

FACTUAL HISTORY

OWCP accepted that by early 2000 appellant, then a 33-year-old patient services assistant, sustained bilateral cubital tunnel syndrome, bilateral carpal tunnel syndrome, and bilateral lesions of his ulnar nerves due to the performance of his repetitive work duties.

In an April 10, 2007 award of compensation, OWCP granted appellant a schedule award for a 23 percent permanent impairment of his left arm and a 20 percent permanent impairment of his right arm. The award ran for 134.16 weeks from December 14, 2006 to July 10, 2009 and was based on an impairment calculation made under the standards of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001).

On March 12, 2009 Dr. Ronald H. Blum, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, reviewed additional medical evidence and determined that appellant then had 31 percent permanent impairment of his left arm and 20 percent permanent impairment of his right arm under the standards of the fifth edition of the A.M.A., *Guides*.

OWCP issued a July 20, 2009 decision granting appellant a schedule award for an additional eight percent permanent impairment of his left arm.² The award ran from December 11, 2008 to January 1, 2010.

On July 1, 2010 Dr. Blum provided a new calculation of appellant's arm impairment under the standards of the sixth edition of the A.M.A., *Guides*.³ He determined that appellant had an eight percent permanent impairment of his left arm under these standards.⁴

In a July 15, 2010 decision, OWCP determined that appellant was not entitled to any schedule award compensation for additional permanent impairment as the evidence did not establish more than a 31 percent permanent impairment of his left arm and a 20 percent permanent impairment of his right arm.

In a September 28, 2010 decision, an OWCP hearing representative affirmed the July 15, 2010 decision but indicated that appellant was not entitled to receive the July 20, 2009 schedule award for an eight percent right arm impairment because it was calculated under the fifth edition of the A.M.A., *Guides*, rather than under the sixth edition of the A.M.A., *Guides*.⁵

Regarding the creation of the overpayment, OWCP stated that appellant "received a schedule award by decision dated July 20, 2009, which awarded you an eight percent impairment

² Appellant had 31 percent left arm impairment and he had already received a schedule award for 23 percent left arm impairment, he was entitled to receive a schedule award for the difference between these percentages.

³ Dr. Blum indicated that he had reviewed an April 13, 2010 report of Dr. Roshan Sharma, an attending Board-certified physical medicine and rehabilitation physician.

⁴ Dr. Blum also determined that appellant had an eight percent permanent impairment of his right arm.

⁵ See *infra* note 15.

of your left upper extremity under [the fifth edition of the A.M.A., *Guides*].”⁶ It noted, “Effective May 1, 2009, OWCP began using the sixth edition of the A.M.A., *Guides*; therefore, the decision on July 29, 2009 was issued in error because it was based on the fifth edition.”

On November 22, 2013 appellant filed a claim for increased schedule award compensation. He submitted an October 16, 2013 document in which Dr. Sharma listed dates of medical examinations or physical therapy sessions between January 2011 and September 2013. The document did not contain any impairment rating by Dr. Sharma.

In a February 3, 2014 decision, OWCP denied appellant’s claim for increased schedule award compensation finding that he did not meet his burden of proof to establish that he has more than a 23 percent permanent impairment of his left arm and more than a 20 percent permanent impairment of his right arm, for which he received schedule awards. It indicated that he did not submit a report containing an impairment rating under the standards of the sixth edition of the A.M.A., *Guides*.

Appellant requested reconsideration of his claim and submitted a February 10, 2014 report in which Dr. Sharma provided an impairment rating for his arms. Dr. Sharma indicated that a new nerve conduction study dated January 23, 2014 was reviewed and taken into account. He reported the findings of his February 10, 2014 physical examination of appellant and provided a diagnosis of bilateral carpal tunnel syndrome and bilateral tardy ulnar palsy. Dr. Sharma stated that he reached maximum medical improvement as of February 10, 2014 and provided an impairment rating based on peripheral nerve deficits. He made reference to Table 15-23 (Entrapment/Compression Neuropathy Impairment) on page 449 of the sixth edition of the A.M.A., *Guides*. Dr. Sharma determined that appellant had eight percent permanent impairment of his left arm and eight percent permanent impairment of his right arm.

In a March 13, 2014 order dismissing appeal,⁷ the Board dismissed appellant’s appeal of OWCP’s October 12, 2012 decision on the grounds that the appeal was untimely filed.

