

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

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**P.I., Appellant**

**and**

**U.S. POSTAL SERVICE, BEVERLY HILLS  
STATION, Dallas, TX, Employer**

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**Docket No. 06-1880  
Issued: February 28, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On August 11, 2006 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs dated June 5, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination in this case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish that he has greater than a 12 percent permanent impairment of the left upper extremity for which he received schedule awards.

**FACTUAL HISTORY**

On September 7, 2001 appellant, then a 37-year-old window and distribution clerk, filed a Form CA-1, traumatic injury claim, alleging that on September 6, 2001 he injured his left arm, elbow and shoulder picking up flats of mail. He did not stop work. In a September 7, 2001 report, Dr. Felix Segovia, an orthopedic surgeon, noted findings on examination and diagnosed

left elbow epicondylitis. The claim was adjudicated under file number 162026144. On February 6, 2002 the Office accepted that appellant sustained an employment-related tendinitis of the left wrist and left shoulder/arm.<sup>1</sup>

On October 7, 2002 appellant filed a second traumatic injury claim, alleging that on that day he was injured when a gate struck his left shoulder. He stopped work on October 11 and returned to limited duty on November 25, 2002. On December 18, 2002 the Office accepted that appellant sustained an employment-related left shoulder contusion and cervical strain. The claim was adjudicated under file number 162046376. Dr. Segovia provided care for both employment injuries. His diagnoses included employment-related acute extensor tendinitis or tenosynovitis, acute left lateral epicondylitis, acute upper dorsal myositis and acute cervical strain. Dr. William H. Noran, a Board-certified neurologist, performed upper extremity electromyographic (EMG) testing on May 23, 2002 and January 17, 2003. The latter study was read as abnormal with evidence of slowing of the distal latencies of the median nerves consistent with bilateral carpal tunnel syndrome. There was also evidence of nerve root dysfunction at C8.

On April 21, 2005 appellant filed a schedule award claim for the October 2002 injury and submitted a February 21, 2005 report from Dr. Sherine Boyd Reno, a Board-certified physiatrist, who advised that he had a 15 percent whole person impairment in accordance with section 15.6 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>2</sup> The Office referred appellant to Dr. John A. Sklar, also a Board-certified physiatrist, for an impairment evaluation. In a June 21, 2005 report, Dr. Sklar determined that in accordance with the A.M.A., *Guides* appellant had a nine percent left upper extremity impairment, based on loss of shoulder range of motion. An Office medical adviser agreed with Dr. Sklar's impairment rating. On July 8, 2005 appellant was granted a schedule award for a nine percent left upper extremity impairment, for 28.08 weeks, to run from June 16 to December 29, 2005.

On November 28, 2005 appellant filed a schedule award claim for the September 2001 injury. He submitted an August 18, 2005 report in which Dr. Reno advised that motor examination was 5/5 bilaterally with increased sensation in the left ulnar nerve root distribution and decreased sensation in the right median nerve root distribution. Dr. Reno provided left shoulder range of motion measurements of 140 degrees of forward flexion, 40 degrees of extension, 130 degrees of abduction, 35 degrees of adduction and 60 degrees of internal and external rotation. Elbow flexion was 100 degrees, extension 0 degrees, pronation 90 degrees and supination 60 degrees. Wrist flexion was 50 degrees, extension 80 degrees, radial deviation 15 degrees and ulnar deviation 40 degrees. Dr. Reno calculated that appellant's loss of shoulder forward flexion yielded three percent impairment, loss of abduction and external rotation, two percent impairments each and loss of adduction a one percent impairment, to total an eight percent shoulder impairment. She advised that appellant had a six percent impairment for loss of elbow flexion and a one percent impairment for loss of elbow supination, to total a seven percent elbow impairment. Dr. Reno determined that appellant had a two percent wrist impairment for

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<sup>1</sup> The accepted conditions were further described as enthesopathy of the left wrist/carpus and unspecified disorder of the left shoulder bursae/tendons.

<sup>2</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

loss of flexion and one percent impairment for loss of radial deviation. She then determined that he had a 39 percent median nerve upper extremity sensory impairment or Grade 2, which yielded a 9.75, rounded up to 10 percent and an ulnar nerve upper extremity sensory impairment of 7 percent or Grade 2, yielding a 1.75, rounded up to 2 percent. Dr. Reno concluded that appellant had a 30 percent upper extremity impairment rating.

In a November 16, 2005 report, an Office medical adviser found that August 18, 2005 was the date of maximum medical improvement. Citing to specific figures found in the A.M.A., *Guides*, he agreed with Dr. Reno's findings and conclusions regarding appellant's loss of range of motion of the shoulder and wrist, finding an eight percent shoulder impairment and a three percent wrist impairment. The Office medical adviser noted that, while Dr. Reno included impairments for loss of motion of the left elbow and sensory loss in the median and ulnar nerves, these conditions had not been accepted as employment related. Therefore, they were not included in his impairment evaluation. He concluded that appellant had an 11 percent left upper extremity impairment.

By decision dated February 14, 2006, the Office determined that appellant was not entitled to an additional schedule award. The cases were doubled with file number 162026144 becoming the master.

In a report dated March 2, 2006, an Office medical adviser noted the accepted wrist and shoulder conditions and reiterated that appellant had an 11 percent left upper extremity impairment. He stated that, as appellant had previously received a schedule award for a nine percent impairment based on loss of left shoulder motion, he was not entitled to an additional schedule award for a shoulder impairment but now had a three percent impairment based on loss of left wrist motion. On June 5, 2006 appellant was granted a schedule award for an additional three percent left upper extremity impairment, for 9.36 weeks, to run from November 1, 2005 to January 5, 2006.

