

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

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A.R., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Phoenix, AZ, Employer  
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**Docket No. 10-395  
Issued: September 1, 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 November 27, 2009 appellant filed a timely appeal from a September 25, 2009 merit decision of the Office of Workers' Compensation Programs granting an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

**ISSUE**

The issue is whether appellant has more than 31 percent permanent impairment of the left arm for which he received schedule awards.

**FACTUAL HISTORY**

On September 29, 2000 appellant, then a 49-year-old mail handler/machine operator, filed an occupational disease claim alleging that he sustained carpal tunnel syndrome of the left

hand due to factors of his federal employment. The Office accepted the claim for left carpal tunnel syndrome.<sup>1</sup>

In an impairment evaluation dated November 10, 2005, Dr. J. Carvel Jackson, an osteopath, diagnosed left carpal tunnel syndrome that had not been treated with a surgical release. He classified appellant's impairment due to sensory deficit as a Grade 3 or 50 percent sensory deficit, according to Table 16-10 on page 482 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*). Dr. Jackson multiplied the maximum impairment for sensory loss at the median nerve below the midforearm of 39 percent by the 50 percent for graded pain to find a 20 percent impairment of the left arm.<sup>2</sup>

On November 17, 2005 appellant requested a schedule award. On January 1, 2008 an Office medical adviser reviewed Dr. Jackson's report and concurred with his rating of a 20 percent impairment due to sensory loss of the median nerve. Dr. Jackson opined that appellant reached maximum medical improvement on November 10, 2005.

On March 3, 2008 Dr. Kraig Burgess, an osteopath, diagnosed left carpal tunnel syndrome and a left wrist bony calcification. He noted that appellant was not interested in a left carpal tunnel release. Dr. Burgess found that he was at maximum medical improvement.

In a report dated May 6, 2008, Dr. David A. Suber, a Board-certified neurologist, listed range of motion findings for the wrists. On examination he found no ankylosis, but weakness in the abductor pollicis brevis. Dr. Suber opined that appellant had a 30 percent loss of function due to sensory loss, a 30 percent loss of function due to decreased range of motion, a 30 percent impairment due to muscle atrophy and a 40 percent impairment due to causalgia and instability. He further found a 5 to 10 percent impairment due to pain in the median nerve.

By decision dated June 19, 2008, the Office granted appellant a schedule award for a 20 percent permanent impairment of the left upper extremity. The period of the award ran from November 10, 2005 to January 20, 2007.

Appellant requested an oral hearing. Following a preliminary review, the hearing representative set aside the June 19, 2008 decision. She found that the Office had not explained why it found that he reached maximum medical improvement in 2005. The hearing representative remanded the case for the Office medical adviser to review the reports of Dr. Burgess and Dr. Suber to determine whether appellant had an additional impairment.

On December 20, 2008 the Office medical adviser evaluated the medical evidence and found that appellant had an additional 12 percent impairment due to loss of range of motion of the wrist. She determined that the maximum impairment of the median nerve at the abductor pollicis brevis for diminished strength was 10 percent of the 10 percent impairment of the

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<sup>1</sup> By decision dated January 9, 2001, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to show that he sustained a condition as a result of an identified work factor. On February 11, 2002 a hearing representative set aside the January 9, 2001 decision and remanded the case for acceptance of left carpal tunnel syndrome.

<sup>2</sup> A.M.A., *Guides* at 492, Table 16-15.

median nerve or 1 percent.<sup>3</sup> The Office medical adviser graded appellant's motor loss as Grade 2 or 80 percent, which she multiplied by the 1 percent impairment of the abductor pollicis brevis nerve to find a 1 percent impairment.<sup>4</sup> She combined the 20 percent impairment due to sensory loss, the 12 percent impairment due to loss of range of motion and the 1 percent impairment due to loss of strength to find a 31 percent impairment of the left upper extremity or an additional 11 percent impairment. The Office medical adviser found that appellant reached maximum medical improvement on May 6, 2008.

By decision dated January 6, 2009, the Office granted appellant a schedule award for 31 percent impairment of the left arm, less than the 20 percent previously paid. The period of the award ran for 34.32 weeks from May 6, 2008 to January 1, 2009.

On January 24, 2009 appellant requested a telephone oral hearing. A hearing was held on July 13, 2009. Following the hearing, he submitted a July 20, 2009 report from Dr. Suber, who noted that his impairment rating differed from the Office's award by two percent.

By decision dated September 25, 2009, the hearing representative affirmed the January 5, 2009 decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>5</sup> and its implementing federal regulation,<sup>6</sup> 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants and the Board has concurred in such adoption.<sup>7</sup> For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>8</sup>

### **ANALYSIS**

The Office accepted that appellant sustained left carpal tunnel syndrome. Appellant filed a claim for a schedule award. On November 10, 2005 Dr. Jackson classified him with a Grade 3

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<sup>3</sup> A.M.A., *Guides* at 492, Table 16-15.

