

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

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F.A., Appellant )  
 )  
and ) **Docket No. 06-1785**  
 ) **Issued: February 16, 2007**  
U.S. POSTAL SERVICE, POST OFFICE, )  
Yonkers, NY, Employer )  
\_\_\_\_\_ )

*Appearances:* Oral Argument January 25, 2007  
*Appellant, pro se*  
*Miriam D. Ozur, Esq., for the Director*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 31, 2006 appellant filed a timely appeal of the July 12, 2006 merit decision of the Office of Workers' Compensation Programs, which granted a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim for a schedule award.

**ISSUE**

The issue is whether appellant has more than 19 percent permanent impairment of the right upper extremity.

**FACTUAL HISTORY**

Appellant, a 47-year-old former letter carrier, injured his right thumb in the performance of duty on July 10, 1995.<sup>1</sup> The Office accepted the claim for open wound of finger with

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<sup>1</sup> Appellant was pushing a gate open when he caught his right thumb on a chain link. A portion of the chain link remained imbedded in appellant's right thumb and it was surgically removed on July 10, 1995.

complications and injury to digital nerve. On March 4, 1997 appellant sustained another employment-related injury, which the Office accepted for right wrist sprain.<sup>2</sup> Appellant underwent a series of Office-approved surgical procedures involving the right thumb, wrist, forearm and elbow, the most recent of which occurred on October 13, 1997.

On March 21, 2005 appellant telephoned the Office inquiring about entitlement to a schedule award.<sup>3</sup> In an April 1, 2005 report, appellant's treating physician, Dr. Salvatore R. Lenzo, a Board-certified orthopedic surgeon, indicated that appellant had a 50 percent loss of use of the right upper extremity. Appellant's chief complaints were residual weakness and stiffness in the right upper extremity. Dr. Lenzo reported a limited range of motion in right elbow with 20 to 110 degrees flexion and 50 degrees of pronation and supination. He also noted that appellant exhibited weakness in right hand and some numbness in the dorsal aspect of the right arm. On January 10, 2006 Dr. Lenzo reiterated his opinion that appellant had a 50 percent loss of the right upper extremity. On physical examination right elbow flexion had improved to 130 degrees, but supination and pronation remained at 50 degrees. Dr. Lenzo also reported that appellant had decreased sensation of the thumb, index finger and middle finger. On April 13, 2006 he advised that a recent right wrist magnetic resonance imaging scan revealed a recurrent tear within the triangular fibrocartilage complex. Dr. Lenzo also noted that appellant still had considerable pain and stiffness. He did not provide any additional measurements, but he again stated that appellant had a 50 percent impairment of the right upper extremity.

The Office referred the claim to its district medical adviser (DMA) for review. In a report dated May 11, 2006, the DMA found 18 percent impairment of the right upper extremity. The rating was based on a combination of sensory deficits involving the right thumb, index finger and middle finger and range of motion deficits involving the wrist and elbow. The DMA identified January 10, 2006 as the date appellant reached maximum medical improvement.

At the Office's request the DMA provided a supplemental report dated May 16, 2006, which excluded any upper extremity impairment associated with the right elbow. Although the Office previously authorized surgery on appellant's right elbow in October 1997, it did not specifically accept an employment-related right elbow injury. The DMA's May 16, 2006 rating was for 13 percent impairment of the right upper extremity, which included 3 percent impairment for limitations with respect to pronation and supination and 10 percent for sensory deficit.

In a May 22, 2006 report, Dr. Lenzo again noted that appellant had 50 percent impairment of the right upper extremity. He provided range of motion measurements with respect to appellant's cervical spine, right shoulder, right elbow and right wrist. Regarding appellant's wrist, Dr. Lenzo noted 40 degrees of extension and flexion. He also reported that pronation and supination was limited to 50 degrees. Additionally, appellant had significant pain and tenderness over the triangular fibrocartilage complex within the right wrist and decreased sensation within the thumb, index finger and middle finger. Dr. Lenzo further noted that appellant exhibited grip strength weakness as well as some mild intrinsic weakness in the

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<sup>2</sup> The Office combined appellant's two right upper extremity claims under file number 02-0699651.

<sup>3</sup> The Office did not receive the actual claim form (Form CA-7) until May 11, 2006.

muscles of the right hand. Appellant also had a sensitivity to cold in the fingers of the right hand. Dr. Lenzo explained that, according to the A.M.A., *Guides*, appellant had a right upper extremity impairment of at least 50 percent.

