

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

---

A.C., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Cincinnati, OH, Employer )

---

**Docket No. 14-965  
Issued: August 20, 2014**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 20, 2014 appellant, through counsel, filed a timely appeal from a January 27, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 sustained any permanent impairment to her right arm, warranting a schedule award under 5 U.S.C. § 8107.

**FACTUAL HISTORY**

On March 8, 2011 appellant, a 49-year-old custodian, injured her back and right arm when she fell while using a floor stripper. OWCP accepted her claim for back contusion, right buttock abrasion and fracture of the right radius head.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

On December 13, 2011 appellant underwent an electromyogram (EMG) and nerve conduction studies (NCV). The tests were negative for neuropathy, plexopathy or radiculopathy of the right upper extremity. On January 27, 2012 appellant underwent a magnetic resonance imaging (MRI) scan which demonstrated a grade 2 collateral ligament sprain of the right elbow.

On August 6, 2012 appellant underwent right elbow surgery by arthroscopy with extensive debridement and open debridement of the extensor carpal radialis brevis tendon with soft tissue and bone. During the procedure it was noted that appellant's radial head was normal and there was a full range of motion at the elbow.

In order to determine whether appellant had residuals of her accepted conditions and her capacity for work, OWCP referred her to Dr. Edward G. Fisher, Board-certified in orthopedic surgery, for a second opinion examination. In an April 26, 2013 report, Dr. Fisher stated that there were no objective findings or evidence of residuals, active or present, from the accepted March 8, 2011 employment injury. Examination of the right elbow revealed a healed incisional scar which was nontender and not adhering to the underlying tissue. There was a normal radial pulse with full extension of the right elbow, full pronation and supination with some minimal soreness over the lateral side of the elbow. There was no atrophy, soft tissue swelling or redness over the elbow. Dr. Fisher advised that the abrasion and contusion appellant sustained were soft tissue injuries which required no definitive treatment and were not clinically present at the time of his examination. He stated that the right radial head fracture was treated appropriately, according to the March 8, 2011 x-rays, January 2012 MRI scan and August 6, 2012 surgical report evidencing a solid, healed fracture. Dr. Fisher found that appellant was capable of performing her full duties of a custodial laborer, her date-of-injury job, as described in the statement of accepted facts.

Dr. Fisher concluded that the accepted conditions had resolved with no physical residuals that required work restrictions. He outlined restrictions of no lifting with appellant's right upper extremity exceeding 20 pounds, due to the nonwork-related condition of right lateral epicondylitis.

By decision dated June 13, 2013, OWCP terminated appellant's entitlement to compensation for wage loss, finding that Dr. Fisher's opinion represented the weight of the medical evidence.

On July 16, 2013 appellant filed a Form CA-7 claim for a schedule award based on the partial loss of use of her right arm.

On July 19, 2013 James W. Dyer, Board-certified in orthopedic surgery and an OWCP medical adviser, stated that he agreed with Dr. Fisher that there was no permanent impairment to appellant's upper extremities.

In a July 8, 2013 report, received by OWCP on July 22, 2013, Dr. Barton R. Branam, a specialist in sports medicine, stated that appellant could return to full duty immediately with no restriction.

By decision dated July 23, 2013, OWCP denied appellant's claim for a schedule award. It found that she did not have any permanent impairment related to her March 8, 2011

employment injury. OWCP noted that appellant was referred to Dr. Fisher for a second medical opinion examination who found no permanent impairment.

On July 31, 2013 appellant, through her attorney, requested an oral hearing, which was held on December 2, 2013.

In a report of August 15, 2013, Dr. Martin Fritzhand, a Board-certified urologist, found that appellant had a four percent right upper extremity impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). On examination of the right elbow, the range of motion in appellant's right elbow was significantly reduced and associated with sensory loss. Dr. Fritzhand found that she had diminished flexion which measured 110 degrees, with extension normal to 0 degrees and that she had a 68 percent score under the Quick Disabilities of Arm, Shoulder & Hand (DASH) test, a questionnaire which calculates functional disability grade by rating the difficulties a patient experiences in performing basic activities of daily living. He advised that where motion loss is present, such impairment can alternatively be rated using section 15.7, Range of Motion Impairment, page 459 of the A.M.A., *Guides*. This section provides that a range of motion impairment stands alone and should not be combined with a diagnosis-based impairment rating. Dr. Fritzhand stated that he relied on Table 15-33, page 574 of the A.M.A., *Guides*<sup>2</sup> to rate appellant's right upper extremity impairment. Based on the loss of range of motion measurements, he found that Table 15-33 yielded a three percent right upper extremity impairment for flexion and a one percent right upper extremity impairment for pronation, or a total of four percent right upper extremity impairment.

