

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

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**P.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Cincinnati, OH, Employer**

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**Docket No. 10-666  
Issued: November 24, 2010**

*Appearances:*

*Alan J. Shapiro, 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 January 11, 2010 appellant, through counsel, filed a timely appeal from an October 21, 2009 decision of the Office of Workers' Compensation Programs' hearing representative concerning a 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 24 percent impairment of both the right and left upper extremities, for which he received schedule awards.

**FACTUAL HISTORY**

On December 3, 1994 appellant, the a 48-year-old mail handler, filed a traumatic injury claim alleging that he injured his head, neck and lower back that day when a door came down on his head. The Office accepted the claim for cervical and lumbar strains and scalp abrasion.<sup>1</sup>

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<sup>1</sup> The Office assigned claim file number xxxxxx955.

On December 28, 2000 appellant filed an occupational disease claim alleging that his bilateral carpal tunnel syndrome was due to repetitive work duties.<sup>2</sup> He noted that he first was aware of this condition and its connection to his employment on May 22, 2000. The Office accepted the claim for carpal tunnel syndrome on February 16, 2001.<sup>3</sup>

Appellant filed claims for a schedule award.

On March 9, 2006 the Office issued a schedule award for 15 percent impairment of both the right and the left upper extremities.

On May 30, 2006 the Office issued a schedule award for an additional 8 percent to each upper extremity or a total 24 percent impairment to each arm. It noted that appellant had previously been paid for 15 percent impairment to each upper extremity under master claim file number xxxxxx955.

On March 10, 2008 appellant filed claim for increased schedule awards.

In an April 8, 2008 report, Dr. Matthew Merz, a treating Board-certified physiatrist, noted that a physical examination revealed a positive Tinel's sign, full range of motion with about a Grade 5 for handgrip and decreased pinprick sensation of the median nerve. Using Table 16-15 of American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*) (5<sup>th</sup> ed.) he found that appellant had an 18 percent combined right hand motor and sensory deficit and a 15 percent combined left hand motor and sensory deficit. Dr. Merz determined that the date of maximum medical improvement was October 2002.

In a December 1, 2008 report, Dr. E. Gregory Fisher, a second opinion Board-certified orthopedic surgeon, provided an impairment rating for appellant's bilateral carpal tunnel syndrome. On physical examination, the right hand revealed normal sensation over the dorsal and volar aspect of the right hand and fingers; mildly positive Tinel's sign; mildly positive Phalen's; mild decreased handgrip and mild decrease strength in handgrip. Dr. Fisher found that appellant's symptoms were consistent with 25 percent impairment due to the positive Tinel's sign and Phalen's test<sup>4</sup> (Table 16-10 page 482 of the A.M.A., *Guides*) and, when multiplied by the 21 percent maximum impairment value for the median nerve involving the index, ring and ring finger (Table 16-15, page 492 of the A.M.A., *Guides*), resulted in a 5.25 percent impairment of both the right and left upper extremities for sensory deficit. He advised that appellant's decreased handgrip was consistent with a 25 percent impairment<sup>5</sup> for decreased motor deficits

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<sup>2</sup> The Office assigned claim file number xxxxxx947. On February 23, 2006 it combined claim file number xxxxxx947 with claim file number xxxxxx955, with the latter as the master file number.

<sup>3</sup> On October 29, 2008 the Office accepted appellant's November 5, 2007 claim for a recurrence of disability for medical treatment only.

<sup>4</sup> Dr. Fisher noted Grade 5 with a 25 percent impairment. This appears to be a typographical error as the 25 percent in the physician's description of sensory deficit or pain and the impairment rating is consistent with Grade 4, not Grade 5.

<sup>5</sup> Dr. Fisher noted Grade 5 with a 25 percent impairment. This appears to be a typographical error as the 25 percent in the physician's description for motor deficit and the impairment rating is consistent with Grade 4, not Grade 5.