### **LEGAL PRECEDENT**

Under section 8107 of the Federal Employees' Compensation Act<sup>3</sup> and section 10.404 of the implementing federal regulations,<sup>4</sup> 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*<sup>5</sup> has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>6</sup>

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> A.M.A., *Guides*, *supra* note 2.

<sup>6</sup> See *Joseph Lawrence, Jr.*, *supra* note 2; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the figures and tables found in the A.M.A., *Guides*. However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment.<sup>7</sup> Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under the Act for injury to the spine.<sup>8</sup> In 1960, amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, as the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.<sup>9</sup>

Chapter 16 of the fifth edition of the A.M.A., *Guides* provides the framework for assessing upper extremity impairments.<sup>10</sup> Section 16.4 provides that in evaluating abnormal motion both active and passive motion measurements are necessary to evaluate the joint motion under the appropriate charts and these should be added to obtain the total motion impairment.<sup>11</sup> While the A.M.A., *Guides* provides for impairment to the individual member and to the whole person, the Act does not provide for permanent impairment for the whole person.<sup>12</sup>

The Office's procedure manual provides that, in evaluating the loss of use of a scheduled member due to an employment injury, the percentage is to include both employment-related impairments and any preexisting impairment of the same member or function.<sup>13</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision. The accepted conditions in the combined cases are tendinitis of the left shoulder, arm and wrist, a left shoulder contusion and a cervical strain. Dr. Reno did not reference specific figures or tables under the A.M.A., *Guides* in her August 15, 2005 report. She, however, provided sufficient examination findings of appellant's left shoulder and wrist for the Office medical adviser to apply the A.M.A., *Guides*. As noted by the Office medical adviser, under Figures 16-43 and 16-46, appellant's measured

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<sup>7</sup> *Robert V. Disalvatore*, 54 ECAB 351 (2003).

<sup>8</sup> *Pamela J. Darling*, 49 ECAB 286 (1998).

<sup>9</sup> *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>10</sup> A.M.A., *Guides*, *supra* note 2 at 433-521.

<sup>11</sup> *Id.* at 451-52.

<sup>12</sup> *See Janae J. Triplette*, 54 ECAB 792 (2003).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(3) (June 2003); *see Michael C. Milner*, 53 ECAB 446 (2002).

left shoulder adduction and external rotation were normal.<sup>14</sup> Shoulder abduction of 130 degrees yielded a 2 percent impairment and external rotation of 40 degrees a 1 percent impairment under Figures 16-43 and 16-46.<sup>15</sup> Under Figure 16-46, shoulder internal rotation of 60 degrees yielded a 2 percent impairment<sup>16</sup> and, under Figure 16-40, flexion of 140 degrees a 3 percent impairment,<sup>17</sup> for a total shoulder impairment due to loss of range of motion of 8 percent. Regarding appellant's left wrist, under Figures 16-28 and 16-31, Dr. Reno's range of motion measurements for extension and ulnar deviation were normal,<sup>18</sup> but under Figure 16-28, dorsiflexion of 50 degrees yielded a 2 percent impairment<sup>19</sup> and, under Table 16-31, radial deviation of 15 degrees a 1 percent impairment, for a left wrist impairment of 3 percent.

The Board finds that appellant was entitled to an additional impairment rating of two percent for loss of left wrist motion based on Dr. Reno's August 15, 2005 report, not the three percent awarded. The scheduled member is the upper extremity which, under the A.M.A., *Guides* is to be evaluated as a whole.<sup>20</sup> Dr. Reno, however, also provided examination findings for appellant's left elbow, advising that he had a six percent impairment for loss of elbow flexion and a one percent impairment for loss of elbow supination, to total a seven percent elbow impairment. While an elbow condition has not been accepted as employment related, in determining entitlement to a schedule award, preexisting impairment to the scheduled member are to be included.<sup>21</sup> In this case, Dr. Segovia diagnosed a left elbow epicondylitis on September 7, 2001, one day after appellant's initial employment injury. Therefore, appellant would be entitled to an additional impairment based on loss of elbow motion.<sup>22</sup> Dr. Reno's August 15, 2005 report, therefore, indicates 11 percent impairment, based on loss of motion of the shoulder, wrist and elbow. Furthermore, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.<sup>23</sup> A January 17, 2003 EMG study indicated evidence of nerve root dysfunction at C8. In her impairment analysis dated August 18, 2005, Dr. Reno advised that appellant had both median and ulnar nerve sensory impairments. The Office medical adviser did not consider appellant's loss of elbow motion or Dr. Reno's sensory deficit findings in making his impairment determination. The case will be remanded to the Office to determine if appellant has established

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<sup>14</sup> A.M.A., *Guides*, *supra* note 2 at 477, 479.

<sup>15</sup> *Id.* at 477, 479.

<sup>16</sup> *Id.* at 479.

<sup>17</sup> *Id.* at 476.

<sup>18</sup> *Id.* at 467, 469.

<sup>19</sup> *Id.* at 467.

<sup>20</sup> *Id.* at 515-18.

<sup>21</sup> *Supra* note 13.

<sup>22</sup> *Id.*

<sup>23</sup> *Thomas J. Engelhart*, *supra* note 9.

an additional left upper extremity impairment such that he would be entitled to a schedule award greater than the 12 percent previously granted.

**CONCLUSION**

The Board finds that this case is not in posture for decision regarding whether appellant is entitled to an increased schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 5, 2006 be vacated and the case remanded to the Office for proceedings consistent with this opinion.

Issued: February 28, 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