By decision dated January 27, 2014, an OWCP hearing representative affirmed the July 23, 2013 decision. He found that Dr. Fritzhand's impairment rating failed to conform to the A.M.A., *Guides* and he did not explain why impairment was calculated based on loss of range of motion rather than the preferred method.

### **LEGAL PRECEDENT**

The schedule award provision of the FECA<sup>3</sup> and its implementing regulations<sup>4</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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 implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup> The claimant has the burden of proving

---

<sup>2</sup> A.M.A., *Guides* 474.

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>5</sup> *Id.*

that the condition for which a schedule award is sought is causally related to his or her employment.<sup>6</sup>

### ANALYSIS

OWCP found that appellant had no ratable permanent impairment stemming from her accepted conditions of back contusion, right buttock abrasion and fracture of the right radius head. Appellant found that she was referred to Dr. Fisher for a second opinion regarding the residuals of her work-related injury. Dr. Fisher found that there was no permanent impairment of the lower or upper extremities from her accepted conditions. His report was reviewed by Dr. Dyer, a medical adviser, who agreed with his calculations.

Appellant submitted the August 15, 2013 report of Dr. Fritzhand, who rated a four percent impairment to the right arm based on loss of range of motion at the right elbow. The Board notes that section 15.2 at page 387 of the A.M.A., *Guides* specifically states that “range of motion is used primarily as a physical examination adjustment factor and only to determine actual impairment values when a grid permits its use as an option.” Appellant’s claim was accepted for a fracture of the right elbow radius head. Fracture of the elbow is evaluated on page 399 of the A.M.A., *Guides*, Table 15-4, Elbow Regional Grid.<sup>7</sup> By means of an asterisk, Table 15-4, the Elbow Regional Grid provides that for a fracture of the elbow “if motion loss is present, this impairment may alternatively be assessed using Section 15.7, Range of Motion Impairment.”

Regarding the range of motion examination, the A.M.A., *Guides* also provide that loss of range of motion is to be verified by recording the active measurements from three separate ranges of motion efforts. Measurements should be rounded up or down to the nearest number ending in 0. All measurements should fall within 10 degrees of the mean of the three measurements. The maximum observed measurement is used to determine the range of motion impairment.<sup>8</sup>

The Board finds that Dr. Fritzhand did not properly reference examination findings which included active measurements from three separate range of motion efforts. Dr. Fritzhand failed to explain why the range of motion method, rather than a diagnosis-based rating, was the appropriate method for rating appellant’s impairment. His report is therefore of limited probative value.

Regarding the diagnosis-based methodology, the Board notes that Table 15-4, the Elbow Regional Grid<sup>9</sup> rates a fracture of the elbow from zero percent impairment, even with surgical treatment, up to five percent with residual symptoms, consistent objective findings and/or functional loss with normal motion. The weight of medical evidence of record as represented by

---

<sup>6</sup> *Veronica Williams*, 56 ECAB 367, 370 (2005).

<sup>7</sup> A.M.A. *Guides* 399.

<sup>8</sup> *Id.* at 464.

<sup>9</sup> *Id.* at 399.

Dr. Fisher's opinion, found that appellant's accepted fracture was well healed with no residual impairment. While radial head (isolated arthroplasty) can be rated from a 6 to 13 percent impairment, appellant's surgical note found that the radial head was intact and the arthroscopy was of the tendon, for the condition of lateral epicondylitis, which is not an accepted condition. There is no medical report of record which found right upper extremity impairment, pursuant to the A.M.A., *Guides*.

The Board finds that appellant has not submitted sufficient medical evidence to the record to establish that she is entitled to a schedule award.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

### **CONCLUSION**

The Board finds that appellant has not established that she has sustained any permanent impairment based on her accepted injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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