

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

D.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Piedmont, MO, Employer**

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**Docket No. 11-1971
Issued: August 21, 2012**

Appearances:
Jim Lawing, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On September 8, 2011 appellant, through her representative, filed a timely appeal from April 12 and August 10, 2011 merit decisions of the Office of Workers' Compensation Programs (OWCP). 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 the case.

ISSUE

The issue is whether appellant is entitled to a schedule award for a permanent impairment of the left arm.

FACTUAL HISTORY

On June 20, 2005 appellant, then a 55-year-old rural carrier associate, filed a traumatic injury claim alleging that on June 18, 2005 she injured her left hand, wrist, shoulder, head and right leg in a motor vehicle accident. OWCP accepted the claim for left wrist sprain, multiple contusions and major depression.

¹ 5 U.S.C. § 8101 *et seq.*

By decision dated June 20, 2006, OWCP terminated appellant's compensation effective that date after finding that she had no further disability due to her accepted work injuries.

In a letter dated July 1, 2009, appellant requested expansion of her claim to include carpal tunnel syndrome. On July 6, 2009 her attorney requested that she receive a schedule award based on a February 23, 2009 impairment evaluation by Dr. John W. Ellis, Board-certified in family medicine, who applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001) and concluded that she had a 46 percent permanent impairment of the left upper extremity.

In a May 18, 2010 impairment evaluation, Dr. Ellis diagnosed left wrist, elbow, shoulder and upper back sprains and strains, left ulnar nerve entrapment and cubital tunnel syndrome, internal derangement of the left shoulder joint, left brachial plexus impingement, medial epicondylitis with left ulnar nerve impingement, resolved back, hip and right knee contusions and post-traumatic stress disorder with depression. He attributed the diagnosed conditions to the employment injury based on the impact forces from the motor vehicle accident. Dr. Ellis opined that appellant was totally disabled. Applying the sixth edition of the A.M.A., *Guides*, he concluded that she had a 40 percent permanent impairment of the left arm due to loss of range of motion of the shoulder and wrist and elbow entrapment neuropathy.

On December 31, 2010 an OWCP medical adviser reviewed Dr. Ellis' report. He noted that OWCP had only accepted left wrist sprain and that diagnostic studies were negative for other conditions. The medical adviser determined that Dr. Ellis did not measure range of motion in accordance with the sixth edition of the A.M.A., *Guides*. He asserted that appellant's continued symptoms might result from a psychiatric condition.

On February 1, 2011 OWCP informed appellant that the evidence was currently insufficient to establish entitlement to a schedule award as Dr. Ellis addressed conditions other than those related to her work injury. It advised her of the evidence required to establish a schedule award and provided her 30 days to submit such evidence.

By decision dated April 12, 2011, OWCP denied appellant's claim for a schedule award. It found that she had not submitted any medical evidence in response to its February 1, 2011 letter.

In an April 27, 2011 impairment evaluation, Dr. Ellis listed left wrist findings of a moderately positive Finkelstein test, swelling over the distal radius and carpometacarpophalangeal thumb joint, a positive Tinel's sign and Phalen's test and the near loss of a radial pulse when raising the left hand to shoulder height. He diagnosed left shoulder and neck strain, left brachial plexus impingement, tendinitis and internal derangement of the left shoulder, a left elbow contusion with lateral and medial epicondylitis and cubital tunnel syndrome with ulnar nerve impingement and left wrist tendinitis and carpal tunnel syndrome. Dr. Ellis attributed the diagnosed conditions to the motor vehicle accident based on the forces involved in the collision. He stated:

“The forces were such that it caused sudden jerking of her neck and left shoulder. This caused [a] tear of the muscles and ligaments in her neck and left shoulder. Physical examination revealed palpable asymmetric tightness of the left shoulder girdle and neck. This type of asymmetric intrinsic tightness cannot be faked or

feigned. The tight muscles in the left shoulder girdle area caused brachial plexus and thoracic outlet impingement down the left arm.”

Dr. Ellis further described his findings and diagnoses for the left elbow and wrist. He indicated that he would only rate the left wrist impairment as it was the accepted condition. Using Figures 15-2 of the sixth edition of the A.M.A., *Guides*, Dr. Ellis identified the diagnosed condition as a wrist sprain and applied grade modifiers to find a two percent left arm impairment.

