

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

P.S., Appellant

and

**U.S. POSTAL SERVICE, BAY VALLEY
PERFORMANCE CLUSTER, Oakland, CA,
Employer**

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**Docket No. 11-1962
Issued: April 17, 2012**

Appearances:
Stanley Silva, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 31, 2011 appellant filed a timely appeal from the August 8, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule award. Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 met her burden of proof to establish that she has more than seven percent permanent impairment of her right arm, for which she received a schedule award.

FACTUAL HISTORY

In February 2006, OWCP accepted that appellant, then a 51-year-old rural letter carrier, sustained a sprain/strain of her right shoulder and arm, other conditions of her right shoulder

¹ 5 U.S.C. §§ 8101-8193.

region and right carpal tunnel syndrome. Appellant underwent two right shoulder surgeries, including arthroscopic subacromial decompression and calcium removal from the rotator cuff, which were authorized by OWCP.

In an April 2, 2007 report, Dr. Patricia Jones, an attending Board-certified internist, provided findings on examination of appellant, including range of motion testing for her right shoulder. On May 23, 2007 Dr. Ellen Pichey, a Board-certified occupational medicine physician serving as an OWCP medical adviser, reviewed the April 2, 2007 report of Dr. Jones. She concluded that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), appellant had a two percent permanent impairment of her right arm due to limited right shoulder motion upon flexion and abduction and a five percent permanent impairment due to mild entrapment neuropathy of the median nerve at her right wrist. Appellant's date of maximum medical improvement was April 2, 2007 and her total right arm impairment was seven percent.

Appellant claimed entitlement to a schedule award for permanent impairment of her right arm. In an August 7, 2007 decision, OWCP granted her a schedule award for a seven percent permanent impairment of her right arm.

Appellant subsequently claimed additional schedule award compensation for impairment of her right arm. OWCP requested additional information from her attending physician. After no response was received, it referred appellant to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for examination and an evaluation of her right arm impairment under the standards of the sixth edition of the A.M.A., *Guides*.²

In a March 17, 2011 report, Dr. Swartz reported findings on examination and noted that appellant had clinical evidence of carpal tunnel syndrome of her right hand with normal electrodiagnostic studies performed on December 23, 2008. She stated that, with respect to the impairment rating for the right shoulder, reference should be made to Table 15-34 on page 475 of the sixth edition of the A.M.A., *Guides*. Appellant's shoulder motions yielded the following impairments of the right arm: 155 degrees of flexion (3 percent impairment), 50 degrees of extension (0 percent) 90 degrees of abduction (3 percent), 50 degrees of adduction (0 percent), 90 degrees of internal rotation (0 percent), and 90 degrees of external rotation (0 percent). Dr. Swartz added up the impairment values to total six percent right arm impairment. Based on the functional history adjustment, under Table 15-7 on page 406, appellant qualified for a grade modifier of 1, and therefore there was no change in the impairment rating for limited right shoulder motion. Disabilities of the arm, shoulder and hand (*QuickDASH*) score of 21 also correlated with a grade modifier of 1 and the total right arm impairment attributed to the right shoulder was six percent. Regarding appellant's right arm impairment due to right carpal tunnel syndrome, Dr. Swartz stated:

“We would refer to page 449, Table 15-23, and find that the test findings would result in grade modifier of 0, the history would qualify for a grade modifier of 1, and the physical examination findings would also qualify for a grade modifier of 2, as decreased sensation [was] found.

² The sixth edition of the A.M.A., *Guides* became effective on May 1, 2009. See *infra* note 8.

“We add 0 + 1 + 2 and arrive at 3, which is divided by 3 [to] equal 1. Our *QuickDASH* score is 21.

“This would place us in grade modifier of 1 with a right extremity impairment rating for carpal tunnel syndrome of 2 percent.

“We then combine the [two] percent for the right carpal tunnel syndrome and the [six] percent of the right shoulder and arrive at [eight] percent right upper extremity impairment.”

In a June 24, 2011 report, Dr. Christopher Brigham, a Board-certified occupational medicine physician serving as an OWCP medical adviser, stated that Dr. Swartz properly calculated that appellant had a six percent right arm impairment under the sixth edition of the A.M.A., *Guides* due to limited right shoulder motion.³ He determined that appellant did not have any right arm impairment due to her right carpal tunnel syndrome. Dr. Brigham noted that electromyogram (EMG) and nerve conduction velocity (NCV) testing from December 23, 2008 did not document any focal neuropathy syndrome.⁴ Under Chapter 15, page 445, there is no ratable impairment if nerve conduction testing does not document focal neuropathy syndrome. Therefore, the total permanent impairment of appellant’s right arm was six percent. As appellant had already received compensation for a seven percent right arm impairment, she was not entitled to additional schedule award compensation.

