

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

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<b>W.W., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 11-1433</b>
	)	<b>Issued: March 8, 2012</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Washington, DC, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 31, 2011 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs (OWCP) dated February 22, 2011. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

**ISSUE**

The issue is whether appellant has established that he has more than five percent permanent impairment of each upper extremity, for which he received schedule awards.

On appeal appellant contends that his impairment rating for his left upper extremity should be more than his right as he has more damage to his left hand.

**FACTUAL HISTORY**

On February 7, 2004 appellant, then a 59-year-old city-carrier, filed an occupational disease claim alleging that the pain in his left shoulder and hand was employment related.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

OWCP accepted the claim for cervical strain, which was subsequently expanded for an aggravation of cervical radiculopathy and bilateral carpal tunnel syndrome.

On June 10, 2010 appellant filed a claim for a schedule award.

In a June 18, 2010 report, Dr. Philip A. Bovell, appellant's treating physician, opined that appellant had an 18 percent upper extremity permanent impairment using Table 15-5 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6<sup>th</sup> ed. 2009). He diagnosed bilateral wrist carpal tunnel syndrome and bilateral shoulder injury with radiculopathy. Using Table 15-5, Dr. Bovell concluded class 2 for Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS) resulting in a class C or 18 percent impairment.

On January 28, 2011 Dr. Christopher R. Brigham, an OWCP medical adviser and Board-certified occupational medicine physician, reviewed Dr. Bovell's report and concluded that appellant had a five percent impairment of both the left and right upper extremities. Referring to Table 15-23, page 449 of the sixth edition of the A.M.A., *Guides*, he found a grade modifier 1, based on a motor/sensory conduction delay confirmed by electrodiagnostic testing. Dr. Brigham assessed a default upper extremity impairment of five percent for moderate functional impairment of the median nerves. Adding the grade modifiers results in five (one + three + one = five), which is then divided by three to result in an average of two. A grade 2 is assigned a default impairment of five percent for the right upper extremity. Dr. Brigham found the evidence insufficient for determination of a functional score so that no additional impairment or lower value was assigned and the rating remained the default. He stated that the left hand impairment was calculated the same as the right hand so appellant had a five percent impairment of the left upper extremity.

By decision dated February 22, 2011, OWCP granted appellant schedule awards for five percent permanent impairment of his left and right upper extremities. The period of the awards was from October 24, 2010 to May 30, 2011.

### **LEGAL PRECEDENT**

Under section 8107 of FECA<sup>2</sup> and section 10.404 of the implementing federal regulations,<sup>3</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. FECA, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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.<sup>4</sup>

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<sup>2</sup> *Id.* at § 8107.

<sup>3</sup> 20 C.F.R. § 10.404

<sup>4</sup> *D.J.*, 59 ECAB 620 (2008); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

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 and Health (ICF).<sup>5</sup> Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.<sup>6</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>7</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed through OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.<sup>8</sup>

### ANALYSIS

OWCP accepted that appellant sustained cervical strain, aggravation of cervical radiculopathy and bilateral carpal tunnel syndrome. Dr. Brigham, OWCP's medical adviser, relied upon the clinical findings contained in Dr. Bovell's report in making the impairment determination.

Dr. Bovell, in his June 18, 2010 report, concluded that appellant had an 18 percent upper extremity permanent impairment according to Table 15-5 of the A.M.A., *Guides* (6<sup>th</sup> ed.). He did not identify whether the impairment rating was for one or both upper extremities. Moreover, Dr. Bovell failed to provide any analysis of the grade modifiers based on functional history, physical examination and clinical studies.<sup>9</sup>

The only medical report properly using the A.M.A., *Guides* in addressing appellant's impairment was from Dr. Brigham, an OWCP medical adviser, who submitted a January 27, 2011 report following the assessment formula of the sixth edition of the A.M.A., *Guides*. Dr. Brigham utilized the clinical findings of Dr. Bovell, a treating physician, who found appellant had reached maximum medical improvement and had an 18 percent impairment. Regarding median nerve involvement, OWCP's medical adviser found a grade 2 modifier according to Table 15-23 for decreased sensation with significant symptoms on physical examination and a motor conduction block. Dr. Brigham assessed a five percent impairment of each upper extremity for moderate functional impairment. He found the evidence insufficient for determination of a functional score so that no additional impairment or lower value was assigned and the rating remained the default of five percent.

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<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

<sup>6</sup> A.M.A., *Guides* 383-419 (6<sup>th</sup> ed. 2009).

<sup>7</sup> *Id.* at 411.

<sup>8</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010). See *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

<sup>9</sup> A.M.A., *Guides* 405-09 (6<sup>th</sup> ed. 2009).

The Board finds that the only medical report properly using the sixth edition of the A.M.A., *Guides* is the January 27, 2011 report from Dr. Brigham, OWCP's medical adviser, who applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Bovell's clinical findings. Also, there is no medical evidence of record which properly used the A.M.A., *Guides* and demonstrated a greater percentage of permanent impairment. Therefore, OWCP properly relied on Dr. Brigham's assessment of a five percent impairment of each extremity based on 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 has not established that he sustained more than a five percent impairment of the right upper extremity and a five percent impairment of the left upper extremity, for which he received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 22, 2011 is affirmed.

Issued: March 8, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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