On May 10, 2011 appellant, through her attorney, requested reconsideration. In a decision dated August 10, 2011, OWCP found that Dr. Ellis’ report was of little probative value as there were no examination records supporting his diagnoses or that indicated that she required further medical treatment for her left wrist sprain and multiple contusions.

On appeal, appellant’s attorney argues that OWCP ignored the evidence from Dr. Ellis.

LEGAL PRECEDENT

FECA² provides compensation for both disability and physical impairment. “Disability” means the incapacity of an employee, because of an employment injury, to earn the wages the employee was receiving at the time of injury.³ In such cases, FECA compensates an employee for loss of wage-earning capacity. In cases of physical impairment FECA, under section 8107(a), compensates an employee, pursuant to a compensation schedule, for the permanent loss of use of certain specified members of the body, regardless of the employee’s ability to earn wages.⁴

The schedule award provision of FECA⁵ and its implementing federal regulations,⁶ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸

² *Id.*

³ *Lyle E. Dayberry*, 49 ECAB 369 (1998).

⁴ *Renee M. Straubinger*, 51 ECAB 667 (2000).

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

ANALYSIS

OWCP accepted that appellant sustained left wrist sprain, multiple contusions and major depression due to a June 18, 2005 motor vehicle accident. On June 20, 2006 it terminated her compensation after finding that she had no further employment-related disability due to her accepted work injuries.

Appellant requested a schedule award and submitted a February 23, 2009 impairment evaluation from Dr. Ellis finding that she had a 46 percent permanent impairment of the left upper extremity under the fifth edition of the A.M.A., *Guides*. As of May 1, 2009, however, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁹ In an impairment evaluation dated May 18, 2010, Dr. Ellis determined that appellant had a 40 percent permanent impairment of the left arm under the sixth edition of the A.M.A., *Guides* due to loss of shoulder and wrist motion and elbow entrapment neuropathy. He further opined that she had numerous other left upper extremity conditions as a result of her motor vehicle accident. An OWCP medical adviser reviewed Dr. Ellis' opinion and determined that he did not measure range of motion in accordance with the provisions of the A.M.A., *Guides*.¹⁰ He further noted that the only accepted condition was left wrist sprain.

In an impairment evaluation dated April 27, 2011, Dr. Ellis found a moderately positive Finkelstein test of the left wrist, swelling over the thumb joint, a positive Tinel's sign and Phalen's test and the near loss of a radial pulse when raising the left hand to the height of the shoulder. He diagnosed left shoulder and neck strain, left brachial plexus impingement, tendinitis and internal derangement of the left shoulder, a left elbow contusion with lateral and medial epicondylitis and cubital tunnel syndrome with ulnar nerve impingement and left wrist tendinitis and carpal tunnel syndrome. Dr. Ellis attributed the diagnosed conditions to the motor vehicle accident based on the degree of force involved in the crash and his findings on physical examination.

In its August 10, 2011 decision, OWCP denied appellant's claim after finding that there was no evidence that she required continued medical treatment for her left wrist sprain and multiple contusions. It further noted that there were no examination findings supporting the other diagnosed conditions. The issue, however, is not whether appellant required further medical treatment for her accepted condition but whether she is entitled to a schedule award for a permanent impairment. A claimant may have an employment-related condition that results in permanent impairment under the A.M.A., *Guides* without any disability for work or the need for continued medical treatment.¹¹

Accordingly, pursuant to its procedures, OWCP should have referred Dr. Ellis' April 27, 2011 impairment evaluation to an OWCP medical adviser for an opinion regarding whether

⁹ *Id.*

¹⁰ See A.M.A., *Guides* 464.

¹¹ See *B.K.*, 59 ECAB 228 (2007).

appellant has a permanent impairment of the left arm.¹² The case will be remanded to OWCP for proper adjudication of the issue of the extent of impairment of the left arm.¹³

The Board notes that appellant requested expansion of her claim to include additional left upper extremity conditions and submitted medical evidence in support of her request. Upon return of the case record, OWCP should adjudicate whether she sustained additional conditions as a result of her June 18, 2005 motor vehicle accident.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 10 and April 12, 2011 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: August 21, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

¹² See *C.C.*, Docket No. 10-2204 (issued June 2011); see also Federal (FECA) Procedure Manual, *supra* note 8 at Chapter 2.808.6d.

¹³ The Board notes that in determining entitlement to a schedule award, preexisting impairments to the scheduled member are included; see *Peter C. Belkind*, 56 ECAB 580 (2005).