In an August 8, 2011 decision, OWCP denied appellant’s claim for additional schedule award compensation finding that she did not meet her burden of proof to establish that she had more than a seven percent permanent impairment of her right arm, for which she received a schedule award.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing regulations⁶ 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, FECA 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the

³ Dr. Brigham indicated that appellant reached maximum medical improvement by September 9, 2010, one year from her last surgical treatment.

⁴ The record contains the findings of this testing which showed no evidence of right median nerve compression at the right wrist or any other peripheral nerve compression.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

appropriate standard for evaluating schedule losses.⁷ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁸

With respect to the shoulder, reference is first made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. A class of diagnosis may be determined from the Shoulder Regional Grid (including identification of a default grade value).⁹ Table 15-5 also provides that, if motion loss is present for a claimant who has undergone certain shoulder surgeries, impairment may alternatively be assessed using section 15.7 (range of motion impairment). Such a range of motion impairment stands alone and is not combined with a diagnosis-based impairment.¹⁰ Impairment ratings for limited shoulder motion are derived from Table 15-34 on page 475.¹¹ Under Table 15-35 on page 477, a grade modifier value is assigned to the impairment ratings calculated from Table 15-34. Table 15-36 on page 477 provides standards for adjusting the grade modifier value based on a claimant's functional history.¹²

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.¹³ In Table 15-23, grade modifiers levels (ranging from 0 to 4) are described for the categories test findings, history and physical findings. However, under Chapter 15, page 445, there is no ratable impairment if nerve conduction testing does not document focal neuropathy syndrome.¹⁴

ANALYSIS

OWCP accepted that appellant sustained a sprain/strain of her right shoulder and arm, other affections of the right shoulder region and right carpal tunnel syndrome. Appellant underwent two right shoulder surgeries, including arthroscopic subacromial decompression and calcium removal from the rotator cuff, which were authorized by OWCP. In an August 7, 2007 award of compensation, OWCP granted her a schedule award for a seven percent permanent impairment of her right arm.

Appellant later claimed entitlement to additional compensation for permanent impairment of her right arm. The Board finds that OWCP properly denied this claim by relying on the June 24, 2011 report of Dr. Brigham, a Board-certified occupational medicine physician serving as an OWCP medical adviser. Dr. Brigham properly evaluated the March 2011 findings of Dr. Swartz, a Board-certified orthopedic surgeon serving as an OWCP referral physician, and

⁷ *Id.*

⁸ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁹ See A.M.A., *Guides* (6th ed. 2009) 401-11.

¹⁰ *Id.* at 405, 475-78.

¹¹ *Id.* at 475, Table 15-34.

¹² *Id.* at 477, Table 15-35 and Table 15-36.

¹³ *Id.* at 449, Table 15-23.

¹⁴ *Id.* at 445.

found that appellant only had a six percent permanent impairment of her right arm under the sixth edition of the A.M.A., *Guides*. As she had already received compensation for a seven percent impairment of her right arm, appellant had not shown entitlement to additional compensation.

Dr. Brigham found that Dr. Swartz properly calculated that appellant had six percent right arm impairment under the sixth edition of the A.M.A., *Guides* due to limited right shoulder motion (three percent for limited flexion and three percent for limited abduction).¹⁵ He correctly determined that appellant did not have any right arm impairment due to her right carpal tunnel syndrome because EMG and NCV testing from December 23, 2008 did not document focal neuropathy syndrome. Under Chapter 15, page 445, there is no ratable impairment if nerve conduction testing does not document focal neuropathy syndrome. Dr. Brigham then concluded that appellant had a total right arm impairment of six percent.¹⁶ Appellant did not submit evidence showing that she had greater right arm impairment under the sixth edition of the A.M.A., *Guides*.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has more than a seven percent permanent impairment of her right arm, for which she received a schedule award.

¹⁵ *Id.* at 475, Table 15-34. Given the surgical history of appellant's right shoulder, it was appropriate to use a range of motion rating method rather than a diagnosis-based method. *See supra* notes 9 and 10. Dr. Brigham properly evaluated appellant's impairment under the sixth edition of the A.M.A., *Guides* as this edition was in effect at the time of his assessment. *See supra* note 8.

¹⁶ On appeal, appellant's representative asserted that Dr. Swartz' carpal tunnel rating of two percent should have been accepted. He did not adequately explain the basis for this belief.

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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