(Table 16-11, page 492 of the A.M.A., *Guides*) and, when multiplied by the 10 percent maximum impairment value for the median nerve below the forearm (Table 16-15, page 492 of the A.M.A., *Guides*),<sup>6</sup> resulted in a 2.50 percent impairment of both the right and left upper extremities. Dr. Fisher then combined the motor and sensory deficits to find a 7.75 percent, which was round up to an 8 percent impairment to both the right and left upper extremities.

On March 10, 2009 Dr. Anthony F. Skalak, an Office medical adviser, reviewed the medical evidence and concurred with Dr. Fisher's determination that appellant had an eight percent permanent impairment to both arms due to his accepted carpal tunnel syndrome. Using Table 16-10, page 482 of the A.M.A., *Guides*, Dr. Skalak determined that appellant had a Grade 4 or 25 percent impairment of both the right and left upper extremities due to sensory loss. He determined that there was 21 percent sensory deficit for median nerve below the midforearm, long, ring and index finger (5+4+5+4+3), which he multiplied by 25 percent to find a 5.25 percent sensory impairment of both the right and left upper extremities. Dr. Skalak determined that appellant had Grade 4 or 25 percent motor deficit impairment.<sup>7</sup> Using Table 16-15, page 492, he determined that appellant had a 10 percent motor deficit for median nerve below the midforearm, which he multiplied by 25 percent, resulting in a 2.5 percent motor deficit impairment of the right and left upper extremities. Dr. Skalak then combined the 5.25 percent and 2.50 percent impairment ratings, which he rounded up to 8 percent. The Office medical adviser concluded that appellant had an eight percent impairment of both arms due to sensory and motor deficits. He determined the date of maximum medical improvement to be September 1, 2000.

By decision dated April 27, 2009, the Office denied appellant's claim for an increased schedule award.

On May 8, 2009 appellant's counsel requested a telephonic hearing before an Office hearing representative, which was held on August 11, 2009.

In a decision dated October 21, 2009, an Office hearing representative affirmed the April 27, 2009 decision denying appellant's request for an increased schedule award.

### **LEGAL PRECEDENT**

A claim for an increased schedule award may be based on new exposure.<sup>8</sup> Absent any new exposure to employment factors, a claim for an increased schedule award may also be based

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<sup>6</sup> Dr. Fisher noted Table 16-10, page 492 of the A.M.A., *Guides* which appears to be a typographical error as it appears he used Table 16-15, page 492 of the A.M.A., *Guides* in reaching the motor deficit impairment.

<sup>7</sup> The correct table for determining motor deficit impairment is Table 16-11, page 484 of the A.M.A., *Guides*. Table 16-10, page 482 of the A.M.A., *Guides* is used for determining sensory impairment. However, the grade classification and percent deficit is the same for both sensory and motor deficits. See Table 16-10, page 482 and Table 16-11, page 484 of the A.M.A., *Guides*. Table 16-10, page 482 of the A.M.A., *Guides*.

<sup>8</sup> A.A., 59 ECAB 726 (2008); *Tommy R. Martin*, 56 ECAB 273 (2005); *Rose V. Ford*, 55 ECAB 449 (2004).

on medical evidence indicating that the progression of an employment-related condition has resulted in a greater permanent impairment than previously calculated.<sup>9</sup>

In determining entitlement to a schedule award, preexisting impairment to the scheduled member should be included.<sup>10</sup> Any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.<sup>11</sup>

The schedule award provision of the Federal Employees' Compensation Act<sup>12</sup> and its implementing regulations<sup>13</sup> set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.<sup>14</sup> However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>15</sup>

The A.M.A., *Guides* note that carpal tunnel syndrome involves compression of the median nerve at the volar aspect of the wrist.<sup>16</sup> The A.M.A., *Guides* list the symptoms, signs and findings of carpal tunnel syndrome as pain and paresthesias in the median nerve distribution, including sensory autonomic disturbances in the radial 3.5 digits, weakness or atrophy of the thenar muscles, a positive percussion sign at the wrist, presence of Phalen's sign and motor and sensory electroneuromyographic abnormalities.<sup>17</sup>

### ANALYSIS

The Board finds that appellant did not establish greater than 24 percent impairment for each arm, for which he received schedule awards.

