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

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| **R.H., Appellant** | ) | |
| **and** | ) | **Docket No. 11-1753** |
| | ) | **Issued: March 16, 2012** |
| **U.S. POSTAL SERVICE, HOUSTON PERFORMANCE CLUSTER, Houston, TX, Employer** | ) | |

*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 July 26, 2011 appellant filed a timely appeal from the June 14, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) granting her schedule award compensation. Pursuant to the Federal Employees' Compensation Act[1] (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 has more than 12 percent permanent impairment of her right arm, for which she received a schedule award.

### ***FACTUAL HISTORY***

On April 27, 2008 appellant, then a 46-year-old automated flat sorter machine clerk, filed an occupational disease claim alleging that on or about April 27, 2008 she experienced right

[1] 20 C.F.R. § 8101 *et seq.*

wrist pain, which she attributed to her employment. The claim was accepted for work-related right carpal tunnel syndrome. On October 7, 2008 appellant underwent right carpal tunnel release surgery which was authorized by OWCP. On March 30, 2009 she filed an occupational disease claim alleging that on or about March 2, 2007 she started having neck pain and right shoulder pain which she attributed to her employment. The case was accepted for work-related impingement syndrome, rotator cuff tear, tendinitis and bursitis of the right shoulder. On May 21, 2009 appellant underwent rotator cuff repair surgery which was authorized by OWCP. On July 8, 2010 she filed a claim for a schedule award due to her accepted work injuries.

In August 20, 2010 and January 7, 2011 reports, Dr. Roger K. Pringle, an attending chiropractor, provided impairment ratings for appellant's right arm.[2] Due to the lack of a current assessment of her right arm impairment by a physician, OWCP referred her to Dr. Zvi Kalisky, a Board-certified physical medicine and rehabilitation physician, for an updated examination and an impairment rating.

In a June 3, 2011 report, Dr. Kalisky discussed appellant's factual and medical history and reported findings on examination. Appellant complained of pain in the right wrist and right shoulder, which she rated at a 1-3/10 and which increased with activity. Dr. Kalisky noted that appellant also complained of numbness and tingling in the ring and middle fingers and occasionally in the thumb and index fingers on the right side. The pain no longer woke appellant up at night but she was complaining of morning pain and stiffness in the right wrist as well as numbness. Appellant's shoulder pain was intermittent and increased with lifting, overhead activities or reaching behind her back. Dr. Kalisky stated that examination of the right wrist revealed mild tenderness over the volar aspect, positive Tinel's sign and negative Phalen's sign.[3] There was no atrophy of the intrinsic muscles and no focal weakness. Intrinsic muscle strength was 5/5 and, on sensory examination, two-point discrimination was impaired at nine millimeters in the thumb and index finger. Physical examination of the right shoulder revealed no muscle atrophy and, on palpation, there was tenderness over the anterior shoulder and acromioclavicular joint area. Dr. Kalisky indicated that impingement signs were mildly positive and reported range of motion findings for the right shoulder.

Dr. Kalisky determined that appellant reached maximum medical improvement on January 7, 2011. Based on Table 15-23 on page 449 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009), it was noted that the test findings category fell under grade modifier 1 (conduction delay -- sensory and/or motor). Dr. Kalisky stated that the history category fell under grade modifier 1 and the physical findings category fell under grade modifier 2 for decreased sensation. The grade

[2] Dr. Pringle would not be a physician under FECA as he did not diagnose a spinal subluxation as demonstrated through x-ray testing. Under section 8101(2) of FECA, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). *See Jack B. Wood*, 40 ECAB 95, 109 (1988). In any event, the Board has held that the opinion of a chiropractor, regarding a permanent impairment of a scheduled extremity or other member of the body is beyond the scope of the statutory limitation of a chiropractor's services. *Pamela K. Guesford*, 53 ECAB 726 (2002); *see also George E. Williams*, 44 ECAB 530 (1993).

[3] With respect to appellant's right carpal tunnel syndrome, Dr. Kalisky noted that the diagnosis of carpal tunnel syndrome was confirmed electrodiagnostically.

modifier average after rounding was 1 and, therefore, grade modifier 1 was selected as the final rating category with default value of two percent upper extremity impairment. The disabilities of the arm, shoulder and hand (*Quick*DASH) score was 50 (a moderate score) which was consistent with functional scale grade modifier 2. Dr. Kalisky stated that this caused movement one space to the right of the default value resulting in a three percent impairment of the right arm due to carpal tunnel syndrome.

With respect to appellant's right shoulder, Dr. Kalisky stated that in view of her range of motion loss, the range of motion impairment rating method was used. Under Table 15-34 on page 475, right shoulder flexion of 140 degrees resulted in three percent upper extremity impairment and right shoulder abduction of 140 degrees also gave three percent upper extremity impairment. Right shoulder extension of 40 degrees resulted in one percent upper extremity impairment and internal rotation of 60 degrees gave two percent upper extremity impairment. Dr. Kalisky indicated that appellant's other right shoulder motions were normal and, therefore, her total motion impairment was nine percent of the right arm. Referencing Table 15-35 on page 477, appellant's nine percent right arm impairment was consistent with range of motion grade modifier 1. Appellant's *Quick*DASH score of 50 was consistent with grade modifier 2. Dr. Kalisky stated that, under Table 15-36 on page 477, the fact that her functional history grade adjustment was one position higher than the range of motion grade modifier meant that the total range of motion impairment was to be increased by a factor of 5 percent of the range of motion impairment, *i.e.*, to 9.45 percent which was rounded down to 9 percent of the right arm. Therefore, appellant had a nine percent impairment of her right arm attributable to her right shoulder. Combining the percentages for right shoulder (9 percent) and for the carpal tunnel (3 percent) gave a total right arm impairment of 12 percent.

