

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

C.V., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Macon, MO, Employer)

**Docket No. 11-1177
Issued: January 20, 2012**

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 14, 2011 appellant filed a timely appeal from a January 12, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied 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 the case.

ISSUE

The issue is whether appellant has more than three percent permanent impairment of the right upper extremity for which she received a schedule award.

FACTUAL HISTORY

On March 31, 2009 appellant, then a 54-year-old rural carrier, filed a claim alleging that on March 31, 2009 she tripped and fell injuring her right elbow, wrist and left knee. OWCP

¹ 5 U.S.C. §§ 8101-8193.

accepted her claim for right elbow strain, right wrist strain, left knee strain, abrasion without infection of the left knee and expanded her claim to include right radial head fracture.

Appellant was initially treated by Dr. Jamie Kauffman, an osteopath, on April 2, 2009, for wrist and elbow injuries sustained in a fall at work. Dr. Kauffman diagnosed strain of unspecified site and returned appellant to work without restrictions. A May 20, 2009 magnetic resonance imaging (MRI) scan of the right elbow revealed marrow edema proximal radius extending from the mid shaft to the proximal diaphysis which may be due to an impacted radial neck fracture. A September 25, 2009 MRI scan of the right elbow revealed a healing radial neck fracture with residual bone marrow edema, small elbow joint effusion and mild olecranon bursitis. On June 1, 2009 appellant was treated by Dr. James F. Eckenrode, a Board-certified orthopedic surgeon, who noted that right elbow examination revealed full range of motion, no swelling, erythema or ecchymosis, with tenderness over the radial aspect of the elbow. Dr. Eckenrode reviewed x-rays of the right elbow that revealed a radial neck fracture. He advised that appellant's injury would heal uneventfully without surgery and she already had a full range of motion.

On January 12, 2010 appellant filed a claim for a schedule award. In a July 6, 2009 report, Dr. Eckenrode noted that she was progressing well with full range of motion. An x-ray of the elbow revealed no evidence of the radial head fracture. Dr. Eckenrode opined that appellant was at maximum medical improvement and could continue to work without restrictions. In a January 12, 2010 report, he noted a January 4, 2010 electromyogram (EMG) revealed no abnormalities. Dr. Eckenrode advised that appellant continued to experience pain and catching in the right elbow but was working without restrictions and her x-rays and MRI scans were unremarkable. He noted some subtle instability to the radial and ulnar stress of the right elbow which correlated to a 10 percent impairment of the right upper extremity due to her elbow injury. In an attending physician's report dated January 14, 2010, Dr. Eckenrode diagnosed right radial head fracture and noted with a checkmark "yes" that her condition was caused by appellant's employment. He noted that she reached maximum medical improvement on July 6, 2009 and had a 10 percent impairment of the right elbow.

On January 19, 2010 OWCP requested that Dr. Eckenrode submit a report providing a detailed description and permanent impairment rating based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009).²

Appellant submitted a February 3, 2010 report from Dr. Julie Burdin, a family practitioner, who noted that appellant reached maximum medical improvement on July 6, 2009 and was released to work without restrictions. Dr. Burdin noted that appellant continued to have right elbow symptoms.

On April 22, 2010 an OWCP medical adviser reviewed Dr. Eckenrode's January 12, 2010 report. He noted that appellant sustained a right radial head fracture. The medical adviser indicated that she could be rated pursuant to the sixth edition of the A.M.A., *Guides*. He noted that an impairment rating due to permanent residuals of a radial head fracture was calculated

² A.M.A., *Guides* (6th ed. 2009).

pursuant to Table 15-4, Elbow Regional Grid, page 399, of the A.M.A., *Guides*. The medical adviser noted that Dr. Eckenrode noted subtle instability to the radial and ulnar stress of the right elbow for a 10 percent impairment rating of the right upper extremity; however, Dr. Eckenrode did not identify any edition of the A.M.A., *Guides* in his rating and therefore his rating could not be accepted for schedule award purposes.