On June 1, 2006 the DMA reviewed the medical evidence and found 19 percent impairment of the right upper extremity. He combined the previously determined 10 percent sensory deficit of the thumb with an additional 10 percent impairment for loss of wrist motion based on Dr. Lenzo's May 22, 2006 physical findings.<sup>4</sup>

By decision dated July 12, 2006, the Office granted a schedule award for 19 percent impairment of the right upper extremity. The award covered a period of 59.28 weeks from January 10, 2006 to February 28, 2007.<sup>5</sup>

### **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.<sup>6</sup> 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the appropriate standard for evaluating schedule losses.<sup>7</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>8</sup>

### **ANALYSIS**

Appellant argues that the Office should have based the July 12, 2006 schedule award on Dr. Lenzo's 50 percent impairment rating. Dr. Lenzo's reports dated April 1, 2005 to May 22, 2006 all found that appellant has a 50 percent impairment of the right upper extremity. But none of these reports explain how Dr. Lenzo determined the extent of appellant's right upper extremity in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001). Several reports do not even reference the A.M.A., *Guides*. Dr. Lenzo noted in the May 22, 2006 report that he reviewed the A.M.A., *Guides*, but did not identify the particular tables or figures he relied upon in determining that appellant had "at least a 50 percent disability with regard to the right upper extremity."

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<sup>4</sup> The DMA noted that Dr. Lenzo's 50 percent assessment included elbow and shoulder pathology, which was not part of the accepted condition.

<sup>5</sup> Appellant had a third-party recovery surplus of \$19,149.96, which fully offset the July 12, 2006 schedule award such that no additional payments were disbursed by the Office.

<sup>6</sup> The Act provides that for a total or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1) (2000).

<sup>7</sup> 20 C.F.R. § 10.404 (2006).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

Because Dr. Lenzo did not specifically relate his findings to the A.M.A., *Guides*, his 50 percent assessment is of diminished probative value.<sup>9</sup>

Appellant also questioned the weight accorded the DMA's 19 percent impairment rating. He noted at oral argument that the DMA had not physically examined him. Appellant argued that, in light of this fact, the Office should not have relied on the DMA's opinion. The Office procedure manual specifically allows the claims examiner to refer the record to a medical adviser for consultation regarding the appropriateness of a schedule award.<sup>10</sup> While the DMA did not physically examine appellant, his impairment rating was appropriately based on Dr. Lenzo's physical findings.

Regarding loss of motion in the wrist, Dr. Lenzo reported that appellant's extension and flexion was limited to 40 degrees. Under Figure 16-28, A.M.A., *Guides* 467, wrist extension to 40 degrees represents 4 percent impairment and flexion to 40 degrees represents 3 percent impairment. The DMA correctly found an additional 3 percent impairment for limitations in supination and pronation of the forearm.<sup>11</sup> The individual impairments for loss of flexion (3 percent), extension (4 percent), pronation (2 percent) and supination (1 percent) were properly added for a total right upper extremity impairment of 10 percent due to abnormal motion.<sup>12</sup>

Dr. Lenzo also noted that appellant had decreased sensation within the thumb, index finger and middle finger. In determining the extent of impairment due to sensory deficit the applicable Tables are 16-10 and 16-15, A.M.A., *Guides* 482, 492. He did not classify appellant's sensory deficit under Table 16-10(a), therefore, the DMA assigned a Grade 4 classification based on the doctor's findings.<sup>13</sup> Applying Table 16-15 and the Grade 4 classification (20 percent), the DMA found 8 percent impairment involving the median nerve distribution (below mid-forearm) and 2 percent impairment for radial nerve distribution involving the thumb, for a total sensory deficit of 10 percent.<sup>14</sup> He then combined the 10 percent sensory deficit with the 10 percent motion impairment, for a total right upper extremity impairment of 19 percent.<sup>15</sup>

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<sup>9</sup> *Lela M. Shaw*, 51 ECAB 372, 374 (2000).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6d (August 2002).

<sup>11</sup> See A.M.A., *Guides* 474, Figure 16-37. In his May 22, 2006 report, Dr. Lenzo noted that supination and pronation was limited to 50 degrees. While the DMA's three percent impairment rating is appropriate, he mistakenly referenced A.M.A., *Guides* 469, Figure 16-31, (Abnormal Radial and Ulnar Deviations of Wrist Joint). Dr. Lenzo did not provide measurements for either radial or ulnar deviation.

<sup>12</sup> See A.M.A., *Guides* 468, Example 16-37; A.M.A., *Guides* 473, Examples 16-44 and 16-45.

<sup>13</sup> A Grade 4 classification is characterized by "[d]istorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensation or pain, that is forgotten during activity." This classification represents a 1 to 25 percent deficit. A.M.A., *Guides* 482, Table 16-10.

<sup>14</sup> See A.M.A., *Guides* 481, section 16.5b; A.M.A., *Guides* 487, Example 16-58.

<sup>15</sup> See A.M.A., *Guides* 480, section 16.5a; A.M.A., *Guides* 604, Combined Values Chart.

The 19 percent impairment rating provided by the DMA conforms to the A.M.A., *Guides* (5<sup>th</sup> ed. 2001) and his finding constitutes the weight of the medical evidence.<sup>16</sup> Appellant has not submitted any credible medical evidence indicating that he has greater than 19 percent impairment of the right upper extremity.

**CONCLUSION**

The Board finds that appellant failed to establish that he has greater than 19 percent impairment of the right upper extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 12, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>16</sup> See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).