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

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| **STEPHEN L. SHEFFIELD, Appellant** | ) | |
| **and** | ) | **Docket No. 04-2162** |
| | ) | **Issued: February 14, 2005** |
| **U.S. POSTAL SERVICE, SHAKER BRANCH, Cleveland, OH, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

### ***JURISDICTION***

On September 1, 2004 appellant filed a timely appeal from an August 3, 2004 decision denying modification of an October 22, 2003 schedule award of the Office of Workers' Compensation Programs, finding that he had no more than a four percent impairment of the left upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over both decisions.

### ***ISSUE***

The issue is whether appellant has met his burden of proof to establish that he has greater than a four percent permanent impairment of the left upper extremity for which he received a schedule award. On appeal appellant, through counsel, contends that the August 3, 2004 decision is contrary to fact and law.

### ***FACTUAL HISTORY***

On June 12, 2001 appellant, then a 48-year-old city carrier, sustained an employment-related left thumb sprain. On November 7, 2001 the Office accepted that he sustained left thumb

de Quervain's tenosynovitis and on December 12, 2001 he underwent left dorsal compartment release, performed by Dr. Robert B. Leb, an attending Board-certified orthopedic surgeon. Appellant returned to limited duty on January 23, 2002.

In a report dated May 24, 2002, Dr. Leb advised that appellant had not reached maximum medical improvement. Dr. Sheldon Kaffen, Board-certified in orthopedic surgery, submitted an August 26, 2003 report in which he provided examination findings and an impairment rating. He referenced the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[1] and advised that pursuant to Figures 16-28 and 16-31 appellant had no impairment due to abnormal motion. Under Table 16-19 a maximum of 10 percent impairment was allowed for mild synovial hypertrophy and, utilizing Table 16-18, appellant had a 40 percent radial wrist carpal impairment. He properly multiplied the 40 percent from Table 16-18 by the 10 percent at Table 16-19 to conclude that appellant had a 4 percent upper extremity impairment due to his employment-related condition.

On September 22, 2003 the Office referred a statement of accepted facts and Dr. Kaffen's August 26, 2003 report to an Office medical adviser for review. In a report dated October 7, 2003, the Office medical adviser advised that maximum medical improvement had been reached on August 27, 2003 and concurred with Dr. Kaffen's finding that appellant had a four percent impairment of the left upper extremity.

By decision dated October 22, 2003, appellant was granted a schedule award for a four percent impairment of the left upper extremity, for a total of 12.48 weeks of compensation, to run from August 27 to November 22, 2003.[2]

On June 20, 2004 appellant, through counsel, requested reconsideration and submitted a June 4, 2004 report in which Dr. Dean W. Erickson, Board-certified in internal and occupational medicine, provided an impairment rating pursuant to the A.M.A., *Guides*. He noted appellant's complaints of pain in the dorsal wrist and thumb extensor region which increased with activity and mild swelling, crepitance and tenderness in the thumb extensor tendons. The physician found abnormal range of motion in the wrist of 50 degrees of flexion and 40 degrees of extension which, under Figure 16-28, represented impairments of 2 and 4 percent respectively. Dr. Erickson found normal ulnar deviation and stated that radial deviation of 15 degrees represented a 1 percent impairment under Figure 16-31. He advised that, under Table 16-29, appellant had a mild impairment due to synovial hypertrophy with constrictive tenosynovitis of four percent impairment of the upper extremity. Dr. Erickson combined the 7 percent range of motion deficit with the 4 percent carpal tunnel impairment to conclude that appellant had an 11 percent left upper extremity impairment.

On July 7, 2004 the Office requested that an Office medical adviser review Dr. Erickson's report and provide a date of maximum medical improvement and an impairment

[1] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ___ (Docket No. 01-1361, issued February 4, 2002).

[2] The record also contains a December 15, 2003 decision in which the Office approved an attorney's fee in the amount of $700.00. Appellant has not filed an appeal with the Board regarding this decision.

rating pursuant to the A.M.A., *Guides*. In a report dated July 14, 2004, the Office medical adviser agreed that appellant demonstrated an 11 percent left upper extremity impairment under the A.M.A., *Guides*, but noted that maximum medical improvement was unknown.