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<sup>9</sup> *James R. Hentz*, 56 ECAB 573 (2005); *Linda T. Brown*, 51 ECAB 115 (1999).

<sup>10</sup> *Carol A. Smart*, 57 ECAB 340 (2006); *Michael C. Milner*, 53 ECAB 446 (2002).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7(a)(2) (January 2010).

<sup>12</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>13</sup> 20 C.F.R. § 10.404.

<sup>14</sup> *Id.* at § 8107(c)(19).

<sup>15</sup> *Id.* at § 10.404; *see I.F.*, 60 ECAB \_\_\_ (Docket No. 08-2321, issued May 21, 2009); *A.A.*, *supra* note 8.

<sup>16</sup> A.M.A., *Guides* 495.

<sup>17</sup> *Id.*

The evidence relevant to appellant's request for an increased schedule award include an April 1, 2008 report from Dr. Merz, a treating Board-certified physiatrist; a December 1, 2008 report from Dr. Fisher, a second opinion Board-certified orthopedic surgeon and a March 10, 2009 report from Dr. Skalak, an Office medical adviser.

Dr. Merz concluded that appellant had an 18 percent right upper extremity impairment and a 15 percent left upper extremity impairment using Table 16-15 of the A.M.A., *Guides*. However, he provided no explanation as to how he made his impairment rating pursuant to the A.M.A., *Guides* other than noting use of Table 16-10. Dr. Merz did not provide any detailed description of how this table applied to appellant's claim. Absent such information, the Board finds that the impairment rating of Dr. Merz is of diminished probative value. Dr. Merz did not properly rate impairment in conformance to the A.M.A., *Guides*.<sup>18</sup>

The Office referred appellant to Dr. Fisher for a second opinion on impairment. Dr. Fisher reported that physical findings revealed normal sensation over the dorsal and volar aspect of the right hand and fingers; mildly positive Tinel's sign; mildly positive Phalen's; mild decreased handgrip and mild decrease strength in handgrip. He concluded that appellant had a 5.25 percent impairment of both the right and left upper extremities for sensory deficit using Table 16-10, page 482 and Table 16-15, page 492 and 2.50 percent impairment of both the right and left upper extremities using Table 16-11, page 484 and Table 16-15, page 492. Dr. Fisher then combined 2.50 plus 5.25 to find a 7.75 percent, which was properly rounded up to 8 percent.<sup>19</sup>

The Office properly referred Dr. Fisher's medical report to Dr. Skalak, an Office medical adviser, who agreed with the finding that appellant had an eight percent impairment in the right upper extremity and an eight percent impairment in the left upper extremity.<sup>20</sup> The evidence does not establish greater than the 24 percent impairment in each upper extremity which was previously awarded.

### CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he is entitled to a schedule award for the impairment to his left and right upper extremities greater than 24 percent each, which was previously awarded.

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<sup>18</sup> *Shalanya Ellison*, 56 ECAB 150 (2004) (schedule awards are to be based on the A.M.A., *Guides*; an estimate of permanent impairment is not probative where it is not based on the A.M.A., *Guides*).

<sup>19</sup> See *J.P.*, 60 ECAB \_\_\_\_ (Docket No. 08-832, issued November 13, 2008); *Richard A. Neidert*, 57 ECAB 474 (2006); *Marco A. Padilla*, 51 ECAB 202 (1999) (the Office's policy is to round the calculated impairment percentage to the nearest whole number).

<sup>20</sup> See Federal (FECA) Procedure Manual, *supra* note 11, at, Chapter 2.808.6(d) (January 2010). See also *C.J.*, 60 ECAB \_\_\_\_ (Docket No. 08-2429, issued August 3, 2009); *Frantz Ghassan*, 57 ECAB 349 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 21, 2009 is affirmed.

Issued: November 24, 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