On August 14, 2014 Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, indicated that he had reviewed the February 10, 2014 report of Dr. Sharma and had determined that appellant had no net additional award due for his left arm because the net additional award now due would be determined by subtracting the prior cumulative award of the left arm (23 percent for peripheral nerve impairment) from the present impairment of the left arm (8 percent for peripheral nerve impairment). He indicated that 8 percent minus 23 percent equaled a number less than 0. Dr. Katz also opined that appellant had no net additional award due for his right arm because the net additional award now due would be determined by subtracting the prior cumulative award of the right arm (20 percent for peripheral nerve impairment) from the present impairment of the right arm (8 percent for peripheral nerve impairment). He indicated that 8 percent minus 20 percent equaled a number less than 0.

⁶ Appellant received \$11,045.77 of schedule award compensation in connection with the July 20, 2009 award of compensation for an eight percent impairment of his right arm.

⁷ Docket No. 14-304 (issued March 13, 2014).

By decision dated August 19, 2014, OWCP affirmed its February 3, 2014 decision, finding that appellant did not meet his burden of proof to establish that he has more than a 23 percent permanent impairment of his left arm and more than a 20 percent permanent impairment of his right arm. It found that the February 10, 2014 report of Dr. Sharma did not show that appellant has more than a 23 percent permanent impairment of his left arm and more than a 20 percent permanent impairment of his right arm.

LEGAL PRECEDENT

The schedule award provision of FECA⁸ and its implementing regulations⁹ 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 appropriate standard for evaluating schedule losses.¹⁰ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.¹¹

ANALYSIS

OWCP accepted that, by early 2000, appellant sustained bilateral cubital tunnel syndrome, bilateral carpal tunnel syndrome and bilateral lesions of his ulnar nerves due to the performance of his repetitive work duties. It granted appellant schedule award for a 23 percent permanent impairment of his left arm and more than a 20 percent permanent impairment of his right arm.¹² On November 22, 2013 appellant filed a claim for increased schedule award compensation. In February 3 and August 19, 2014 decisions, OWCP denied appellant's claim for increased schedule award compensation on the grounds that he did not submit sufficient medical evidence in support of his claim.

The Board finds that appellant did not submit sufficient medical evidence to establish that he has more than a 23 percent permanent impairment of his left arm and more than a 20 percent permanent impairment of his right arm, for which he received schedule awards.

Appellant submitted a February 10, 2014 report in which Dr. Sharma, an attending Board-certified physical medicine and rehabilitation physician, determined that he had an eight percent permanent impairment of his left arm and an eight percent permanent impairment of his

⁸ 5 U.S.C. § 8107.

⁹ 20 C.F.R. § 10.404 (1999).

¹⁰ *Id.*

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

¹² OWCP rescinded its July 29, 2009 schedule award for an additional eight percent permanent impairment of appellant's left arm but this matter is not currently before the Board.

right arm. Dr. Sharma reported findings of his February 10, 2014 physical examination of appellant and provided a diagnosis of bilateral carpal tunnel syndrome and bilateral tardy ulnar palsy. He made reference to Table 15-23 (Entrapment/Compression Neuropathy Impairment) on page 449 of the sixth edition of the A.M.A., *Guides* in reaching his conclusions about appellant's arm impairments.

The Board finds that OWCP properly determined that the February 10, 2014 report of Dr. Sharma does not show that appellant is entitled to additional schedule award compensation because the arm impairment ratings contained in that report (eight percent for each arm) are lower than the arm impairments for which appellant has already been compensated (23 percent for the left arm and 20 percent for the right arm). As noted on August 14, 2014 by Dr. Katz, an OWCP medical adviser, found that appellant had no net additional award due for his left arm because subtracting the prior cumulative award of the left arm (23 percent for peripheral nerve impairment) from the present impairment of the left arm (8 percent for peripheral nerve impairment) equaled a number less than zero. He also stated that appellant had no net additional award due for his right arm because subtracting the prior cumulative award of the right arm (20 percent for peripheral nerve impairment) from the present impairment of the right arm (eight percent for peripheral nerve impairment) equaled a number less than zero.

For these reasons, appellant has not shown that he has more than a 23 percent permanent impairment of his left arm or more than a 20 percent permanent impairment of his right arm. 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 did not meet his burden of proof to establish that he has more than a 23 percent permanent impairment of his left arm and more than a 20 percent permanent impairment of his right arm, for which he received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2015
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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