

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

M.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kearny, NJ, Employer**

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**Docket No. 10-522
Issued: October 4, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 16, 2009 appellant filed a timely appeal from the November 12, 2009 merit decision of the Office of Workers' Compensation Programs, which granted a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has more than three percent impairment of the right upper extremity and one percent impairment of the left upper extremity.

FACTUAL HISTORY

On March 12, 2008 appellant, a 54-year-old mail handler, filed an occupational disease claim alleging that he developed bilateral wrist conditions as a result of repetitive employment activities. The Office accepted his claim for bilateral carpal tunnel syndrome (CTS). Appellant underwent approved surgery for right CTS release on July 22, 2008 and returned to full duty on August 25, 2008. On October 31, 2008 he requested a schedule award.

Appellant submitted a February 16, 2009 report from Dr. Stuart J. Fischer, a Board-certified orthopedic surgeon, who stated that appellant had reached maximum medical improvement on August 25, 2008, when he returned to full duty. Dr. Fischer noted no subjective complaints, no restrictions of movement and “no other pertinent findings.” He opined that appellant had a two percent permanent impairment.

The Office referred appellant to Dr. Jeffrey Lakin, Board-certified in the field of diagnostic radiology, for an examination and an opinion as to the degree of permanent impairment to his upper extremities. In an April 3, 2009 report, Dr. Lakin reviewed appellant’s medical history and provided examination findings. Examination of the left upper extremity revealed full active range of motion of the bilateral shoulders, elbows, wrists and digits. The shoulders and elbows were nontender, with no deformity and no instability. There was a negative Tinel’s response in the left wrist; two-point discrimination was six millimeters (mm) on all digits tested and there was no thenar or hypothenar atrophy. Grip and pinch strength were 5/5. Sensation was intact to light touch.

Examination of the right upper extremity showed well-healed incisions in the wrist crease and the proximal portion of the hand consistent with the July 22, 2008 surgery. Two-point discrimination was six mm on all digits tested. Grip and pinch strength were 4/5. There was no evidence of any thenar or hypothenar atrophy. Results of Tinel’s, Phalen’s and carpal compression testing were negative. The examination of both upper extremities was negative for Tinel’s test of the median nerve at the proximal forearm and elbow.

Dr. Lakin referred to Tables 15-14, 15-21, 15-23 of the 6th edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), to determine the degree of appellant’s impairment due to his accepted carpal tunnel syndrome. Based on normal physical findings, but abnormal electromyogram/nerve conduction velocity (EMG/NCV), he concluded that appellant had a one percent impairment of the left upper extremity. Dr. Lakin opined that a mild motor deficit in the right upper extremity corresponded to a three percent impairment of the right upper extremity. He stated that appellant reached maximum medical improvement as of the date of his return to work on August 24, 2008.

In a report dated April 26, 2009, the district medical adviser (DMA) concurred with Dr. Lakin’s rating. He noted that Dr. Lakin had assigned a one percent impairment rating based on normal physical findings but abnormal EMG and NCV in the left upper extremity and a three percent impairment rating due to a motor deficit in the right upper extremity. The DMA opined that Dr. Lakin’s April 3, 2009 report and physical findings were “complete and accurate to within a reasonable degree of medical certainty,” and that he properly referred to Tables 15-14, 15-21 and 15-23 of the 6th edition of the A.M.A., *Guides* in reaching his conclusion. He agreed that August 24, 2008 was the date of maximum medical improvement.

By decision dated May 12, 2009, the Office granted a schedule award for three percent impairment of the right upper extremity and one percent impairment of the left upper extremity. The award covered the period August 24 through November 19, 2008.

On May 26, 2006 appellant requested a telephonic hearing, which was held on September 11, 2009. At the hearing, he testified that residuals from his accepted carpal tunnel syndrome dramatically limited his ability to function. Appellant was provided 30 days to provide additional medical evidence.

In a November 12, 2009 decision, an Office hearing representative affirmed the May 12, 2009 decision. He found that Dr. Lakin provided a thorough report of his clinical findings and diagnostic tests, with reference to the appropriate tables from the A.M.A., *Guides*.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.¹ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.² Effective May 1, 2009, schedule awards are determined in accordance with the A.M.A., *Guides* (6th ed. 2008).³

ANALYSIS

Under the sixth edition of the A.M.A., *Guides*, impairments of the upper extremities are covered by Chapter 15. Entrapment neuropathy, such as carpal tunnel syndrome, is addressed at section 15-4f.⁴ Having established the diagnosis of carpal tunnel syndrome, the next step in the rating process is to consult Table 15-23, entitled "Entrapment/Compression Neuropathy Impairment."⁵ The table provides a series of grade modifiers from zero to four and a range of corresponding upper extremity impairments from zero to nine percent. Grade modifiers are assigned based on a combination of factors including test findings, history and physical findings.⁶

Dr. Lakin cited Tables 15-14, 15-21 and 15-23 as the basis for his impairment rating. He concluded based on normal physical findings but abnormal EMG/NCV, that appellant had a one percent impairment of the left upper extremity. Dr. Lakin opined that a mild motor deficit in the

¹ For a total loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1) (2006).

² 20 C.F.R. § 10.404 (2009).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Example 1 (January 2010).

⁴ A.M.A., *Guides* 432.

⁵ *Id.* at 448-49.

⁶ *Id.* Additional grade modifications are permitted using the *QuickDASH* (Disabilities of the Arm, Shoulder and Hand) functional assessment tool.

right upper extremity corresponded to a three percent impairment of the right upper extremity. He did not, however, explain how he arrived at his rating.

Dr. Lakin did not assign grade modifiers, as prescribed by the A.M.A., *Guides*.⁷ For the left upper extremity, under Table 15-23 normal physical findings but abnormal test findings would result in a Grade 1 modifier. The default impairment value for a Grade 1 modifier under Table 15-23 is two percent impairment of the upper extremity. Dr. Lakin did not provide any salient explanation as to why he awarded appellant one percent impairment rating for the left upper extremity, and the justification for such an award is not readily discernable from his report. For the right upper extremity, a mild motor deficit would result in a Grade 3 modifier, with a default rating of eight percent. Dr. Lakin did not explain why his three percent impairment rating is appropriate under the A.M.A., *Guides*.

The DMA stated that Dr. Lakin's report and physical findings were "complete and accurate to within a reasonable degree of medical certainty," and that he properly referred to Table 15-14, Table 15-21 and Table 15-23 of the 6th edition of the A.M.A., *Guides* in reaching his conclusion. He did not, however, explain how he arrived at the proposed impairment rating by applying the provisions of the 6th edition of the A.M.A., *Guides*. Accordingly, the Board finds that the case is not in posture for decision. The matter will be remanded to the Office for clarification of the basis for the three percent impairment of the right upper extremity and one percent impairment of the left upper extremity under the A.M.A., *Guides*.

CONCLUSION

The Board finds that the case is not in posture for decision as to the extent of appellant's upper extremity impairment.

⁷ A.M.A., *Guides* 448.

ORDER

IT IS HEREBY ORDERED THAT the November 12, 2009 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for further action consistent with this decision.

Issued: October 4, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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