

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

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L.C., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Waterford, WI, Employer )

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**Docket No. 15-1264  
Issued: August 26, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On May 20, 2015 appellant filed a timely appeal from a March 25, 2015 merit 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 merits of this case.

**ISSUE**

The issue is whether appellant has more than four percent permanent impairment of the right upper extremity, for which she received a schedule award.

**FACTUAL HISTORY**

On January 15, 2014 appellant, then a 64-year-old rural carrier, filed a traumatic injury claim alleging that on January 14, 2014 she fractured her right elbow and dislocated her right

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

arm when she slipped on ice while exiting her delivery vehicle. OWCP accepted the claim for a closed dislocation of the right elbow.

In a progress note dated March 3, 2013, a physical therapist measured flexion of 140 degrees and extension of 8 degrees.

Appellant resumed her regular employment on March 12, 2014.

An April 1, 2014 x-ray of the elbow revealed a “[s]table examination of the elbow with fracture fragments anterior to the distal humerus and radial to the proximal radial diaphysis.”

On April 23, 2014 appellant filed a claim for a schedule award. By letter dated May 2, 2014, OWCP requested that she submit an impairment evaluation from an attending physician addressing the extent of any permanent impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a report dated May 13, 2014, Dr. Nvjot S. Kohli, a Board-certified orthopedic surgeon, diagnosed status post elbow dislocation and radial head fracture. On examination he found reduced motion and that appellant was “neurovascularly intact.” An x-ray revealed a radial head fragment anteriorly. Dr. Kohli stated, “[Appellant] has ... an acceptable range of motion. She still lacks terminal extension and terminal flexion and has pain at the end ranges. We are going to go ahead and give [appellant] end of healing and a PPD [permanent partial disability] of 10 [percent] given the fractures and dislocation, persistent pain and decreased motion.”

On March 2, 2015 an OWCP medical adviser reviewed Dr. Kohli’s May 13, 2014 report and found that it was not sufficient to support a schedule award as he did not calculate the impairment rating using the A.M.A., *Guides*. He noted that measurements from a March 3, 2014 physical therapy appointment revealed elbow range of motion from 8 to 140 degrees, which constituted mildly reduced motion under Table 15-33 on page 474 of the A.M.A., *Guides*. The medical adviser discussed the x-ray findings of a radial head fragment without symptoms of catching and locking. He determined that appellant did not have instability or a neurovascular condition. The medical adviser identified the diagnosis-based impairment as an elbow fracture with residual symptoms under Table 15-4 on page 399, noting that the A.M.A., *Guides* did not provide a rating for a reduced and stable elbow dislocation. He applied a grade modifier of two for functional history due to appellant’s pain with range of motion, which moved the default value of three percent over one place for a total right upper extremity impairment of four percent. The medical adviser opined that she had reached maximum medical improvement on May 13, 2014.

By decision dated March 25, 2015, OWCP granted appellant a schedule award for a four percent permanent impairment of the right upper extremity. The period of the award ran for 12.48 weeks from May 13 to August 8, 2014.

## LEGAL PRECEDENT

The schedule award provision of FECA,<sup>2</sup> and its implementing federal 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. 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>4</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>5</sup>

The sixth edition requires identifying the impairment Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).<sup>6</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

## ANALYSIS

OWCP accepted appellant's claim for a closed dislocation of the right elbow. On April 23, 2014 appellant filed a claim for a schedule award.

On May 13, 2014 Dr. Kohli diagnosed status post elbow dislocation and radial head fracture. He found that appellant was intact neurovascularly but did not have full flexion and extension. A radial head fragment anteriorly was noted by x-ray. Dr. Kohli determined that appellant had 10 percent permanent impairment due to her fracture and dislocation as a result of reduced motion and pain. He did not, however, refer to the A.M.A., *Guides* in reaching his impairment determination. As Dr. Kohli did not provide an impairment rating based on the sixth edition of the A.M.A., *Guides*, the Board finds his opinion is of diminished probative value.<sup>7</sup>

An OWCP medical adviser reviewed Dr. Kohli's report and applied the provisions of the A.M.A., *Guides* to his findings. He identified the diagnosis as a class 1 elbow fracture, which yielded a default value of three percent impairment. The medical adviser properly noted that the A.M.A., *Guides* did not provide an impairment rating for a stable elbow dislocation. He found that a physical therapist measured range of motion of the elbow from 8 to 140 degrees on March 3, 2014, which constituted a mild impairment under Table 33 on page 474 of the A.M.A.,

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *Id.* at § 10.404(a).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>6</sup> A.M.A., *Guides* 494-531.

<sup>7</sup> *See Richard A. Neidert*, 57 ECAB 474 (2006) (an attending physician's report is of little probative value where the A.M.A., *Guides* are not properly followed).

*Guides.* The Board finds that the medical adviser properly applied a grade modifier of two for functional history, which moved the default value one place to the right for a total right upper extremity impairment of four percent. The Board finds no probative medical evidence establishing a greater degree of impairment.<sup>8</sup>

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 four percent permanent impairment of the right upper extremity, for which she received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 25, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> See *M.P.*, Docket No. 15-383 (issued July 1, 2015).