."

By decision dated March 20, 2009, the Office denied appellant's claim for an increased schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,¹³ and its implementing federal regulations,¹⁴ 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all

¹³ 5 U.S.C. § 8107.

¹⁴ 20 C.F.R. § 10.404.

claimants.¹⁵ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹⁶

A claim for an increased schedule award may be based on new exposure or on medical evidence indicating the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated.¹⁷ Where a claimant has previously received a schedule award and subsequently claims an additional schedule award due to a worsening of his or her condition, the claimant bears the burden of proof to establish a greater impairment causally related to the employment injury.¹⁸

ANALYSIS

The Office accepted that appellant sustained bilateral tendinitis of the wrists due to factors of her federal employment. By decision dated September 8, 2006, the Office granted appellant a schedule award for a 27 percent permanent impairment of each upper extremity.

Appellant submitted November 10 and 17, 2008 reports from Dr. Lima in support of her claim for an increased schedule award. Dr. Lima noted that her symptoms were unchanged since April 2005 and provided range of motion findings for the wrist and forearm. He generally concluded that appellant had a 57 percent impairment of each upper extremity but did not explain his calculations pursuant to the A.M.A., *Guides*. As Dr. Lima did not explain the protocols used in making the impairment determination, his opinion is insufficient to establish the extent of her permanent impairment.¹⁹ Additionally, his range of motion findings did not yield a greater extent of impairment than the 27 percent impairment of each upper extremity previously awarded.²⁰ Consequently, Dr. Lima's report does not support that appellant has more than a 27 percent permanent impairment of each upper extremity due to loss of range of motion.

The Office referred appellant to Dr. Hanley for a second opinion examination. Dr. Hanley diagnosed synovial based bilateral wrist arthritis greater on the right largely due to

¹⁵ 20 C.F.R. § 10.404(a).

¹⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003). As of May 1, 2009, the sixth edition will be used. FECA Bulletin No. 09-03 (issued March 15, 2008).

¹⁷ *Linda T. Brown*, 51 ECAB 115 (1999).

¹⁸ *Edward W. Spohr*, 54 ECAB 806 (2003).

¹⁹ See *Carl J. Cleary*, 57 ECAB 563 (2006) (an opinion which is not based upon the standards adopted by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of permanent impairment).

²⁰ On the right side, Dr. Lima found 0 degrees flexion which equals a 10 percent impairment, 40 degrees extension which equals a 4 percent impairment, 60 degrees supination which equals a 1 percent impairment of the forearm, and 85 degrees pronation which yields no impairment. A.M.A., *Guides* 467, 474, Figures 16-28 and 16-27. On the left side, 20 degrees flexion yields seven percent impairment, 40 degrees extension yields four percent impairment, 45 degrees supination yields two percent impairment and 85 degrees pronation yields no impairment. *Id.*

progressive preexisting rheumatologic disease. He determined that 10 degrees dorsiflexion yielded eight percent impairment,²¹ 30 degrees volar flexion yielded five percent impairment,²² 0 degrees ulnar deviation yielded five percent impairment²³ and 15 degrees radial deviation yielded a one percent impairment.²⁴ For the left wrist, he found that 45 degrees dorsiflexion yielded three percent impairment,²⁵ 40 degrees volar flexion yielded three percent impairment,²⁶ 0 degrees ulnar deviation yielded five percent impairment²⁷ and 5 degrees radial deviation yielded one percent impairment.²⁸ He found that appellant had full elbow pronation on both sides but 50 degrees supination, which he found equaled one percent impairment.²⁹ Dr. Hanley combined the impairments for loss of range of motion and concluded that appellant had an 18 percent impairment of the right upper extremity and a 12 percent impairment of the left extremity due to loss of range of motion.³⁰ He further noted that factors such as loss of grip strength should not be considered given appellant's restriction in motion.³¹

An Office medical adviser reviewed Dr. Hanley's report and noted that Dr. Lima based part of his impairment evaluation on loss of strength. He properly found that the A.M.A., *Guides* precludes rating decreased strength in the presence of decreased motion that prevents the application of maximal force in the region being evaluated."³² The Office medical adviser asserted that Dr. Lima's current range of motion findings did not differ significantly from Dr. Hanley's and that the difference in the impairment determination was due to Dr. Lima's loss of strength measurements. He concurred with Dr. Hanley's range of motion findings and opined that appellant had no more than a 27 percent impairment of each upper extremity. There is no probative medical evidence conforming to the A.M.A., *Guides* establishing that appellant has more than a 27 percent permanent impairment of each upper extremity.

²¹ A.M.A., *Guides* 467, Figure 16-28.

²² *Id.*

²³ *Id.* at 469, Figure 16-31.

²⁴ *Id.*

²⁵ *Id.* at 467, Figure 16-28.

²⁶ *Id.*

²⁷ *Id.* at 469, Figure 16-31.

²⁸ *Id.*

²⁹ *Id.* at 474, Figure 16-37.

³⁰ Impairment values due to loss of range of motion are added together. A.M.A., *Guides* 466. Dr. Hanley's combining of his findings, however, does not affect the outcome of the case as it would not show that appellant was entitled to an award for a greater impairment.

³¹ *Id.* at 508.

³² *Id.*

CONCLUSION

The Board finds that appellant has no more than a 27 percent permanent impairment of each upper extremity for which she received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 20, 2009 is affirmed.

Issued: February 19, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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