

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

D.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**

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**Docket No. 11-1302
Issued: January 26, 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 May 5, 2011 appellant filed a timely appeal of a March 23, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which affirmed the denial of her claim for 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 established that she has more than a five percent impairment of the left upper extremity for which she received a schedule award.

FACTUAL HISTORY

On April 3, 2009 appellant, then a 51-year-old clerk, filed an occupational disease claim alleging that, since December 20, 2008, she began having pain and swelling in her left arm. She did not stop work. On July 15, 2009 OWCP accepted the claim for left lateral epicondylitis. Appellant received compensation benefits. On October 29, 2009 she underwent a release of the

¹ 5 U.S.C. § 8101 *et seq.*

lateral epicondylitis of the left elbow, which was performed by Dr. Tariq B. Iftikhar, a Board-certified orthopedic surgeon.

In a March 15, 2010 report, Dr. Iftikhar, noted that appellant was “four months post-op for release of the tennis elbow on the left side.” He indicated that she had returned to work in a modified-duty capacity. Dr. Iftikhar advised that appellant had no particular complaints, but took nonsteroidal anti-inflammatory medications on an intermittent basis. He noted that she was working limited duties for a long period of time due in part to her rotator cuff repair on the same side. Dr. Iftikhar examined appellant and determined that the “scar is very well-healed. Strength is mildly diminished, but mobility is normal in the left elbow. Neurovascular status is intact.” Dr. Iftikhar recommended that she avoid extremely cold temperatures and continue her exercise program for the left upper extremity. He recommended a follow-up evaluation in approximately four weeks.

On April 24, 2010 appellant requested a schedule award.²

By letter dated June 16, 2010, OWCP advised appellant to provide her physician with a copy of its letter and to provide specific medical findings, as well as an assessment of impairment using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6th ed. 2009) (*hereinafter*, A.M.A., *Guides*).

In a June 21, 2010 report, Dr. Iftikhar opined that appellant had 20 percent impairment for left lateral epicondylitis, 20 percent impairment for a rotator cuff injury and 10 percent impairment for a wrist injury, due to peripheral nerve entrapment and 2 percent whole person impairment for the elbow and shoulder.

In an August 8, 2010 report, OWCP’s medical adviser noted appellant’s history of injury and treatment and utilized the A.M.A., *Guides*. He referred to Table 15-4 and noted that she had residual symptoms of epicondylitis after surgical release that corresponded to a five percent permanent impairment rating.³ The medical adviser noted that the previous impairment of three percent was for the left shoulder and wrist and explained that the five percent for the left elbow was in addition to the previous rating.

On October 18, 2010 OWCP granted appellant a schedule award for an additional five permanent impairment of the left upper extremity. The award covered a period of 15.6 weeks.

In a letter dated October 26, 2010, appellant requested that OWCP include a pinched nerve as an accepted condition. She also requested additional compensation for her pain. On November 4, 2010 appellant requested a review of the written record.

² The record reflects that appellant received a schedule award on September 12, 2008 for three percent permanent partial impairment of the left upper extremity under a separate claim for a left shoulder and wrist injury, which was accepted for bilateral carpal tunnel syndrome and left shoulder tendinitis, left rotator cuff tear and left rotator cuff repair on August 18, 2006.

³ A.M.A., *Guides* 399.

OWCP subsequently received a May 25, 2010 report from Dr. Iftikhar, who noted that appellant was seen for follow up for her left tennis elbow release. Dr. Iftikhar found that appellant's shoulder range of motion was mildly limited and the rotator cuff scar was very well healed. He advised that she had strength of approximately four out of five on the left side and no instability for the left shoulder. Appellant had a healed scar on the left elbow with strength of the shoulder mildly diminished.

By decision dated March 23, 2011, OWCP's hearing representative affirmed the October 18, 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. For decisions issued after May 1, 2009, the A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶

ANALYSIS

Appellant's claim was accepted by OWCP for left lateral epicondylitis. On April 24, 2010 she requested a schedule award.

Appellant provided several reports from Dr. Iftikhar, who listed findings on examination. Her scar was well healed and she had strength of approximately four out of five on the left side with no instability for the left shoulder. Dr. Iftikhar found that appellant's mobility was normal in the left elbow and her neurovascular status was intact. He noted that her shoulder range of motion was mildly limited. Dr. Iftikhar opined that appellant had 20 percent impairment for left lateral epicondylitis, 20 percent impairment for a rotator cuff injury and 10 percent impairment for a wrist injury, due to peripheral nerve entrapment and 2 percent whole person impairment due to the elbow and shoulder. However, the present claim pertains to appellant's left elbow condition.⁷ Furthermore, Dr. Iftikhar did not explain how his impairment rating of the left elbow pertained to her accepted condition, left lateral epicondylitis.⁸ He did not refer to any specific pages or Tables in the A.M.A., *Guides* (6th ed.), in rating impairment. Board precedent is well settled that when an attending physician's report gives an estimate of impairment but does not

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ FECA Bulletin No. 09-03 (issued March 15, 2009). A.M.A., *Guides* (6th ed. 2008).

⁷ Appellant's wrist and shoulder conditions are not presently before the Board.

⁸ With regards to Dr. Iftikhar's rating of whole person impairment, the Board notes that FECA does not authorize schedule awards for permanent impairment of the whole person. *N.D.*, 59 ECAB 344 (2008).

address how the estimate is based upon the A.M.A., *Guides*, OWCP may follow the advice of its medical adviser where he or she has properly applied the A.M.A., *Guides*.⁹

OWCP's medical adviser determined that appellant had a five percent impairment of her left arm attributable to the accepted left lateral epicondylitis. He referred to Table 15-4, the Elbow Regional Grid, and noted that she demonstrated residual symptoms of epicondylitis after surgical release which corresponded to a five percent permanent impairment rating.¹⁰ The Board notes that diagnosis-based impairment is the primary method of evaluation for the upper extremity.¹¹ OWCP accepted appellant's claim for lateral epicondylitis, for which she underwent a release of the lateral epicondylitis of the left elbow on October 29, 2009. Table 15-4, page 399 of the A.M.A., *Guides* gives a default impairment rating of five percent for the diagnosis of lateral epicondylitis following surgical release of extensor origins with residual symptoms. This default rating, classified as mild, can be modified slightly based on a claimant's functional history, physical findings and clinical studies. The medical adviser explained that appellant had some residual symptoms of epicondylitis after surgical release, which warranted no modification. The Board finds that his report conforms to the A.M.A., *Guides* and represents the weight of the medical evidence regarding the extent of appellant's left upper extremity impairment attributable to her elbow condition. Appellant has not submitted any credible medical evidence indicating that she has greater than five percent impairment of the left upper extremity due to her elbow condition.

On appeal, appellant generally disagrees with the amount of her schedule award. She contends that her condition has worsened and that she has to use her right side to compensate for her left condition. However, the medical evidence does not support a greater award.

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 has not established that she has more than a five percent additional impairment of the left upper extremity for which she received a schedule award.

⁹ See *Ronald J. Pavlik*, 33 ECAB 1596 (1982); *Robert R. Snow*, 33 ECAB 656 (1982); *Quincy E. Malone*, 31 ECAB 846 (1980).

¹⁰ *Supra* note 3.

¹¹ *Id.* at 387 (6th ed., second printing 2009).

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 26, 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