

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

CATHERINE A. JONES, Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
HEALTH CARE SYSTEM, San Diego, CA,)
Employer)

**Docket No. 05-204
Issued: July 8, 2005**

Appearances:
Catherine A. Jones, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On October 27, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 23, 2004 wherein the Office found that appellant was entitled to a schedule award for a two percent impairment of her right upper extremity. Pursuant to 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 a two percent impairment of her right upper extremity for which she has received a schedule award.

FACTUAL HISTORY

On June 29, 1998 appellant was injured in the performance of duty. The Office accepted appellant's claim for right de Quervain's tenosynovitis.

On September 20, 2002 appellant filed a claim for a schedule award for her right hand. On February 18, 2003 the Office issued a schedule award for a one percent impairment of the right upper extremity, Office File No. 131167747.

On September 9, 2003 appellant filed a claim for an additional schedule award. By decision dated September 26, 2003, the Office noted that, as appellant's condition was not yet permanent and stationary, a decision on appellant's schedule award claim was being deferred.

In an initial orthopedic evaluation dated January 22, 2004, Dr. Vito J. Caruso, a hand surgeon, diagnosed appellant with bilateral ulnar nerve entrapment and bilateral carpal tunnel syndrome but determined that appellant was not permanent and stationary. However, in a report dated February 12, 2004, Dr. Caruso found that appellant was permanently partially disabled. Dr. Caruso took various range of motion measurements. He also noted, *inter alia*, that appellant had occasional minimal pain of the elbow, forearms and wrists which occasionally became light to moderate. Dr. Caruso noted decreased range of motion for wrists, forearms and elbows. He noted that examination of the right elbow revealed full range of motion of 0 to 135 degrees with 75 degrees of pronation and 85 degrees of supination. Dr. Caruso noted that examination of the right wrist revealed full range of motion with 65 degrees of dorsiflexion, 70 degrees of palmar flexion, 40 degrees of ulnar deviation and 20 degrees of radial deviation. Additionally, Dr. Caruso reported that appellant had no neurologic deficit, muscle weakness, atrophy or instability.

On May 14, 2004 the Office medical adviser reviewed appellant's medical record, noted that Dr. Caruso had not provided an impairment rating and determined that appellant had a two percent impairment of the right upper extremity. He calculated this based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) as follows:

“For the purposes of schedule award of the claimant's right upper extremity, the claimant does not have any impairment for loss of motion of the right elbow, loss of motion of the right wrist, muscle weakness, atrophy or instability. The claimant does have Grade 4 pain/decreased sensation that is forgotten with activity [25 percent] (Table 16-10/Page 482) of the radial nerve ([5]) (Table 16-14/Page 492), which results in 1 percent impairment of the right elbow for pain that is forgotten with activity. The claimant has Grade 4 pain/decreased sensation that is forgotten with activity 25 percent (Table 16-10/Page 482) of the radial nerve [5] (Table 16-15/Page 492), which results in 1 percent impairment for pain which does not interfere with function in the right wrist and 1 percent impairment for pain which does not interfere with the function of the right elbow, this results in 2 percent impairment of the right upper extremity.”

The Office medical adviser noted that appellant was previously found to have a one percent impairment of the right upper extremity, but that, based on Dr. Caruso's more recent evaluation of February 12, 2004, it did appear that appellant's impairment had increased to two percent due to the pain in her elbow.

By decision dated September 23, 2004, the Office issued a schedule award for a two percent impairment of appellant's right upper extremity. The Office noted that, as appellant had previously received a schedule award for a one percent loss of use of the right upper extremity, this award was for an additional one percent loss of use.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.¹ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.² Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides*, fifth edition (2001).³

ANALYSIS

The Board finds that the Office properly determined that appellant was entitled to a schedule award based on an impairment rating of two percent of the right upper extremity. Dr. Caruso did not determine appellant's impairment rating pursuant to the A.M.A., *Guides*. However, he did take range of motion measurements. As Dr. Caruso did not provide any impairment rating based on the A.M.A., *Guides*, the Office medical adviser properly utilized the findings in Dr. Caruso's report to determine appellant's level of impairment.⁴ Dr. Caruso noted that appellant had occasional pain to the right elbow that occasionally became light to moderate. The Office medical adviser applied Table 16-10, page 482 of the A.M.A., *Guides* and determined that appellant's level of pain entitled him to a Grade 4 classification, or 25 percent sensory deficit due to pain. Pursuant to Table 16-15, page 492, the maximum percent impairment of the upper extremity for sensory deficit or pain of the radial elbow is five percent. Accordingly, the Office properly determined that, as appellant had a 25 percent impairment of the radial nerve, he was entitled to a one percent impairment with regard to the right elbow. With regard to the right wrist, the Office medical adviser noted that the aforementioned explanation by Dr. Caruso would also yield a maximum medical impairment of the right upper extremity of 25 percent, and as stated *supra*, the maximum upper extremity impairment due to the radial nerve is 5 percent. Accordingly, the Office medical adviser properly determined that appellant was also entitled to a schedule award based on a one percent impairment based on his right wrist. The Office medical adviser properly noted that, as appellant had already received a schedule award of one percent for the upper right extremity, an additional one percent would be

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁴ See e.g., *Norman D. Armstrong*, 55 ECAB ____ (Docket No. 04-306, issued June 23, 2004); *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

awarded. There is no medical evidence in the record that indicates that appellant is entitled to a greater award for an impairment to his right upper extremity. Accordingly, the Office properly determined appellant's schedule award.

CONCLUSION

The Board finds that the Office properly determined that appellant has no more than a two percent impairment of the right upper extremity for which he has received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 23, 2004 is hereby affirmed.

Issued: July 8, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member