

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

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**M.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
San Francisco, CA, Employer**

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**Docket No. 14-1446  
Issued: October 29, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 9, 2014 appellant filed a timely appeal from the May 8, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP), which awarded schedule compensation. 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 to review the merits of this case.

**ISSUE**

The issue is whether appellant has more than a 12 percent impairment of her left upper extremity, for which she received a schedule award.

**FACTUAL HISTORY**

On September 17, 2009 appellant, a 39-year-old letter carrier, sustained a traumatic injury in the performance of duty when she released the hand brake on her mail truck. She underwent left shoulder arthroscopy with decompression and debridement of the scapularis

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

tendon. Appellant underwent a second left shoulder arthroscopy with distal clavicle excision, subacromial decompression and rotator cuff debridement. OWCP accepted her claim for left biceps strain, left labral tear, left shoulder strain, left rotator cuff tear, left shoulder impingement, and aggravation of left shoulder acromioclavicular arthritis.

Appellant filed a schedule award claim. As her physician did not perform impairment ratings under the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009), OWCP referred her to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon.

Dr. Swartz examined appellant on March 21, 2014. He offered a diagnosis-based impairment rating based on impingement syndrome. Referring to Table 15-5, page 402 of the *Guides*, he noted a default impairment rating of three percent. Dr. Swartz adjusted this slightly higher to five percent based on moderate functional history and severe physical examination findings (loss of motion). He concluded that appellant had a five percent impairment of her left upper extremity due to impingement syndrome.

On April 21, 2014 Dr. Arthur S. Harris, an OWCP medical adviser, reviewed Dr. Swartz' evaluation. He noted that appellant had undergone an arthroscopic distal clavicle excision or resection. Referring to Table 15-5, page 403 of the A.M.A., *Guides*, he found that appellant had a 12 percent impairment of the left upper extremity due to a distal clavicle resection diagnosis-based rating.

In a decision dated May 8, 2014, OWCP issued a schedule award for a 12 percent impairment of appellant's left upper extremity.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>2</sup> and the implementing regulations<sup>3</sup> 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.<sup>4</sup>

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. OWCP has adopted the A.M.A., *Guides* as the appropriate

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

standard for evaluating schedule losses.<sup>5</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup>

### ANALYSIS

Diagnosis-based impairment is the primary method of evaluation for the upper extremities. The first step is to choose the diagnosis that is most applicable for the region being assessed. If more than one diagnosis can be used, the highest causally-related impairment rating should be used. This will generally be the more specific diagnosis. Typically, one diagnosis will adequately characterize the impairment and its impact on activities of daily living.<sup>7</sup>

Dr. Swartz, the orthopedic surgeon and referral physician, evaluated appellant's impairment based on her diagnosis of impingement syndrome. He determined that she had a five percent impairment of her left upper extremity, which is the highest rating allowed for that diagnosis. Dr. Harris, OWCP's medical adviser observed, however, that appellant was also status post distal clavicle resection. Using the diagnosis of acromioclavicular joint injury or disease he found that she had a 12 percent impairment of her left upper extremity.

The Board notes that, if more than one diagnosis can be used, the highest causally-related impairment rating should be used. Upper extremity impairments for shoulder pain and strain/sprain are just one or two percent. Impairment for impingement syndrome, partial thickness rotator cuff tears and labral lesions can be as much as five percent. Impairment for acromioclavicular injury or disease can be as high as 12 percent if the patient is status post distal clavicle resection.<sup>8</sup> As this is the highest impairment rating allowed under the A.M.A., *Guides*, the Board finds that OWCP properly followed the recommendation of its medical adviser and issued a schedule award for a 12 percent impairment of her left upper extremity. Accordingly, the Board will affirm OWCP's May 8, 2014 decision.

The Board notes that section 8107(c)(1) of FECA provides 312 weeks of compensation for the total loss of an arm.<sup>9</sup> Section 8107(c)(19) provides that compensation for partial losses is proportionate.<sup>10</sup> Therefore, 12 percent of 312 weeks of compensation is 37.44 weeks of compensation, which is what OWCP awarded.

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<sup>5</sup> 20 C.F.R. § 10.404; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010).

<sup>7</sup> A.M.A., *Guides* 387, 389 (6<sup>th</sup> ed. 2009).

<sup>8</sup> There is no indication appellant suffers from at least a Type IV acromioclavicular separation, characterized by a complete disruption of the acromioclavicular joint and coracoclavicular ligaments and avulsion or detachment of the coracoclavicular ligament from the clavicle.

<sup>9</sup> 5 U.S.C. § 8107(c)(1).

<sup>10</sup> *Id.* at § 81017(c)(19).

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 no more than a 12 percent impairment of her left upper extremity, for which she received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 8, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 29, 2014  
Washington, DC

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

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

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