

By decision dated June 8, 2005, the Office determined that appellant's actual earnings as a modified mail handler fairly and reasonably represented her wage-earning capacity, finding that she had no wage loss.

On November 16, 2005 appellant was granted a schedule award for a 10 percent right upper extremity impairment and a 10 percent left upper extremity impairment, for 62.4 weeks, to run from October 13, 2004, the date of maximum medical improvement, to December 13, 2005. In a March 8, 2006 decision, an Office hearing representative affirmed the November 16, 2005 decision. By decisions dated September 15, 2006 and March 9, 2007, the Office denied modification of the previous decisions.

On March 7, 2008 appellant again requested reconsideration. In a January 25, 2008 report, Dr. Michael D. Butcher, a Board-certified orthopedic surgeon, noted that he initially saw appellant on November 21, 2005. He provided upper extremity examination findings including sensory testing, range of motion measurements and grip testing. Dr. Butcher presented an impairment analysis in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and concluded that appellant had 35 percent impairment of both the right and left upper extremities.

In a decision dated May 21, 2008, the Office denied modification. It found that, because Dr. Butcher did not discuss appellant's condition as of October 13, 2004, the date of maximum medical improvement, his report did not reflect the degree of impairment at that time, but rather stated that her condition had worsened.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.404 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*³ has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

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 an employment injury.⁵ Office procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁴ See *Joseph Lawrence, Jr.*, *id.*

⁵ *Tammy L. Meehan*, 53 ECAB 229 (2001).

that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (“date of maximum medical improvement”) describes the impairment in sufficient detail to include, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment, and the percentage of impairment should be computed in accordance with the fifth edition of the A.M.A., *Guides*. The procedures further provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment, and the Office medical adviser should provide rationale for the percentage of impairment specified.⁶

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 impairment than previously calculated.⁷

ANALYSIS

The Board finds this case is not in posture for decision. The Board notes that a claimant retains the right to file a claim for an increased schedule award based on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated.⁸ Appellant previously received a schedule award for bilateral upper extremity impairment of 10 percent to each arm. With her March 7, 2008 reconsideration request, she submitted a January 25, 2008 report from Dr. Butcher who provided findings on examination and a detailed description of appellant’s upper extremity impairments in accordance with the A.M.A., *Guides*. Dr. Butcher concluded that appellant had 35 percent right upper extremity impairment and 35 percent left upper extremity impairment.

The case will be remanded for the Office to forward Dr. Butcher’s January 25, 2008 report to an Office medical adviser for review. After such further development as deemed necessary, the Office should issue a decision regarding the extent of impairment to both upper extremities.

CONCLUSION

The Board finds that the case is not in posture for decision on whether appellant has more than 10 percent bilateral upper extremity impairments.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002). See *Thomas J. Fragale*, 55 ECAB 619 (2004).

⁷ *Tommy R. Martin*, 56 ECAB 273 (2005).

⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2008 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded to the Office for proceedings consistent with this decision of the Board.

Issued: January 7, 2010
Washington, DC

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

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

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