

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

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T.C., Appellant )

and )

U.S. POSTAL SERVICE, PROCESSING & )  
DELIVERY CENTER, Springfield, IL, Employer )

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**Docket No. 10-1414  
Issued: April 5, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On April 28, 2010 appellant filed a timely appeal from an April 1, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act,<sup>1</sup> and 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 seven percent impairment of his right upper extremity, for which he previously received a schedule award.

On appeal appellant argues that he was entitled to a greater schedule award. He contends that the Office did not consider a more recent medical report that indicated that he had a 29 percent impairment of his right upper extremity.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On November 26, 2007 appellant, then a 52-year-old clerk, filed an occupational disease claim alleging that, as a result of repetitive working on mailing and keying on a linear integrated parcel sorter machine, he sustained a pinched nerve in his right hand. On February 27, 2008 the Office accepted his claim for lesion of right ulnar nerve. On June 13, 2008 it expanded acceptance of appellant's claim to include aggravation of osteoarthritis hand and osteoarthritis forearm. On May 13, 2008 appellant underwent a right Guyon canal release and a right cubital tunnel release.

On October 30, 2008 appellant filed a claim for a schedule award.<sup>2</sup> In support thereof, he submitted results of tests conducted on October 17, 2008 wherein the registered and licensed occupational therapist determined that appellant had 29 percent impairment to his right upper extremity. In a narrative report by an unknown author with regard to these tests, it is indicated that, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001), the grip strength measurements that were measured on October 17, 2008 were invalid as appellant exerted less than maximal effort.

In a July 9, 2009 report, Dr. Michael Neumeister, appellant's treating Board-certified plastic surgeon with a subspecialty in surgery of the hand, noted that there was no documentation of elbow pain. He noted that the flexion on the affected side was 145 degrees, extension was 10 degrees, forearm pronation was 70 degrees, supination was 60 degrees and that there was no ankylosis of the elbow or forearm. Dr. Neumeister noted Jamar measurements for the thumb of 5 pounds on the right and 7 pounds on the left, for the second finger 8 pounds on the right versus 10 pounds on the left, for the third finger 8 pounds on the right versus 10 pounds on the left, for the fourth finger 7 pounds on the right versus 10 pounds on the left, and for the fifth finger 7 pounds on the right versus 8 pounds on the left. He listed appellant's date of maximum medical improvement as October 8, 2008.

On September 10, 2009 the Office forwarded appellant's file to the Office medical adviser for a permanent impairment evaluation. The Office medical adviser determined that pursuant to the A.M.A., *Guides* (6<sup>th</sup> ed. 2009) appellant had a four percent impairment due to loss of motion at the right elbow. In reaching this conclusion, he applied the A.M.A., *Guides*, page 474, Figure 15-33. The Office medical adviser evaluated the range of motion measurements and noted that flexion of 140 degrees equaled a zero percent impairment, 10 degrees of extension equaled a two percent impairment, 70 degrees of pronation equaled a one percent impairment and 60 degrees of supination equaled a one percent impairment for a total impairment of four percent of the right upper extremity for loss of range of motion to the right elbow. He noted that Dr. Neumeister did not report elbow or hand ankylosis.

In a decision dated December 2, 2009, the Office found that the record did not support an increase in impairment to appellant's right upper extremity from the seven percent previously awarded.

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<sup>2</sup> The Office previously accepted appellant's claim for bilateral trigger thumb and bilateral tenosynovitis of the hands in Office File No. xxxxxx269. It granted him a schedule award for seven percent impairment of the right upper extremity.

On December 7, 2009 appellant requested review of the written record.

By decision dated April 1, 2010, the hearing representative affirmed the Office's December 2, 2009 decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>3</sup> and its implementing regulations<sup>4</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 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.<sup>5</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>6</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.<sup>7</sup>

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).<sup>8</sup> Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).<sup>9</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>10</sup>

The Office's procedures 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 in accordance with the A.M.A., *Guides*. The Office medical adviser is to provide rationale for the percentage of impairment specified.<sup>11</sup>

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> See *Ronald R. Kraynak* 53 ECAB 130 (2001); *August M. Buffa*, 12 ECAB 324 (1961).

<sup>6</sup> 20 C.F.R. § 10.404 (1999).

<sup>7</sup> FECA Bulletin No. 09-93 (issued March 15, 2009).

