

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

G.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lenoir, NC, Employer**

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**Docket No. 13-100
Issued: March 11, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 18, 2012 appellant filed a timely appeal from a September 10, 2012 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.

ISSUE

The issue is whether appellant has more than a five percent right arm permanent impairment.

FACTUAL HISTORY

On November 5, 2010 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right arm injury on November 2, 2010 from a motor vehicle accident in the performance of duty. OWCP initially accepted the claim for a right

¹ 5 U.S.C. § 8101 *et seq.*

elbow contusion on December 6, 2010. On January 20, 2011 it accepted the claim for enthesopathy of the elbow region, right flexor tendon tear, and on June 3, 2011 accepted closed dislocation of the right elbow.

In a report dated November 8, 2011, Dr. Jeremy Johnson, a Board-certified orthopedic surgeon, indicated that appellant had undergone a right ulnar collateral ligament reconstruction surgery on June 13, 2011.² He provided results on examination, including elbow range of motion and grip strength results. Dr. Johnson reported that the ulnar collateral ligament showed slight laxity but an excellent end point. He completed a form report stating that appellant had a 20 percent arm impairment.³ No citations to tables or other explanation was provided as to the calculation.

OWCP referred the case to an OWCP medical adviser for review. In a report dated January 18, 2012, the medical adviser identified Table 15-4 (elbow regional grid) of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th edition, hereinafter A.M.A., *Guides*). He indicated that the default impairment for the ulnar collateral ligament injury was five percent, and there was no adjustment based on application of the relevant grade modifiers. The medical adviser reported a date of maximum medical improvement of November 8, 2011.

By decision dated February 15, 2012, OWCP issued a schedule award for a five percent right arm impairment. The period of the award was 15.60 weeks from November 20, 2012.⁴

Appellant requested a hearing before an OWCP hearing representative, which was held on June 12, 2012. On July 10, 2012 he submitted a June 19, 2012 report from Dr. Johnson, who stated that his permanent disability rating was “based on the patient’s residual laxity, decreased range of motion, decreased strength and likely permanent paresthesias in his operative right elbow.” Dr. Johnson further stated that, based on the sixth edition of the A.M.A., *Guides*, appellant was “given a 3 percent permanent partial disability due to mild dysthetic pain of 3 percent as seen on Table 13.7 and a 13 percent upper extremity permanent partial disability based on instability of his ulnar collateral ligament repair as noted on Table 15.4.” He concluded that appellant had a 16 percent right arm impairment.

By decision dated August 23, 2012, the hearing representative remanded the case for review of Dr. Johnson’s report by an OWCP medical adviser. In a report dated September 5, 2012, the medical adviser opined that appellant did not have more than a five percent right arm permanent impairment. The medical adviser stated that Dr. Johnson’s opinion as to 16 percent was not a proper application of the A.M.A., *Guides*.

² The surgical report of record dated June 13, 2011 reported the surgery was to the left elbow.

³ The form report was a state workers’ compensation form.

⁴ The decision stated that the impairment was to the right elbow. The elbow is not a scheduled member of the body under 5 U.S.C. § 8107. The 15.60 weeks of compensation represents five percent of the maximum 312 weeks of compensation for impairment to the arm.

In a decision dated September 10, 2012, OWCP found that appellant was not entitled to more than the five percent schedule award previously issued.

LEGAL PRECEDENT

Section 8107 of FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁵ Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁷

With respect to an elbow impairment, the A.M.A., *Guides* provides a regional grid at Table 15-4. The class of impairment (CDX) is determined based on specific diagnosis, and then the default value for the identified CDX is determined. The default value (grade C) may be adjusted by using grade modifiers for Functional History (GMFH, Table 15-7), Physical Examination (GMPE, Table 15-8) and Clinical Studies (GMCS, Table 15-9). The adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁸

ANALYSIS

In the present case, the attending orthopedic surgeon, Dr. Johnson, initially provided an opinion in a November 8, 2011 form report that appellant had a 20 percent right arm impairment. He provided no reference to specific tables under the A.M.A., *Guides*. A medical report that does not describe the basis for the impairment rating or refer to specific tables in the A.M.A., *Guides* is of diminished probative value.⁹

OWCP referred the case to a medical adviser, who reviewed the findings in Dr. Johnson's November 8, 2011 narrative report and identified Table 15-4. Under this table, an ulnar collateral ligament injury with occasional instability is CDX 1 with a default (grade C) arm impairment of five percent.¹⁰ The medical adviser then identified the grade modifiers: a GMFH of one (mild problem, pain with vigorous activity), a GMPE of two (moderate problem with moderate instability). As to clinical studies, the medical adviser found this was not applicable.

⁵ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁶ A. *George Lampo*, 45 ECAB 441 (1994).

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

⁸ The net adjustment is up to +2 (Grade E) or -2 (Grade A).

⁹ See *Mary L. Henninger*, 52 ECAB 408 (2001).

¹⁰ A.M.A., *Guides* 399, Table 15-4.

Applying the formula noted above, the correct adjustment would have been +1 (grade D), as $(1-1) + (2-1) = 1$. OWCP's medical adviser attempted to divide 1 by 3, stating that $1/3 = 0$, or no adjustment. This is not a correct application of the formula. Based on the OWCP medical adviser's findings, the correct arm impairment was grade C adjusted up one grade due to the functional history and physical examination resulting in a grade D, or a six percent arm impairment under Table 15-4.¹¹

With respect to Dr. Johnson's June 19, 2012 report, OWCP properly found his opinion that appellant had a 16 percent arm impairment was of little probative value. Dr. Johnson identified a three percent impairment under Table 13-7, a table that refers to a mental status examination for neurologically-impaired patients.¹² It is not clear what table Dr. Johnson intended to apply regarding pain. As to Table 15-4, Dr. Johnson provides no explanation as to how a 13 percent impairment was calculated. For ulnar collateral ligament injuries under Table 15-4, even if Dr. Johnson was referring to "recurrent instability: frequent; resulting in functional limitation," the range of impairment is 8 to 12 percent.¹³ In the absence of a rationalized medical opinion, Dr. Johnson's report is not sufficient to establish the degree of permanent impairment.

The Board finds the weight of the medical evidence of record indicates that appellant had a six percent arm impairment. On return of the case record, OWCP should issue a schedule award for an additional one percent right arm impairment. Appellant may request at any time an increased schedule award based on new probative evidence showing an increased employment-related permanent impairment.

CONCLUSION

The Board finds that the probative medical evidence of record establishes a six percent right arm impairment.

¹¹ *Id.*

¹² *Id.* at 330, Table 13-7.

¹³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 10, 2012 is modified to reflect a six percent right arm impairment and affirmed as modified.

Issued: March 11, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board