On May 4, 2010 OWCP referred appellant to Dr. Garth S. Russell, a Board-certified orthopedic surgeon, for an impairment evaluation. On July 17, 2010 Dr. Russell obtained a history of a right radial head fracture. He discussed appellant's complaints of right elbow pain at the radial head. On examination, Dr. Russell found mild weakness in flexion of the right elbow with pain, full range of motion, mild pain in supination and no atrophy in the right upper extremity. He noted x-rays of the right elbow were normal with a healed impacted fracture of the head of the radius with no degenerative changes. Dr. Russell diagnosed nondisplaced impacted fracture of the right elbow, mild and internal derangement of the right knee. He opined that in accordance with the A.M.A., *Guides* (6th ed. 2009), under Table 15-4 on page 399, with normal motion, appellant had eight percent permanent impairment of the right arm.

OWCP sought clarification from Dr. Russell with regard to whether appellant required further treatment for her work injury. On July 14, 2010 Dr. Russell advised that she was released from treatment by Dr. Eckenrode in January 2010 who found maximum medical improvement. He noted that appellant sustained a right elbow impacted fracture of the head of the radius and had functional impairment. Dr. Russell noted that pursuant to the A.M.A., *Guides*, Table 15-4 on page 399, she was class 1 with 6 to 10 percent impairment. He indicated that applying grade modifiers for functional history, physical examination and clinical studies yielded a net adjustment of zero. Dr. Russell opined that he selected an eight percent rating based upon the functional impairments which were clinically consistent with the injury sustained. He noted that the *QuickDash* was not used to modify the study. OWCP requested further clarification with regard to appellant's impairment rating and in a report dated July 22, 2010, Dr. Russell noted that based on the physical examination and a review of the diagnostic testing including x-rays, MRI scans and EMG's was a class 1, category default C for an eight percent impairment of the right upper extremity.

On August 13, 2010 an OWCP medical adviser reviewed Dr. Russell's reports. For the right elbow fracture, Dr. Russell cited the default value incorrectly for a radial head (isolated) arthroplasty. In this case, appellant did not have a radial head arthroplasty. The medical adviser noted that the impairment rating for the elbow must be based on the key factor diagnoses of fracture which is found on page 399, class 1 with an impairment range of one to five percent. He noted that Dr. Russell did consider modifiers when he incorrectly recommended the rating for a radial head (isolated) arthroplasty. The medical adviser noted that the modifiers would be used in the same fashion for a class 1, elbow fracture, with a default value of three percent impairment for the right elbow fracture. He noted that Dr. Russell did not use the optional subjective *QuickDash* questionnaire which was acceptable as noted on pages 482 to 486 of the A.M.A., *Guides*. The medical adviser opined that appellant had three percent impairment due to the right elbow fracture pursuant to the A.M.A., *Guides*.³

³ *Id.* at 399, Table 15-4.

In a decision dated August 20, 2010, OWCP granted appellant a schedule award for three percent impairment of the right upper extremity. The period of the award was from January 16 to March 22, 2010.

In an undated letter, appellant requested reconsideration. She submitted an October 5, 2010 report from Dr. Eckenrode, who rated a 10 percent permanent impairment of the right upper extremity due to her elbow injury. Dr. Eckenrode noted that Dr. Russell determined that appellant sustained eight percent impairment to the right upper extremity in accordance with the A.M.A., *Guides*. He opined that Dr. Russell's impairment rating was appropriate.

In a December 7, 2010 report, the medical adviser reviewed Dr. Eckenrode's report and noted that the physician did not reference any edition of the A.M.A., *Guides* as a basis for his rating. Based on the available evidence, no revision of the right upper extremity impairment was warranted.

In a decision dated January 12, 2011, OWCP denied modification of the August 20, 2010 decision.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing regulations⁵ 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 appropriate standard for evaluating schedule losses.⁶

For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷ For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.⁸ It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.⁹

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

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *See id.*; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁸ A.M.A., *Guides* (6th ed. 2009).

⁹ *Tammy L. Meehan*, 53 ECAB 229 (2001).

and Health (ICF).¹⁰ Under the sixth edition of the A.M.A., *Guides*, 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).¹¹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹²

ANALYSIS

OWCP accepted that appellant sustained right elbow strain, right wrist strain, left knee strain, abrasion without infection of the left knee and right radial head fracture due to a March 31, 2009 employment injury.

