

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

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<b>M.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 14-865</b>
	)	<b>Issued: August 7, 2014</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, North Metro, GA, Employer</b>	)	
_____	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

**DECISION AND ORDER**

Before:  
PATRICIA HOWARD FITZGERALD, Acting Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 7, 2014 appellant, through counsel, filed a timely appeal from a January 17, 2014 schedule award decision of the Office of Workers' Compensation Programs (OWCP). 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 schedule award determination.

**ISSUE**

The issue is whether appellant established that she has more than 12 percent permanent impairment of the left arm for which she received a schedule award.

**FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> In an October 2, 2012 decision, the Board found that, with regard to her left shoulder, appellant had not met her burden of proof to

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

<sup>2</sup> Docket No. 12-752 (issued October 2, 2012). OWCP accepted appellant's claim for a thoracic sprain, left wrist sprain and left shoulder impingement syndrome on May 21, 2008.

establish that she had greater than the 12 percent impairment of the left upper extremity based on loss of range of motion of the left shoulder. The Board found that the case was not in posture for a decision with regard to whether she had any permanent impairment due to her accepted left wrist sprain. The Board found that the treating physician, Dr. Martin Fritzhand, a Board-certified urologist, provided appellant with an impairment rating of four percent secondary to poor radial deviation. However, OWCP's medical adviser did not address impairment in the wrist region. The Board remanded the case for further development of the medical evidence. The facts of the case as contained in the prior decision are incorporated by reference.

By letter dated April 5, 2013, OWCP requested that appellant contact her attending physician and obtain an opinion regarding appellant's accepted work-related left wrist sprain. It advised her that the physician needed to utilize the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2008), hereinafter A.M.A., *Guides*, and provide an opinion regarding the percentage of impairment with an explanation of how the calculation was derived. No additional evidence was received.

By decision dated May 9, 2013, OWCP denied appellant's claim for a schedule award due to the accepted left wrist sprain.

OWCP received a report dated May 2, 2013, from Dr. Maurice Jove, a Board-certified orthopedic surgeon, who noted that appellant had no significant issues related to her "wrist." Dr. Jove indicated that appellant was experiencing pain that "goes in a C6 distribution." He found that her symptoms as of five years ago had resolved and that she reached maximum medical improvement. Dr. Jove explained that her diagnosis upon which the impairment was based, was chronic wrist sprain and advised that she had no impairment of the wrist, a full range of motion without any subluxation, and no dislocation or instability. He noted that appellant's impairment rating, "if any" would be attributed to her neck. Dr. Jove concluded his report by advising that her wrist was at maximum medical improvement.

On May 14, 2013 appellant's attorney requested a telephonic hearing, which was held on October 30, 2013. Counsel argued that, in 2011, the previous treating physician, Dr. Fritzhand, found four percent impairment of the left wrist and the case was remanded to determine whether she had any impairment attributable to the left wrist. The hearing representative held the record open for additional medical evidence.

By decision dated January 17, 2014, a hearing representative affirmed the May 9, 2013 decision.

### **LEGAL PRECEDENT**

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>3</sup> FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all

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<sup>3</sup> 5 U.S.C. § 8107.

claimants.<sup>4</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.<sup>6</sup>

### ANALYSIS

The evidence of record is insufficient to establish that appellant has any impairment attributable to the left wrist. On the previous appeal, the Board directed OWCP to further develop the medical evidence with regard to whether she had any permanent impairment attributable to her left wrist. Consistent with this decision, OWCP asked appellant, on April 5, 2013, to obtain a report from her treating physician addressing the extent of permanent impairment attributable to her left wrist sprain.

OWCP received a May 2, 2013 report from Dr. Jove, appellant's treating physician, who determined that appellant was at maximum medical improvement and had no significant issues related to her left wrist and that her symptoms of five years earlier had resolved. Dr. Jove determined that she had no impairment of the wrist, and that she had full range of wrist motion without any subluxation, dislocation or instability. He noted that appellant's impairment rating, "if any" would be attributed to her neck and indicated that she had pain in the C6 distribution.

Counsel contended that the 2011 report from Dr. Fritzhand found that appellant had four percent impairment in the left wrist region. It was noted at the hearing that the report from Dr. Jove found that she had no permanent impairment of the left arm attributable to her left wrist. The hearing representative held the record open for 30 days for submission of additional medical evidence concerning appellant's left wrist. No evidence was submitted. The Board has held that an opinion on a permanent impairment must be based on a reasonably current physical examination and that an opinion based on examination conducted several years earlier is of diminished probative value.<sup>7</sup> There is no reasonably current medical evidence of record establishing that appellant sustained impairment, attributable to her left wrist, pursuant to 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 OWCP properly denied appellant's claim for an additional schedule award.

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<sup>4</sup> *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010); *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

<sup>7</sup> *See E.R.*, Docket No. 14-53 (issued April 4, 2014).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

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

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