<sup>4</sup> *Id.* at 484, Table 16-11.

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> 20 C.F.R. § 10.404(a).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003). As of May 1, 2009, the sixth edition will be used. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a. (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

or 50 percent, sensory deficit of the median nerve below the midforearm.<sup>9</sup> He multiplied the 50 percent graded sensory deficit by 39 percent, the maximum impairment provided under the A.M.A., *Guides*, to find 20 percent impairment of the left upper extremity.<sup>10</sup> An Office medical adviser concurred with Dr. Jackson's finding and on June 19, 2008 the Office awarded appellant a schedule award for 20 percent left arm impairment.

On October 16, 2008 a hearing representative set aside the June 19, 2008 schedule award decision after finding that the Office had not adequately established that appellant reached maximum medical improvement in 2005 rather than 2008, as found by Dr. Burgess in a March 3, 2008 report. She also noted that the Office medical adviser had not reviewed Dr. Suber's May 6, 2008 impairment evaluation. In his May 6, 2008 report, Dr. Suber found that appellant had weakness in the abductor pollicis brevis nerve and listed range of motion findings. He concluded that appellant had 30 percent impairment due to sensory deficit, 30 percent impairment due to loss of range of motion, 30 percent impairment due to atrophy or weakness and 40 percent impairment due to instability. Dr. Suber additionally determined that he had 5 to 10 percent impairment of the median nerve due to sensory loss. He did not, however, adequately reference the tables and pages of the A.M.A., *Guides* in reaching his impairment determination. As Dr. Suber's report does not conform to the A.M.A., *Guides*, it is of diminished probative value.<sup>11</sup>

An Office medical adviser reviewed Dr. Suber's report on December 20, 2008. She found that appellant had a Grade 2 or 80 percent loss of strength in the abductor pollicis brevis nerve.<sup>12</sup> A Grade 2 loss of strength, however, is classified as between 51 and 75 percent motor deficit according to Table 16-11 on page 484. The Office medical adviser then multiplied the 80 percent graded loss of strength by 1 percent, which she found to be the maximum provided for motor loss of the median nerve for the abductor pollicis brevis.<sup>13</sup> The maximum impairment for loss of motor strength for the median nerve below the midforearm, however, is 10 percent rather than 1 percent.<sup>14</sup> The Office medical adviser further determined that appellant had 12 percent impairment due to loss of range of motion. Her inclusion of the 12 percent impairment for loss of range of motion, however, is improper under the A.M.A., *Guides*.<sup>15</sup> Under the fifth edition of the A.M.A., *Guides*, schedule awards for carpal tunnel syndrome are predicated only on motor and sensory impairments.<sup>16</sup> Therefore, appellant should not have received a rating for loss of

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<sup>9</sup> A.M.A., *Guides* at 482, Table 16-10.

<sup>10</sup> *Id.* at 492, Table 16-15.

<sup>11</sup> *Mary L. Henninger*, 52 ECAB 408 (2001).

<sup>12</sup> A.M.A., *Guides* at 484, Table 16-11.

<sup>13</sup> *Id.* at 492, Table 16-15.

<sup>14</sup> *Id.*

<sup>15</sup> *See* A.M.A., *Guides* 480-83, section 16.5.

<sup>16</sup> *Robert V. Disalvatore*, 54 ECAB 351 (2003). The A.M.A., *Guides* on page 495 provides three scenarios for determining the permanent impairment due to carpal tunnel syndrome after an optimal recovery time following surgical decompression. As appellant did not undergo surgical decompression on the left side, the specific method for determining impairment due to carpal tunnel syndrome provided on page 495 of the A.M.A., *Guides* does not apply.

range of motion of the wrist in addition to the impairment rating he received for motor and sensory loss. As the Office medical adviser's opinion does not conform to the A.M.A., *Guides*, it is insufficient to establish the extent of his permanent impairment due to left carpal tunnel syndrome.

In a report dated July 20, 2009, Dr. Suber asserted that his impairment rating differed from the Office by two percent. He did not, however, provide any further explanation or reference the tables and pages of the A.M.A., *Guides*. As Dr. Suber did not explain the protocols used in making the impairment determination, his opinion is insufficient to establish permanent impairment.<sup>17</sup>

The Board finds that the medical opinion evidence requires development on the nature and extent of appellant's left arm impairment. The case will be remanded to the Office for further development of the medical evidence, as appropriate, to be followed by a *de novo* decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>17</sup> See *Carl J. Cleary*, 57 ECAB 563 (2006) (an opinion which is not based upon the standards adopted by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of permanent impairment).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 25, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: September 1, 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