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

| | | |
|---|---|---|
| **A.M., Appellant** | ) | |
| **and** | ) | **Docket No. 06-1962** |
| | ) | **Issued: February 2, 2007** |
| **U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer** | ) | |

*Appearances:*
*Thomas R. Uliase, Esq.,* for the appellant
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

### *JURISDICTION*

On August 22, 2006 appellant filed a timely appeal of a March 3, 2006 merit decision of the Office of Workers' Compensation Programs with respect to a schedule award. 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 the Office properly issued a schedule award for a four percent impairment to the right arm and three percent to his left arm commencing February 10, 2005.

### *FACTUAL HISTORY*

The Office accepted that appellant sustained a scalp contusion and cervical strain in the performance of duty on February 3, 1986 when he was assaulted. The record indicated that he had a prior neck injury on April 15, 1983 when he was involved in a motor vehicle accident while in the performance of duty.

Appellant submitted a report dated February 10, 2005 from Dr. Nicholas Diamond, an osteopath, providing a history and results on examination. Dr. Diamond diagnosed right

shoulder adhesive capsulitis, left biceps tendinitis, post-traumatic cervical and lumbar strain and sprain, chronic myofascitis and cervical radiculitis. With respect to permanent impairment, Dr. Diamond provided the following percentages for the right arm: (1) for loss of range of motion, 1 percent for shoulder flexion of 165 degrees, 1 percent for shoulder abduction of 165 degrees; (2) 20 percent for grip strength deficit; and (3) 3 percent for pain. He concluded that appellant had a 25 percent right upper extremity impairment. For the left arm, Dr. Diamond provided: (1) 4 percent for motor deficit of the left supraspinatus, (2) 9 percent for left deltoid motor deficit; (3) 20 percent for grip strength deficit; and (4) 3 percent for pain. Dr. Diamond, therefore, found that appellant had a 33 percent left arm impairment. He cited the tables and figures in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.) used to calculate the impairment rating.

The Office referred the case to an Office medical adviser for review. He submitted a May 25, 2005 handwritten report that is partially illegible. The Office medical adviser stated that the schedule award "will not include [illegible] injury as [illegible] by Dr. Diamond because it was not included in the accepted conditions." For the right arm, the medical adviser found a two percent impairment based on loss of range of motion in the shoulder, with an additional two percent for pain under Chapter 18 of the A.M.A., *Guides*. The Office medical adviser stated that, under section 16.8(a), loss of strength cannot be combined with range of motion. Regarding the left arm, he found three percent for pain under Chapter 18. The Office medical adviser stated that a weakness award was not appropriate, citing section 16.8(a). The date of maximum medical improvement was February 10, 2005.

By decision dated June 28, 2005, the Office issued a schedule award for an impairment of four percent to the right arm and three percent for the left arm. The period of the award was 21.84 weeks commencing February 10, 2005.

Appellant requested a hearing before an Office hearing representative which was held on December 19, 2005. By decision dated March 3, 2006, the hearing representative affirmed the June 28, 2005 decision.

## ***LEGAL PRECEDENT***

Under section 8107 of the Federal Employees' Compensation Act[1] and section 10.404 of the implementing federal regulation,[2] 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

[1] 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.404.

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.[3]

## ***ANALYSIS***

The medical evidence regarding an impairment to the upper extremities consists of the February 10, 2005 report from Dr. Diamond and a May 25, 2005 report from an Office medical adviser. Neither report is of sufficient probative value to determine the degree of employment-related impairment to the arms.

Dr. Diamond did not provide a reasoned medical opinion applying the A.M.A., *Guides.* He provides, for example, grip strength impairments without discussing the relevant issues in this regard. The A.M.A., *Guides* limit the use of such tables to the "rare case" when the loss of strength represents an impairing factor not adequately considered by other methods.[4] Dr. Diamond did not provide any explanation of why grip strength was an appropriate method in this case. In addition, the impairments for pain pursuant to Chapter 18 are not used "for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters of the A.M.A., *Guides.*"[5] Dr. Diamond did not discuss the use of Chapter 18 and explain why other methods were not adequate. The Board also notes that, for the left arm regarding motor strength deficits, Dr. Diamond cited Table 16-15, but identified the affected muscles. A proper application of this table should identify the peripheral nerve involved in accord with Table 16-15.[6]

The Office medical adviser's report is also of limited probative value. He appeared to raise the issue of causal relationship between diagnosed conditions and employment, without providing further explanation. He also refers to the pain impairments from Chapter 18, as did Dr. Diamond, without discussing the appropriateness of such a rating under the provisions of the A.M.A., *Guides.* For the left arm, he stated that a weakness impairment was not appropriate, without a clear explanation. The Office medical adviser cited section 16.8(a), which limits grip strength evaluations to the "rare case" noted above, as well as stating that decreased strength cannot be rated in the presence of decreased motion or other condition that prevents the application of maximal force in the evaluated region.[7] This section would not preclude a motor deficit for an identified peripheral nerve, using Tables 16-15 and 16-11 cited by Dr. Diamond.

---

[3] *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[4] A.M.A., *Guides* 508. *See also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (4) (June 2003).

[5] A.M.A., *Guides* 571. *See also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (5) (June 2003).

[6] *Id.* at 492, Table 16-15.

[7] *Id.* at 508.

The case will be remanded to the Office to secure a medical report that properly addresses the impairment issues in this case and provides a reasoned medical opinion. After such further development as the Office deems necessary, it should issue an appropriate decision.

## ***CONCLUSION***

The record does not contain probative medical evidence with respect to a schedule award under the Act and the case is remanded for further development.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 3, 2006 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: February 2, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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