The Board finds that Dr. Eckenrode did not adequately explain how his impairment rating was reached in accordance with the relevant standards of the A.M.A., *Guides*.¹³ Dr. Eckenrode noted that appellant experienced pain and catching in the right elbow with some subtle instability to the radial and ulnar stress. He found that she had 10 percent impairment of the right arm, however, he did not cite to any tables or charts in making the impairment rating. OWCP utilizes the sixth edition of the A.M.A., *Guides* in determining the extent of permanent impairment. A medical opinion not based on the A.M.A., *Guides* is of diminished probative value.¹⁴ The reports from Dr. Eckenrode do not explain how the impairment rating was calculated under the sixth edition of the A.M.A., *Guides*. The Board finds that Dr. Eckenrode did not properly follow the A.M.A., *Guides*, his opinion was of limited probative value.¹⁵

On May 4, 2010 OWCP referred appellant to Dr. Russell for an impairment evaluation. Dr. Russell reviewed the medical evidence of record. In his reports dated June 17 and July 14 and 22, 2010, he noted that based on the physical examination and a review of the diagnostic testing including x-rays, MRI scans and EMG's appellant had eight percent impairment of the right arm for a radial head injury. Dr. Russell noted that pursuant to the A.M.A., *Guides*, under Table 15-4 on page 399, radial head injury, she was a class 1, with normal motion with an impairment of 6 to 10 percent with a default rating of 8 percent. He noted that, using the modifiers for functional history, physical examination and clinical studies yielded a net

¹⁰ A.M.A., *Guides*, *supra* note 8, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

¹¹ *Id.* at 385-419.

¹² *Id.* at 411.

¹³ See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

¹⁴ See *Fritz A. Klein*, 53 ECAB 642 (2002).

¹⁵ See *id.*; *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *John Constantine*, 39 ECAB 1090 (1988) (a medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

adjustment of zero.¹⁶ Dr. Russell opined that this resulted in the default rating of eight percent impairment.

The Board notes that Dr. Russell incorrectly based appellant's impairment rating on a radial head (isolated) arthroplasty which provides a default impairment of eight percent. As indicated by OWCP's medical adviser, Dr. Russell diagnosed a right elbow fracture but he incorrectly cited the default value for a radial head (isolated) arthroplasty. Appellant did not have a radial head arthroplasty and there is no evidence in the record to support such a condition and Dr. Russell did not explain how her condition equated to a radial head arthroplasty. As Dr. Russell did not use a diagnosis consistent with appellant's accepted condition, he did not properly follow the A.M.A., *Guides* with respect to the diagnosis. Thus, OWCP properly relied on the opinion of its medical adviser.¹⁷

The medical adviser accurately explained that appellant sustained a right radial head fracture, which was consistent with a class 1 diagnosis for an elbow fracture in Table 15-4 at page 399 of the A.M.A., *Guides*. This diagnosis has a range of impairment of one to five percent with a default impairment of three percent. After determining the impairment class and default grade, an OWCP medical adviser considered whether there were any applicable grade adjustments for GMFH, GMPE and GMCS. He noted that Dr. Russell's consideration of grade modifiers was appropriate for a class 1, elbow fracture. As explained, Dr. Russell applied the net adjustment formula and determined that there was no net adjustment of the default impairment of three percent. The medical adviser, consequently, determined that appellant had a three percent permanent impairment of the right upper extremity.¹⁸ There is no medical evidence consistent with the A.M.A., *Guides* that supports any greater impairment.

On appeal, appellant asserts that she should be entitled to eight percent impairment based on the determination of Drs. Eckenrode and Russell. She indicates that she did not undergo surgical repair of her elbow. As noted above, Dr. Russell incorrectly noted an impairment rating based on a right radial heal (isolated) arthroplasty, a procedure which appellant did not undergo and therefore his impairment rating was improper. OWCP requested clarification from Dr. Russell regarding his impairment rating and provided the physician with an accurate statement of accepted facts; however, Dr. Russell did not provide a rating based on appellant's accepted condition and diagnosis. As explained, Dr. Eckenrode did not rate impairment in conformance with the sixth edition of the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant has no more than a three percent permanent impairment of the right upper extremity.

¹⁶ Dr. Russell advised that the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), resulted in (1-1) + (1-1) + (1-1) = 0, for a net adjustment of zero. See *supra* notes 11-12.

¹⁷ *J.Q.*, 59 ECAB 366 (2008) (it is well established that, when the examining physician does not provide an estimate of impairment conforming to the A.M.A., *Guides*, OWCP may rely on the impairment rating provided by a medical adviser).

¹⁸ A.M.A., *Guides* 399, Table 15-4.

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 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