On June 9, 2011 Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, agreed with the report of Dr. Kalisky. He concluded that appellant had 12 percent permanent impairment of her right arm.

In a June 14, 2011 decision, OWCP granted appellant a schedule award for a 12 percent permanent impairment of her right arm. The award ran for 37.44 weeks from January 7 to June 4, 2011.

## ***LEGAL PRECEDENT***

The schedule award provision of FECA[4] and its implementing regulations[5] 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

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999).

appropriate standard for evaluating schedule losses.[6] The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.[7]

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[8] In Table 15-23, grade modifiers levels (ranging from 0 to 4) are described for the categories test findings, history and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down by one percent based on functional scale, an assessment of impact on daily living activities.[9]

With respect to the shoulder, reference is first made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. A class of diagnosis may be determined from the Shoulder Regional Grid (including identification of a default grade value).[10] Table 15-5 also provides that, if motion loss is present for a claimant who has undergone rotator cuff repair surgery, impairment may alternatively be assessed using section 15.7 (range of motion impairment). Such a range of motion impairment stands alone and is not combined with diagnosis impairment.[11] Impairment ratings for limited shoulder motion are derived from Table 15-34 on page 475.[12] Under Table 15-35 on page 477, a grade modifier value is assigned to the impairment ratings calculated from Table 15-35. Table 15-36 on page 477 provides standards for adjusting the grade modifier value based on a claimant's functional history.[13]

## ***ANALYSIS***

Appellant's claim was accepted for work-related right carpal tunnel syndrome and impingement syndrome, rotator cuff tear, tendinitis and bursitis of the right shoulder. On October 7, 2008 she underwent right carpal tunnel release surgery which was authorized by OWCP. On May 21, 2009 appellant underwent rotator cuff repair surgery of the right shoulder which was authorized by OWCP. She received a schedule award for 12 percent permanent impairment of her right arm. The award was based on the June 3, 2011 report of Dr. Kalisky, a Board-certified physical medicine and rehabilitation physician serving as an OWCP referral physician and the June 9, 2011 report of Dr. Katz, a Board-certified orthopedic surgeon serving as an OWCP medical adviser.

[6] *Id*.

[7] FECA Bulletin No. 09-03 (issued March 15, 2009).

[8] *See* A.M.A., *Guides* (6th ed. 2009) 449, Table 15-23.

[9] A survey completed by a given claimant, known by the name *Quick*DASH, may be used to determine the function scale score. *Id.* at 448-49.

[10] *See* A.M.A., *Guides* (6th ed. 2009) 401-11.

[11] *Id.* at 402-05, 475-78.

[12] *Id.* at 475, Table 15-34.

[13] *Id.* at 477, Tables 15-35 and 15-36.

Dr. Kalisky discussed his review of the medical records and found that appellant had 12 percent right arm impairment under the standards of the sixth edition of the A.M.A., *Guides.*[14] He properly applied the A.M.A., *Guides* to reach his rating of impairment.

Dr. Kalisky referenced Table 15-23 (Entrapment/Compression Neuropathy Impairment) on page 449 of the sixth edition of the A.M.A., *Guides*.[15] He chose grade modifiers from the table for the various categories, including test findings (grade modifier 1), history (grade modifier 1) and physical findings (grade modifier 2). The Board notes that Dr. Kalisky provided an extensive discussion of appellant's complaints and examination findings and chose grade modifiers that were in accordance with these complaints and findings. Dr. Kalisky then correctly averaged the grade modifiers, considered the effect of her functional scale and chose the final value of three percent for her impairment due to right carpal tunnel syndrome.

For the right shoulder, Dr. Kalisky properly determined that appellant had a nine percent impairment rating due to limited right shoulder motion.[16] Per Table 15-34 on page 475, right shoulder flexion of 140 degrees resulted in three percent upper extremity impairment and right shoulder abduction of 140 degrees also gave three percent upper extremity impairment. Right shoulder extension of 40 degrees resulted in one percent upper extremity impairment and internal rotation of 60 degrees yielded two percent arm impairment. Under Tables 15-35 and 15-36, Dr. Kalisky then properly considered the effect of appellant's functional history on his rating related to limited right shoulder motion and determined that no change in the rating was warranted.[17]

Using the Combined Values Chart, beginning on page 604, Dr. Kalisky combined the 3 percent rating related to the right wrist and the 9 percent rating related to the right shoulder to properly conclude that appellant had a 12 percent permanent impairment of her right arm. On June 9, 2011 Dr. Katz reviewed the report of Dr. Kalisky and agreed with the impairment rating.

On appeal, appellant questioned Dr. Kalisky's choice of the date of maximum medical improvement, but she has not identified any medical evidence showing that an improper date of maximum medical improvement has been used. She has not submitted medical evidence showing that she has more than 12 percent permanent impairment of her right arm and OWCP properly denied her claim for a higher 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.

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[14] OWCP's decision regarding impairment was not issued until after May 1, 2009 and, therefore, evaluation of appellant's impairment under the sixth edition of the A.M.A., *Guides* was appropriate. *See supra* note 7.

[15] *See supra* note 8.

[16] Dr. Kalisky first appropriately referenced Table 15-5 (Shoulder Regional Grid), but determined that appellant's limited right shoulder motion after rotator cuff repair allowed evaluation under the range of motion method found in section 15.7. *See supra* notes 10 through 12.

[17] *See supra* note 13.

## ***CONCLUSION***

The Board finds that appellant did not meet her burden of proof to establish that she has more than 12 percent permanent impairment of her right arm, for which she received a schedule award.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the June 14, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 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