By decision dated August 3, 2004, the Office found that appellant was not entitled to an additional schedule award because a date of maximum medical improvement had not been provided.[3]

## ***LEGAL PRECEDENT***

Under section 8107 of the Federal Employees' Compensation Act[4] and section 10.404 of the implementing federal regulation,[5] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[6] Chapter 16 provides the framework for assessing upper extremity impairments.[7]

It is well established that the period covered by the schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted employment injury. The Board has explained and the A.M.A., *Guides* provides that maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.[8] It is understood that an individual's condition is dynamic and maximum medical improvement refers to a date from which further recovery or deterioration is not anticipated, although over time there may be some expected change. Once an impairment has reached maximum medical improvement, a permanent impairment rating may be performed.[9] The determination of whether maximum medical improvement has been reached is

[3] The Board notes that on September 20, 2004 appellant submitted an unsigned treatment note dated August 24, 2004 in which Dr. Leb advised that maximum medical improvement had been reached. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *See Joseph Lawrence, Jr., supra* note 1; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[7] A.M.A., *Guides*, *supra* note 1 at 433-521.

[8] *Mark A. Holloway*, 55 ECAB ____ (Docket No. 03-2144, issued February 13, 2004); *see* A.M.A., *Guides*, *supra* note 1 at 19.

[9] *Patricia J. Penney-Guzman*, 55 ECAB ____ (Docket No. 04-1052, issued September 30, 2004).

based on the probative medical evidence of record and is usually considered to the date of the evaluation by the attending physician which is accepted as definitive by the Office.[10]

## ***ANALYSIS***

The Board finds that the Office properly granted appellant a schedule award for a four percent permanent impairment of the left upper extremity on October 22, 2003. The relevant medical evidence at that time consisted of an August 26, 2003 impairment rating in which an attending physician, Dr. Kaffen, properly referenced the fifth edition of the A.M.A., *Guides* and advised that pursuant to Figures 16-28[11] and 16-31[12] appellant had no impairment due to abnormal motion. He noted that Table 16-19[13] provided a maximum of 10 percent impairment due to synovial hypertrophy and, utilizing Table 16-18,[14] appellant had a 40 percent radial wrist carpal impairment. Dr. Kaffen correctly multiplied the 40 percent by the 10 percent as directed at Table 16-19 to find that appellant had a 4 percent upper extremity impairment due to his employment-related condition. His report was reviewed by an Office medical adviser who noted that maximum medical improvement had been reached on August 27, 2003 and agreed with Dr. Kaffen's findings and conclusion. Appellant properly received a schedule award for a four percent left upper extremity impairment.[15]

The Board, however, finds that the case is not in posture for decision regarding whether appellant has established that he has more than a four percent left upper extremity impairment. Subsequent to the October 22, 2003 schedule award, appellant submitted an additional medical report from Dr. Erickson dated June 4, 2004, which found 11 percent impairment to his left upper extremity. In referring this report to the Office medical adviser, the Office requested that a date of maximum medical improvement be provided. In a report dated July 14, 2004, the Office medical adviser agreed with Dr. Erickson's estimate that appellant had an 11 percent impairment. The Office medical adviser stated, however, that the date of maximum medical improvement was unknown. The Office then issued a final decision on August 3, 2004 finding that appellant was not entitled to an additional schedule award because a date of maximum medical improvement had not been provided.

An impairment should not be considered permanent until the clinical findings indicate that the medical condition is static and well stabilized.[16] The Board has held, however, that the date of maximum medical improvement is usually considered to be the date of the evaluation by

[10] *Mark A. Holloway, supra* note 8.

[11] A.M.A., *Guides, supra* note 1 at 467.

[12] *Id.* at 469.

[13] *Id.* at 500.

[14] *Id.* at 499.

[15] *Joseph J. Lawrence, Jr., supra* note 1.

[16] *Patricia J. Penney-Guzman, supra* note 9; A.M.A., *Guides, supra* note 1 at 19.

the attending physician which is accepted as definitive by the Office.[17] In an October 7, 2003 report, the Office medical adviser advised that maximum medical improvement had been reached on August 27, 2003, one day after the date of Dr. Kaffen's report. Dr. Erickson did not provide a date of maximum medical improvement or indicate whether appellant's condition had stabilized. The Board finds that the Office should seek clarification regarding the issue of maximum medical improvement.[18] The case will therefore be remanded to the Office for further development of the medical evidence, as is appropriate, to determine whether appellant has reached maximum medical improvement and regarding entitlement to an increased schedule award and such further development it deems necessary.

## ***CONCLUSION***

The Board finds this case is not in posture for decision regarding whether appellant has greater than a four percent permanent impairment of the left upper extremity.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 3, 2004 is set aside and the case remanded to the Office for proceedings consistent with this opinion of the Board. The decision dated October 22, 2003 is affirmed.

Issued: February 14, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[17] *Mark A. Holloway, supra* note 8.

[18] *See generally Patricia J. Penney-Guzman, supra* note 9.