<sup>8</sup> A.M.A., *Guides*, *supra* note 7 at 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

<sup>9</sup> *Id.* at 385-419.

<sup>10</sup> *Id.* at 411.

<sup>11</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010).

## ANALYSIS

The Office accepted appellant's claim for lesion of the right ulnar nerve, aggravation of osteoarthritis and osteoarthrosis forearm. Appellant's surgeon, Dr. Neumeister, evaluated appellant's condition in a July 9, 2009 report, noting appellant's range of motion limitations. However, he did not provide a recommendation with regard to appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*. It is well established that, when the examining physician does not provide an estimate of impairment conforming to the proper edition of the A.M.A., *Guides*, the Office may rely on the impairment rating provided by the medical adviser.<sup>12</sup> The Office medical adviser rated appellant's impairment pursuant to Table 15-33 of the sixth edition of the A.M.A., *Guides*. The Office medical adviser reviewed Dr. Neumeister's July 9, 2009 report and concluded that flexion of 140 degrees equaled a zero percent impairment, extension of 10 degrees equaled a two percent impairment, pronation of 70 degrees equaled a one percent impairment and supination of 60 degrees equaled a one percent impairment for a total four percent impairment of the right upper extremity due to loss of range of motion.

The Board finds that the medical adviser's impairment rating is incomplete and requires further clarification. Section 15.2 of the sixth edition of the A.M.A., *Guides* provides that range of motion is used primarily as a physical examination adjustment factor and only used to determine actual impairment values when a grid permits its use as an option and diagnosis-based impairment is the primary method of evaluation for the upper limb.<sup>13</sup> Range of motion may be used for rating impairment in the following two situations:

1. For amputation ratings, deficits of motion for the remaining portion of the limb, maybe combined with the amputation impairment.
2. In very rare cases, severe injuries may result in passive range of motion losses qualifying for Class 3 or 4 impairment. If the active range of motion impairment percentage is greater than the percentage impairment derived from the diagnosis-based class, then the impairment is rated by range of motion as a stand[-]alone rating. This range of motion for the impairment may only be used if the active range of motion is within 10 degrees of the passive range of motion measured. The active range of motion measurement is what determines the final impairment rating. Examples include complex flexor or extension tendon or multiple tendon laceration injuries severe crush injuries, residual compartment syndrome or other conditions having significant functional loss.<sup>14</sup>

In this case, the Office medical adviser did not explain how appellant's injury fell into either of these categories. He did not explain why he used the range of motion analysis, rather than the diagnosis-based analysis found under the sixth edition of the A.M.A., *Guides*. Accordingly, the Board will remand this case for further development of the evidence. On

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<sup>12</sup> See *J.Q.*, 59 ECAB 366 (2008).

<sup>13</sup> A.M.A., *Guides* 387.

<sup>14</sup> *Id.* at 461.

remand, the medical adviser should fully explain why he did not use a diagnosis-based estimate to evaluate appellant's impairment. He should address the medical evidence consistent with the protocols for determining upper extremity impairment. After such development as it deems necessary, the Office shall issue an appropriate decision on appellant's claim for a schedule award.

Although the Board remands this case for further evaluation under the A.M.A., *Guides*, the Board finds that appellant's argument that his impairment rating should be based on the October 17, 2008 test results to be without merit. The Board notes that the Office's decision was based on the Office medical adviser's September 12, 2009 evaluation of the July 9, 2009 report of Dr. Neumeister, appellant's surgeon. Accordingly, the October 17, 2008 test results are not more recent, as alleged. Furthermore, the October 17, 2008 tests were conducted by an occupational therapist; an occupational therapist is not a physician under the Act.<sup>15</sup> In addition, these test results do not refer to the A.M.A., *Guides*, and the accompanying narrative indicates that the fifth edition of the A.M.A., *Guides* was applied. However, as the decision was issued on April 1, 2010, the sixth edition of the A.M.A., *Guides* were appropriate.<sup>16</sup> Finally, the narrative report questions whether appellant exerted his maximal effort in taking the test.

### **CONCLUSION**

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

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<sup>15</sup> See 5 U.S.C. § 8101(2); *David P. Sawchuk*, 57 ECAB 316 (2005); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

<sup>16</sup> FECA Bulletin No. 09-93 (issued March 15, 2009); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 1, 2010 is set aside and the case remanded for further proceedings consistent with this decision.

Issued: April 5, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board