

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

A.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Louisville, MS, Employer**

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**Docket No. 10-1753
Issued: March 18, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On June 22, 2010 appellant filed a timely appeal from a January 29, 2010 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 40 percent permanent impairment to her left arm.

FACTUAL HISTORY

On July 5, 2005 appellant, then a 30-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that she fractured her left wrist in the performance of duty on that date in a motor vehicle accident. The Office accepted the claim for left distal radius open fracture, left carpal tunnel syndrome (CTS) and left wrist, ring and middle finger contracture.

In a report dated June 22, 2006, Dr. Sheila Lindley, an orthopedic surgeon, advised that appellant had reached maximum medical improvement. In a report dated August 9, 2006,

Dr. Lindley opined that under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) appellant had a 44 percent left arm impairment. She found the impairment for wrist loss of motion was 12 percent, with a 32 percent impairment for digital contractures, resulting in a 44 percent left arm permanent impairment.

The Office referred the medical record to an Office medical adviser for review. In a report dated October 20, 2006, the Office medical adviser concurred that there was a 12 percent impairment for loss of motion and 32 percent for loss of finger and hand motion. The medical adviser found the impairments should be combined under the Combined Values Chart, resulting in a 40 percent left arm permanent impairment.

By decision dated November 2, 2006, the Office issued a schedule award for a 40 percent left arm permanent impairment. The period of the award was 124.80 weeks of compensation from June 22, 2006.

On May 17, 2007 appellant requested reconsideration of the schedule award decision.¹ In a November 27, 2006 report, Dr. Howard Katz, a physiatrist, did not provide any opinion as to the degree of permanent impairment to the left arm.

By decision dated July 24, 2007, the Office denied modification of the November 2, 2006 decision.

On November 12, 2008 appellant filed a claim for compensation (Form CA-7) and checked a box for a schedule award. She submitted a report dated February 26, 2009 from Dr. Lindley, who provided results on examination and noted that diagnostic studies showed no nerve compression on the left. Dr. Lindley diagnosed left wrist contracture, posterior trunk muscle spasms, cervical spine pain, bilateral ulnar nerve compression and right CTS.

In a decision dated March 30, 2009, the Office found appellant was not entitled to an additional schedule award.

On November 27, 2009 appellant requested reconsideration. In a July 29, 2009 report, Dr. Lindley, provided a history and results on examination. She found that under the A.M.A., *Guides*, appellant had a 44 percent impairment to the left upper extremity, based on wrist and digital range of motion (ROM). Dr. Lindley stated, "The additional diagnosis of left cubital tunnel syndrome would add five percent upper extremity impairment to this rating. The radiographic note of cystic change within the scaphoid, which could have represented a previous injury with degenerative change now being observed, would add five percent impairment to the upper extremity."

In a report dated January 8, 2010, an Office medical adviser found that appellant was not entitled to an additional left arm impairment. The medical adviser noted that the diagnosed left

¹ By decision dated January 17, 2007, the Office found that appellant's earnings in a modified position fairly and reasonable represented her wage-earning capacity.

cubital tunnel syndrome and cystic changes to the scaphoid bone were not accepted as employment-related conditions.

By decision dated January 29, 2010, the Office found the evidence did not establish more than a 40 percent left arm permanent impairment.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³ The permanent impairment must be causally related to an accepted employment injury.⁴

Office procedures provide that, effective May 1, 2009, all schedule awards are to be calculated under the sixth edition of the A.M.A., *Guides*.⁵ Any recalculations of previous awards which result from hearings or reconsideration decisions issued on or after May 1, 2009, should be based on the sixth edition of the A.M.A., *Guides*. A claimant who has received a schedule award calculated under a previous edition and who claims an increased award, will receive a calculation according to the sixth edition of the A.M.A., *Guides* for any decision issued on or after May 1, 2009.⁶

It is well established that, in determining the amount of a schedule award for a given member of the body that sustained an employment-related permanent impairment, preexisting impairments of that scheduled member of the body are to be included.⁷

ANALYSIS

The Office granted appellant a schedule award for 40 percent impairment to the left arm on November 2, 2006. Appellant seeks an additional schedule award and submitted additional

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

³ *A. George Lampo*, 45 ECAB 441 (1994).

⁴ *Rosa Whitfield Swain*, 38 ECAB 368 (1987).

⁵ FECA Bulletin No. 09-03 (issued March 15, 2009); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010).

⁶ *Id.*

⁷ *Carl J. Cleary*, 57 ECAB 563 (2006); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3b (June 1993).

medical evidence. As noted, any decision after May 1, 2009 must be based on the sixth edition of the A.M.A., *Guides*. The issue is whether the medical evidence establishes an employment-related impairment to the left arm greater than 40 percent.

In a July 29, 2009 report, Dr. Lindley, stated that appellant was assigned a 44 percent left arm impairment for the wrist and digital ROM. She did not provide further explanation. It appears that Dr. Lindley was referring to her prior opinion under the fifth edition of the A.M.A., *Guides*, although she did not explain which edition she utilized. She noted an additional five percent impairment for cubital tunnel syndrome and five percent for cystic changes to the scaphoid bone. There is no indication as to how these impairments were calculated as with citation to specific tables under the sixth edition of the A.M.A., *Guides*. This reduces the probative value of Dr. Lindley's impairment rating.

Although Dr. Lindley opined in her July 29, 2009 report that appellant had an additional diagnosis of left cubital tunnel syndrome, the Board finds that there is no evidence that this is a preexisting impairment. As noted by the Office medical adviser, there is no evidence that this condition has been accepted as causally related to the employment injury. While Dr. Lindley also concluded that appellant had an additional five percent impairment due to a cystic change within the scaphoid, she noted that this could have been from a previous injury "with degenerative change now being observed." Her opinion regarding the cystic change is speculative in nature. Dr. Lindley did not provide any findings of degenerative changes upon which impairment could be rated.

The Board accordingly finds that the evidence does not establish more than a 40 percent left arm permanent impairment. Dr. Lindley did not provide a probative medical opinion under the sixth edition of the A.M.A., *Guides* with respect to the degree of permanent impairment. An Office medical adviser opined that appellant did not have more than the previously awarded 40 percent left arm impairment. The weight of the evidence supports the finding that she was not entitled to an additional schedule award.

CONCLUSION

The Board finds that the evidence does not establish more than a 40 percent permanent impairment to the left arm.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 29, 2010 is affirmed.

Issued: March 18, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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