

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

T.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE
Columbus, OH, Employer**

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**Docket No. 12-271
Issued: June 21, 2012**

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 November 16, 2011 appellant filed a timely appeal from a September 29, 2011 merit decision 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 this case.²

ISSUES

The issues are: (1) whether appellant has more than a six percent permanent impairment to her left arm; and (2) whether OWCP properly determined the period of the July 15, 2011 schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board does not have jurisdiction over a November 17, 2010 overpayment decision. A claimant has 180 days from the date of an OWCP final decision to timely file an appeal and appellant did not file the appeal until November 16, 2011. 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

On January 6, 2009 appellant, then a 55-year-old clerk, filed an occupational claim for left carpal tunnel syndrome as a result of her federal employment. OWCP accepted the claim for left carpal tunnel syndrome. The record notes that appellant had a previous claim accepted for right carpal tunnel syndrome.³ She underwent a left carpal tunnel release on September 11, 2009 and returned to work on August 16, 2010.

Appellant received schedule awards for impairment to the right arm of 21 percent on November 30, 2004 and 18 percent on October 28, 2005, a total of 39 percent. In a report dated August 30, 2010, Dr. James Rutherford, a Board-certified orthopedic surgeon, selected as a second opinion physician, provided a history of injury and results on examination. He opined that appellant had a five percent left arm impairment. In a report dated April 26, 2011, Dr. Rutherford stated the date of maximum medical improvement (MMI) for the left arm was March 11, 2010 or six months after the carpal tunnel release.

By report dated June 9, 2011, Dr. Rutherford opined that under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A. *Guides*) appellant had a six percent left arm impairment based on the carpal tunnel syndrome. He identified Table 15-23 and found that her default impairment was five percent based on grade modifier 2. Dr. Rutherford indicated that the functional scale was one grade higher and therefore appellant had six percent impairment. As to the right arm, he found that she had a 14 percent permanent impairment.

In a report dated June 20, 2011, an OWCP medical adviser concurred with percentage of impairment as found by Dr. Rutherford. The medical adviser agreed that the date of MMI was June 9, 2011, the date of the report by Dr. Rutherford.

By decision dated July 15, 2011, OWCP issued a schedule award for a six percent permanent impairment to the left arm with a date of MMI as March 11, 2010. The period of the award was 18.72 weeks commencing September 26, 2010 through February 4, 2011. The decision found no additional impairment of the right arm.

Appellant requested a review of the written record. By decision dated September 29, 2011, the hearing representative affirmed the July 15, 2011 decision.

LEGAL PRECEDENT -- ISSUE 1

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

³ Appellant has an accepted claim filed on November 26, 2002 for right carpal tunnel syndrome and right shoulder impingement. The January 6, 2009 claim has been doubled with the November 26, 2002 claim for administrative purposes.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

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.⁶ The A.M.A. *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁸

The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For the arm, the maximum number of weeks of compensation is 312.

ANALYSIS -- ISSUE 1

On appeal, appellant specifically stated that “my complaint is not the percentage that I was given at this time.” She stated that she was trying to get someone to understand that the claims examiner set the date of MMI as March 11, 2010. According to appellant, she had returned to work on August 16, 2010 and was paying back an overpayment of compensation. She felt that her schedule award had been delayed and she was entitled to an award from August 16, 2010 to February 4, 2011.

The determination that appellant had a six percent left arm impairment was based on Dr. Rutherford’s June 9, 2011 report.⁹ He identified Table 15-23, which provides impairments for entrapment/compression neuropathies.¹⁰ Dr. Rutherford found a grade modifier of 2, for a history of significant intermittent symptoms, decreased sensation on examination and test findings of motor conduction block. The default arm impairment is five percent. The default value may be adjusted based on a functional scale, using a *QuickDASH* questionnaire.¹¹ Dr. Rutherford found that the functional scale was a grade modifier 3 or severe rating, which results in an adjustment of +1 from the default value. The medical adviser concurred in this application of Table 15-23.

⁶ See *Ronald R. Kraynak*, 53 ECAB 130 (2001); *August M. Buffa*, 12 ECAB 324 (1961).

⁷ See *supra* note 5.

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

⁹ A right arm impairment is a separate issue arising from a previous injury and should have been addressed in a separate decision. Since this is a merit review of the September 29, 2011 decision, appellant has one year from the date of this Board decision to request reconsideration. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(a) (October 2011). In addition, a claimant may at any time seek an additional schedule award and submit probative medical evidence showing an increase in an employment-related permanent impairment.

¹⁰ The A.M.A., *Guides* 449, Table 15-23.

¹¹ As noted by the A.M.A., *Guides*, the *QuickDASH* is a shortened version of the standard disabilities of the arm, shoulder and hand questionnaire. A.M.A., *Guides* 482.

The weight of the medical evidence of record establishes six percent permanent impairment to appellant's left arm. The maximum number of weeks for arm impairment is 312 weeks. Therefore, appellant is entitled to six percent of 312 weeks or 18.72 weeks of compensation. The Board finds OWCP properly found that appellant was entitled to 18.72 weeks of compensation.

LEGAL PRECEDENT -- ISSUE 2

It is well established that the period covered by a schedule award commences on the date that the employee reaches MMI from residuals of the employment injury.¹² This is a medical issue and is determined by the medical evidence.¹³ With respect to the period of a schedule award, an employee cannot concurrently receive compensation under a schedule award and compensation for disability for work.¹⁴

ANALYSIS -- ISSUE 2

As noted, appellant's entitlement to compensation for the six percent left arm permanent impairment is 18.72 weeks. With respect to the specific period for payment of the 18.72 weeks of compensation, this is based on the date of MMI.

Dr. Rutherford indicated that the date of MMI was March 11, 2010, approximately six months after the carpal tunnel release surgery.¹⁵ The Board finds that the evidence supports a finding that MMI occurred on March 11, 2010. OWCP did not begin the schedule award on March 11, 2010 because appellant was still receiving compensation for wage loss at that time. While appellant refers to a "delay" in the schedule award, this was not adverse to her because if the schedule award had begun on March 11, 2010 she would not have been entitled to wage-loss compensation at the same time.¹⁶

On appeal, appellant contends that her schedule award should have begun on August 16, 2010 when she returned to work, instead of September 26, 2010. She would be entitled to 18.72 weeks of compensation, regardless of whether the schedule award began on August 16 or September 26, 2010.

The Board finds that OWCP properly determined the period of the award for 18.72 weeks from September 26, 2010 to February 4, 2011. Based on the evidence of record, the period of the award does not represent an adverse finding to appellant. She may request an increased

¹² *Albert Valverde*, 36 ECAB 233, 237 (1984).

¹³ *Adela Hernandez-Piris*, 35 ECAB 839 (1984); *James T. Rogers*, 33 ECAB 347 (1981).

¹⁴ *James A. Earle*, 51 ECAB 567 (2000); *Andrew B. Poe*, 27 ECAB 510 (1976).

¹⁵ The medical adviser did not provide any explanation as to why the date of MMI provided by Dr. Rutherford was inappropriate.

¹⁶ See *Marie J. Born*, 27 ECAB 623 (1976).

schedule award based on evidence of new exposure or medical evidence showing progression of an employment-related condition resulting in greater permanent impairment.

CONCLUSION

The Board finds that appellant does not have more than a six percent employment-related permanent impairment to her left arm. In addition, the Board finds that OWCP properly determined the period of the award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 29, 2011 is affirmed.

Issued: June 21, 2012
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