

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

E.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Decatur, IL, Employer**

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**Docket No. 10-680
Issued: October 26, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 11, 2010 appellant filed a timely appeal from an October 21, 2009 merit decision of the Office of Workers' Compensation Programs. 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 four percent left upper extremity permanent impairment and a three percent right upper extremity permanent impairment causally related to her federal employment.

FACTUAL HISTORY

The case was before the Board on a prior appeal. By decision dated July 1, 2009, the Board remanded the case for further development with respect to the issue of permanent impairment.¹ The Board noted that the Office had issued a July 1, 2008 schedule award decision

¹ Docket No. 08-2526 (issued July 1, 2009).

for a six percent right arm permanent impairment and a one percent left arm impairment. The Board found that the impairment ratings had been based on decreased range of motion, but the American Medical Association, *Guides to the Evaluation of Permanent Impairment* did not evaluate carpal tunnel syndrome based on loss of range of motion. The history of the case as provided in the Board's prior decision is incorporated herein by reference.

On return of the case record, the Office referred appellant to Dr. Richard Katz, a physiatrist, for a second opinion evaluation. In a report dated October 1, 2009, Dr. Katz provided a history and results on examination. He stated that appellant had brought an "appellate letter" indicating that additional conditions were to be covered, including left adhesive capsulitis, bilateral radial tunnel syndrome and left elbow ulnar neuropathy. With respect to permanent impairment, Dr. Katz identified bilateral carpal tunnel syndrome, noting conduction delay and stating, "Grade 1 modifier" on each side. He found a two percent impairment for each arm. Dr. Katz diagnosed left radial tunnel syndrome, reported a Grade 1 modifier and found a two percent left arm impairment. As to right tunnel syndrome and right lateral epicondylitis, he reported residual mild tenderness, a Grade 1 modifier and a two percent right arm impairment. Dr. Katz also found a two percent left arm impairment for left ulnar neuropathy, noting a Grade 1 modifier. He stated that the functional assessment DASH (disabilities of the arm, shoulder and hands) score of 72.5 was exaggerated and would not be included in the rating. Dr. Katz found that applying the ratings for multiple entrapments, there was a four percent left arm impairment and a three percent right arm impairment.

In a report dated October 16, 2009, an Office medical adviser stated that Dr. Katz had applied the appropriate tables from the sixth edition of the A.M.A., *Guides*. He indicated the date of maximum medical improvement was October 1, 2009.

By schedule award decision dated October 21, 2009, the Office granted appellant an additional three percent permanent impairment to the left arm. The period of the award was 9.36 weeks from October 1, 2009. The Office indicated that appellant was not entitled to an additional award for the right arm.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ 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 to 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.⁴ The A.M.A., *Guides* has been adopted by the

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ See *Ronald R. Kraynak*, 53 ECAB 130 (2001); *August M. Buffa*, 12 ECAB 324 (1961).

implementing regulations as the appropriate standard for evaluating schedule losses.⁵ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁶

ANALYSIS

The Office based the October 21, 2009 decision on the reports of Dr. Katz and the Office medical adviser. Entrapment neuropathies are evaluated under Table 15-23 of the sixth edition of the A.M.A., *Guides*. Dr. Katz identified conduction delay test findings, which under Table 15-23 is grade modifier 1, with a default impairment value of two percent.⁷ The default value may be modified up or down based on a functional scale grade. Dr. Katz kept the value at the default of two percent, noting that the DASH results would not provide a valid functional assessment.⁸

With respect to the additional diagnosed conditions, Dr. Katz identified the evidence confirming the diagnosis and applied grade modifier 1, with a default of two percent arm impairment. In accord with the A.M.A., *Guides*, when there are multiple neuropathies, the secondary nerves are rated at 50 percent of the impairment found under Table 15-23 and are combined.⁹ For the right arm, the impairment was two percent (carpal tunnel) and one percent (radial tunnel and lateral epicondylitis) for a three percent total impairment. For the left arm, the total was two percent (carpal tunnel), one percent (radial tunnel) and one percent (ulnar neuropathy) resulting in a four percent left arm impairment.

The Board finds that the weight of the medical evidence is represented by Dr. Katz,¹⁰ who provided a rationalized medical opinion as to the degree of permanent impairment in the arms. For the right arm, appellant had previously received an award for a six percent arm impairment and, therefore, she was not entitled to an additional award. As to the left arm, the prior award was one percent; therefore, appellant was entitled to an additional award for a three percent left arm impairment.

On appeal, appellant stated that the date of maximum medical improvement should not have been changed from September 22, 2007 and she should be paid the same number of weeks as the original award in 2008 but the number of weeks of compensation is not based on the date of maximum medical improvement, it is based on the percentage of impairment. Since the Office found appellant had a four percent left arm impairment and had received one percent previously, the schedule award was for three percent of the maximum 312 weeks of

⁵ 20 C.F.R. § 10.404 (1999).

⁶ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁷ A.M.A., *Guides* 449, Table 15-23. Grade modifier 1 is also identified for a history of mild intermittent symptoms and normal physical findings.

⁸ The A.M.A., *Guides* note that a DASH score of greater than 60 would not be consistent with a mild impairment. A.M.A., *Guides* 445.

⁹ *Id.* at 448.

¹⁰ The Board notes that Dr. Katz is listed as a section editor of the sixth edition of the A.M.A., *Guides*.

compensation.¹¹ The award properly runs for 9.36 weeks from October 1, 2009, the date identified by the Office medical adviser as the date of maximum medical improvement based on the examination that date by Dr. Katz.

CONCLUSION

The Board finds that appellant has not established more than a four percent left arm impairment causally related to her federal employment or three percent right arm impairment.

ORDER

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

Issued: October 26, 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

¹¹ 5 U.S.C. § 8107(c)(1).