

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

M.G., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Salisbury, NC, Employer)

**Docket No. 10-2187
Issued: May 23, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 24, 2010 appellant filed a timely appeal from a July 26, 2010 merit decision of the Office of Workers' Compensation Programs granting her a schedule award. Pursuant to the Federal Employees' Compensation Act¹ and 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 a one percent permanent impairment of the right arm.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 7, 2010 appellant, then a 50-year-old psychiatric nursing assistant, filed a claim alleging that on January 6, 2010 she injured her right wrist and arm separating patients during an altercation. The Office accepted the claim for a sprain of the right elbow and forearm.

In a report dated March 29, 2010, Dr. T. Adam Ginn, an attending Board-certified orthopedic surgeon, noted that appellant related that her right arm was “pretty much completely better” with no numbness or tingling and only occasional aching pain with certain types of grasping. On examination he found no atrophy, good grip strength and full range of both passive and active motion. Dr. Ginn further found minimal tenderness and a slight loss of strength in extension with resistance. He diagnosed right elbow lateral epicondylitis and determined that appellant had reached maximum medical improvement. Dr. Ginn found that, based on state guidelines, she had a three percent impairment of the right arm due to decreased strength on wrist extension.

On April 15, 2010 appellant filed a claim for a schedule award. On April 22, 2010 an Office medical adviser reviewed Dr. Ginn’s report. He discussed the clinical findings of some right arm pain with grasping, minimal tenderness, slightly decreased strength in extension and full range of motion. The Office medical adviser noted that Dr. Ginn’s rating of a three percent impairment due to loss of wrist strength was based on state guidelines rather than the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*). Utilizing Table 15-4 on page 399 of the A.M.A., *Guides*, he found that appellant had a class 1 impairment due to lateral epicondylitis, which provided a default value of a one percent right upper extremity impairment. The Office medical adviser applied grade modifiers for functional history of one, physical examination of one and clinical studies of one. Using the net adjustment formula, he determined that appellant should receive no adjustment from the default grade. The Office medical adviser concluded that she had a one percent right upper extremity impairment.

On May 10, 2010 Dr. Ginn reiterated that appellant had a three percent right upper extremity impairment based on the sixth edition of the A.M.A., *Guides*.

On May 21, 2010 the Office requested that Dr. Ginn review the Office medical adviser’s report and explain whether he agreed or disagreed with his conclusion. If Dr. Ginn disagreed with the Office medical adviser, he should submit a supplemental report explaining his impairment evaluation with supporting citations to the sixth edition of the A.M.A., *Guides*. In a June 7, 2010 response, he related that he did not disagree with the findings of the Office medical adviser based on the sixth edition of the A.M.A., *Guides*.

By decision dated July 26, 2010, the Office granted appellant a schedule award for a one percent permanent impairment of the right arm. The period of the award ran for 3.12 weeks from March 29 to April 19, 2010.

On appeal appellant contends that the Office should use the impairment percentage provided by her physician rather than a physician who did not perform an examination. She

asserts that her arm continues to hurt and that occasionally she experiences difficulty grasping objects.

LEGAL PRECEDENT

The schedule award provision of the Act,² and its implementing federal regulations,³ 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.⁴ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁵

The sixth edition requires identifying 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).⁶ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

ANALYSIS

The Office accepted that appellant sustained a sprain of the right elbow and forearm due to a January 6, 2010 employment injury. Appellant submitted a March 29, 2010 impairment evaluation from Dr. Ginn, who diagnosed right lateral epicondylitis and found that she had reached maximum medical improvement. Dr. Ginn measured full range of motion without atrophy or loss of grip strength and found that appellant had minimal lateral tenderness and loss of strength in extension with resistance. He opined that appellant had a three percent impairment of the right upper extremity based on the state workers' compensation guidelines. The Office, however, utilizes the sixth edition of the A.M.A., *Guides* in determining the extent of permanent impairment.⁷ A medical opinion not based on the appropriate edition of the A.M.A., *Guides* has diminished probative value in determining the extent of a claimant's permanent impairment.⁸

An Office medical adviser reviewed the evidence and applied the sixth edition of the A.M.A., *Guides* to Dr. Ginn's clinical findings. He identified a class 1 impairment due to lateral

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.* at § 10.404(a).

⁵ 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).

⁶ A.M.A., *Guides* 494-531.

⁷ *See supra* note 5.

⁸ *See Fritz A. Klein*, 53 ECAB 642 (2002).

epicondylitis using the elbow regional grid set forth in Table 15-4, which yielded a default value of one percent.⁹ After determining the impairment class and default grade, the Office medical adviser considered whether there were any applicable grade adjustments for GMFH, GMPE and GMCS. He found a grade modifier of one for functional history, physical examination and clinical studies. Utilizing the net adjustment formula discussed above, (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), or (1-1) + (1-1) + (1-1) = 0, yielded a zero adjustment. The Office medical adviser, consequently, determined that appellant had a one percent permanent impairment of the right upper extremity.

On May 10, 2010 Dr. Ginn related that appellant had a three percent impairment of the right upper extremity under the sixth edition of the A.M.A., *Guides*. On June 7, 2010, however, at the request of the Office, Dr. Ginn reviewed the Office medical adviser's May 21, 2010 report and concurred with his findings. There is no probative medical evidence to establish that appellant has more than a one percent right upper extremity impairment.

On appeal appellant contends that the Office should have awarded her the percentage of impairment found by Dr. Ginn. As noted, however, Dr. Ginn did not apply the sixth edition of the A.M.A., *Guides* and his rating is of diminished probative value. On June 7, 2010 he concurred with the Office medical adviser's finding that she had no more than a one percent right upper extremity impairment.

Appellant also maintains that she continues to experience right arm pain and difficulty grasping objects. The calculation of a schedule award, however, does not take into account factors such limitations on daily activities.¹⁰ The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the arm, the maximum number of weeks of compensation is 312 weeks. Since appellant's permanent impairment of the arm is one percent, she is entitled to one percent of 312 weeks, or 3.12 weeks of compensation.

CONCLUSION

The Board finds that appellant has no more than a one percent permanent impairment of the right arm.

⁹ The Office accepted that appellant sustained a right elbow and forearm sprain rather than epicondylitis. However, the elbow regional grid at Table 15-4 on page 398 sets forth identical impairment values for an elbow sprain/strain as for lateral or medial epicondylitis of the elbow.

¹⁰ See *James A. Castagno*, 53 ECAB 417 (2002).

ORDER

IT IS HEREBY ORDERED THAT the July 26, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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