

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

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D.C., Appellant )

and )

U.S. POSTAL SERVICE, COLLINGWOOD )  
POST OFFICE, Cleveland, OH, Employer )

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**Docket No. 09-1467  
Issued: February 5, 2010**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On May 26, 2009 appellant, through her attorney, filed a timely appeal from September 22, 2008 and May 1, 2009 merit decisions 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 merits of this case.

**ISSUE**

The issue is whether appellant has more than a 10 percent permanent impairment of the right upper extremity and a 6 percent permanent impairment of the left upper extremity for which she received schedule awards.

**FACTUAL HISTORY**

On July 26, 2000 appellant, then a 54-year-old window clerk, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome due to factors of her federal employment. The Office accepted the claim for bilateral carpal tunnel syndrome. Appellant

underwent a right carpal tunnel release on October 3, 2000. She resumed her regular employment on November 27, 2000.

By decision dated March 15, 2002, the Office granted appellant a schedule award for a five percent permanent impairment of the right upper extremity and a six percent permanent impairment of the left upper extremity.<sup>1</sup> Following an oral hearing, in a decision dated December 6, 2002, an Office hearing representative affirmed the March 15, 2002 decision.

On June 13, 2007 appellant filed a claim for an increased schedule award.<sup>2</sup> She submitted an impairment evaluation dated October 12, 2007 from Dr. Timothy Morley, an osteopath, who found that she had a 10 percent permanent impairment of the upper extremity. On December 15, 2007 an Office medical adviser reviewed Dr. Morley's report and concurred with his finding that appellant had a 10 percent permanent impairment of the right upper extremity.<sup>3</sup>

By decision dated March 4, 2008, the Office granted appellant a schedule award for an additional five percent permanent impairment of the right upper extremity. The period of the award ran for 15.6 weeks from October 12, 2007 to January 29, 2008.

On August 19, 2008 appellant again filed a claim for an increased schedule award. By letter dated August 21, 2008, the Office requested that she submit medical evidence within 30 days showing that she had more than a 10 percent impairment of the right upper extremity and a 6 percent impairment of the left upper extremity. In a decision dated September 22, 2008, it denied appellant's claim for an increased schedule award. The Office noted that she had not submitted any evidence in support of her claim that she had a greater permanent impairment of her upper extremities than previously awarded.

On October 1, 2008 appellant, through her attorney, requested an oral hearing. At the hearing, held on February 17, 2009, her attorney asked the hearing representative to hold the record open 30 days for the submission of additional medical evidence. By decision dated May 1, 2009, the hearing representative affirmed the September 22, 2008 decision. She indicated that appellant had not submitted any evidence showing an additional impairment of either upper extremity.

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<sup>1</sup> The Office initially issued the schedule award decision on November 15, 2001 but sent the decision to an incorrect address.

<sup>2</sup> In a decision dated May 10, 2007, the Office found that appellant did not establish a recurrence of disability beginning January 7, 2002 due to her accepted work injury.

<sup>3</sup> By letter dated December 21, 2007, the Office requested that Dr. Morley clarify whether appellant had a permanent impairment of the right, left or both upper extremities. In a telephone call dated February 26, 2008, appellant requested an increased schedule award for the right arm only.

## LEGAL PRECEDENT

The Federal Employees' Compensation Act<sup>4</sup> provides compensation for both disability and physical impairment. "Disability" means the incapacity of an employee, because of an employment injury, to earn the wages the employee was receiving at the time of injury.<sup>5</sup> In such cases, the Act compensates an employee for loss of wage-earning capacity. In cases of physical impairment the Act, under section 8107(a), compensates an employee, pursuant to a compensation schedule, for the permanent loss of use of certain specified members of the body, regardless of the employee's ability to earn wages.<sup>6</sup>

As a claimant seeking compensation under the Act has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, it is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of his or her employment injury entitling him or her to a schedule award.<sup>7</sup> 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.<sup>8</sup>

## ANALYSIS

The Office accepted appellant's claim for bilateral carpal tunnel syndrome. In March 15 and December 6, 2002 decisions, the Office granted her a schedule award for a five percent permanent impairment of the right upper extremity and a six percent permanent impairment of the left upper extremity. On June 13, 2007 appellant requested an increased schedule award. In a decision dated March 4, 2008, the Office granted her a schedule award for an additional five percent permanent impairment of the right upper extremity.

On August 19, 2008 appellant filed another claim for an increased schedule award. By letter dated August 21, 2008, the Office requested that she submit medical evidence showing that she had more than a 10 percent permanent impairment of the right upper extremity and a 6 percent permanent impairment of the left upper extremity. Appellant, however, did not submit evidence addressing the extent of her permanent impairment. On February 17, 2009 a hearing representative advised her attorney that he would hold the record open for the submission of supporting medical evidence. Appellant did not submit medical evidence addressing the extent of her permanent impairment of the bilateral upper extremities. It is her burden to submit evidence showing that she sustained an increased impairment of a scheduled member as a result

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Lyle E. Dayberry*, 49 ECAB 369 (1998).

<sup>6</sup> *Renee M. Straubinger*, 51 ECAB 667 (2000).

<sup>7</sup> *See D.H.*, 58 ECAB 358 (2007); *Veronica Williams*, 56 ECAB 367 (2005).

<sup>8</sup> *Edward W. Spohr*, 54 ECAB 806 (2003).

of an employment injury.<sup>9</sup> She did not submit such evidence and thus failed to meet her burden of proof.

**CONCLUSION**

The Board finds that appellant has no more than a 10 percent permanent impairment of the right upper extremity and a 6 percent permanent impairment of the left upper extremity for which she received schedule awards.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 1, 2009 and September 22, 2008 are affirmed.

Issued: February 5, 2010  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>9</sup> *Id.*