

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

R.S., Appellant)	
)	
and)	Docket No. 14-1951
)	Issued: March 12, 2015
DEPARTMENT OF THE NAVY, NAVAL)	
AVIATION DEPOT, Cherry Point, NC,)	
Employer)	
)	

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 September 8, 2014 appellant filed a timely appeal from the August 28, 2014 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 to review the merits of this case.

ISSUE

The issue is whether appellant is entitled to an additional schedule award.

FACTUAL HISTORY

In a prior appeal, the Board found in its May 7, 2013 decision that appellant was not entitled to an additional schedule award.² In 1998, as a 40-year-old sandblaster, appellant filed

¹ 5 U.S.C. § 8101 *et seq.*

² Docket No. 12-1628 (issued May 7, 2013).

an occupational disease claim alleging that his carpal tunnel syndrome was a result of hand cleaning, stripping or blasting small aircraft components, which made his hands numb. OWCP accepted his claim for bilateral carpal tunnel syndrome and approved surgical releases. Appellant had received schedule awards totaling 42 percent for his left upper extremity (27 percent in 2000 plus an additional 15 percent in 2007) and 28 percent for his right (10 percent in 2000 plus an additional 15 percent in 2007 plus an additional three percent in 2012).³ The Board found that appellant had only a six percent impairment bilaterally under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (hereinafter A.M.A., *Guides*). As this was less than the impairment for which he previously received schedule awards, the Board found that he was not entitled to an additional award.

On February 6, 2014 appellant underwent additional bilateral carpal tunnel release. He filed a claim for an additional schedule award. In support thereof, appellant submitted the July 10, 2014 report of Dr. Ivor B. Kaplan, a hand surgeon and Board-certified plastic surgeon. During postsurgical physical therapy, he noted an almost immediate improvement in the numbness and tingling in his fingers. When he last saw Dr. Kaplan on July 2, 2014, appellant noted that his hands felt “the best that they have ever felt.” It was Dr. Kaplan’s opinion that he had reached maximum medical improvement and had an upper extremity impairment of one percent bilaterally.

In a decision dated August 28, 2014, OWCP denied appellant’s claim for an additional schedule award.

LEGAL PRECEDENT

FECA authorizes the payment of schedule awards for the loss or loss of use of specified members, organs, or functions of the body. Such loss or loss of use is known as permanent impairment. Compensation for the complete loss of an upper extremity, as with amputation at the shoulder, extends 312 weeks.⁴ Compensation for partial losses is proportionate.⁵

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.⁶

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

³ OWCP mistakenly indicated that appellant had received schedule awards for a 30 percent impairment of his right upper extremity, when in fact he received schedule awards of 10 percent and 15 percent.

⁴ 5 U.S.C. § 8107(c)(1).

⁵ *Id.* at § 8107(c)(19).

⁶ *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

standard for evaluating schedule losses.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸

ANALYSIS

The issue before the Board is whether appellant has permanent impairment in excess of 42 percent permanent impairment of his left upper extremity and a 28 percent permanent impairment of his right upper extremity. The Board finds that appellant has not established entitlement to an additional schedule award.

It would appear from the July 10, 2014 report of Dr. Kaplan, the surgeon who performed the most recent carpal tunnel releases, that appellant now has almost no impairment of his upper extremities. Appellant stated that his hands feel the best they have ever felt. This is a dramatic improvement since OWCP determined that he had permanently lost 42 percent of the use of his left upper extremity and 28 percent of the use of his right. Dr. Kaplan found that appellant's loss of use was now merely one percent bilaterally.

Under the sixth edition of the A.M.A., *Guides*, the highest impairment rating anyone may receive for carpal tunnel syndrome is nine percent of the upper extremity.⁹ As appellant has already received much more than this, he is not entitled to receive an additional schedule award under the sixth edition of the A.M.A., *Guides* regardless of how bad his accepted condition may become.

The Board finds that he is not entitled to an additional schedule award. The Board will therefore affirm OWCP's August 28, 2014 decision.

CONCLUSION

The Board finds that appellant is not entitled to an additional schedule award.

⁷ 20 C.F.R. § 10.404; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010).

⁹ A.M.A., *Guides* 449, Table 15-23 (6th ed. 2009).

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2015
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