

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

EDITE ABOLINS, Appellant

and

**LIBRARY OF CONGRESS,
Washington, DC, Employer**

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**Docket No. 05-988
Issued: September 9, 2005**

Appearances:
Edite Abolins, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 23, 2005 appellant filed a timely appeal of the February 3, 2005 merit decision of the Office of Workers' Compensation Programs which granted her a schedule award. Pursuant to 20 C.F.R. §§ 501.2 (c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant is entitled to an additional schedule award for impairment of the right upper extremity.

FACTUAL HISTORY

Appellant, a 60-year-old former librarian, has several accepted occupational disease claims involving both upper extremities.¹ Claim number 25-404620, with a date of injury of April 8, 1992 was accepted for right carpal tunnel syndrome. The Office also authorized a right

¹ Appellant retired from federal service effective March 1, 2002.

carpal tunnel release, which was performed on June 26, 1992. Appellant subsequently received a 1995 schedule award for 46 percent impairment of the right upper extremity. She also filed an occupational disease claim for a left hand injury arising on April 28, 1995. The Office accepted the claim for left finger, thumb and hand tenosynovitis (25-466834). Additionally, the Office authorized a June 14, 1996 trigger finger release of the fourth finger, left hand. On August 17, 1998 appellant received a schedule award for six percent impairment of the left hand.²

Appellant also has an accepted claim (25-511227) for trigger and flexor tenosynovitis of the right thumb and ring finger, which arose on or about July 16, 1997. The Office also authorized two surgeries for her right ring finger, which were performed on April 3 and September 4, 1998. Appellant returned to modified duty on October 8, 1998.

On August 30, 1999 appellant filed another occupational disease claim for injury to her right third (middle) finger. The Office accepted the claim (25-547424) for tenosynovitis of the right third finger, with a date of injury of August 17, 1999.³ On June 23, 2000 the Office paid an additional schedule award for five percent impairment of the right hand.

On July 7, 2000 appellant underwent a right middle trigger finger release. This was followed by a March 13, 2001 surgery on her left thumb. On September 4, 2001 Dr. Bahman Sadr, a Board-certified orthopedic surgeon, performed an excision of trapezium, ligament reconstruction and tendon interposition, right thumb. Additionally, he performed a volvar capsulodesis of metacarpophalangeal joint, right thumb.

On September 24, 2002 the Office granted a schedule award for 9 percent impairment of the left upper extremity and 11 percent impairment of the right upper extremity, for a total of 62.4 weeks' compensation. The Office medical adviser's September 18, 2002 report revealed that the left upper extremity award was for "implant arthroplasty" of the left thumb carpometacarpal (CMC) joint and the right upper extremity award was for "resection arthroplasty" of the right thumb CMC joint.⁴

Appellant requested an additional schedule award on November 25, 2003. She submitted a November 24, 2003 report from Dr. Sadr, who advised that she had reached maximum medical improvement following her September 4, 2001 right hand surgery. He indicated that appellant had a problem with clicking of her right thumb, but she had learned to cope. Physical examination revealed some laxity of the basal joint of the right thumb and some crepitation, which he indicated was presumably from the rubbing of the base of the thumb metacarpal against the trapezoid. Appellant's overall function of the thumb was good, but Dr. Sadr noted weakness

² Appellant would later undergo three additional surgeries on her left hand and she received an additional schedule award for nine percent impairment of the left upper extremity.

³ In November 1999, the Office doubled claims 25-404620, 25-466834, 25-511227 and 25-547424 under claim number 25-466834. Appellant also has an accepted claim for a 1994 right shoulder sprain and impingement syndrome, with acromioclavicular joint release on September 6, 1996 (25-486635). However, the case record for this latter claim was not combined with her four other upper extremity claims.

⁴ The Office medical adviser referenced "Table 16-27" of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

of grip and pinch on account of discomfort at the operative site. He found a total impairment of 29 percent of the right upper extremity due to a combination of the September 4, 2001 arthroplasty and weakness of the right thumb and hand. Dr. Sadr explained that the arthroplasty warranted 11 percent impairment under the A.M.A., *Guides* and the noted weakness represented 20 percent impairment of the right upper extremity.

On February 23, 2004 appellant reiterated her request for an additional schedule award, noting that more than one year had elapsed since her September 4, 2001 right thumb surgery and Dr. Sadr recently found a 29 percent impairment of the right upper extremity.

Dr. Sadr provided a March 19, 2004 addendum to his November 24, 2003 report. He explained that appellant's 20 percent impairment for weakness was based on a dynamometer measurement of 19 kilograms using the rapid exchange grip technique. Dr. Sadr indicated that this measurement was 35 percent less than expected and, therefore, represented 20 percent impairment under the A.M.A., *Guides*. He also reiterated that appellant had an additional 11 percent impairment as a result of the September 4, 2001 resection arthroplasty of the right thumb, for a combined right upper extremity impairment of 29 percent.

In an October 6, 2004 report, the Office medical adviser, Dr. Willie E. Thompson, a Board-certified orthopedic surgeon, indicated that following her right thumb surgery appellant reached maximum medical improvement on September 4, 2002. He explained that the September 4, 2001 surgery was analogous to thumb CMC junction arthroplasty with resection, which represented 11 percent impairment of the right upper extremity under the A.M.A., *Guides*.

On December 8, 2004 the Office asked Dr. Thompson whether his recent 11 percent right upper extremity impairment rating was in addition to the 46 percent and 11 percent right upper extremity schedule awards appellant received in 1995 and 2002.⁵ The Office also asked whether current rating was for the thumb only. In his December 15, 2004 response, Dr. Thompson explained that, while the current rating related to the right thumb only, the impairment for the thumb CMC joint corresponded to 11 percent of the right upper extremity. Dr. Thompson further stated that the current 11 percent impairment rating was in addition to the two prior right upper extremity schedule awards in 1995 and 2002.

On January 12, 2005 the Office granted appellant a schedule award for 11 percent disability "right upper extremity (right thumb)." The award covered a period of 8.25 weeks. On February 3, 2003 the Office issued an amended schedule award because it had miscalculated the prior award based on impairment to the thumb only. The Office explained that based on its medical adviser's December 15, 2004 report appellant was entitled to an award for 11 percent impairment of the right upper extremity. Therefore, the award was amended to reflect entitlement to 34.32 weeks' compensation instead of the previously award 8.25 weeks.⁶

⁵ Dr. Thompson also prepared the September 18, 2002 rating the Office relied upon in granting the September 24, 2002 schedule award.

⁶ Whereas a total loss of use, of an arm warrants 312 weeks' compensation, a total loss of use, of a thumb only warrants 75 weeks' compensation. 5 U.S.C. § 8107(c)(1) and (c)(6). Because Dr. Thompson provided an impairment rating of the upper extremity, appellant's compensation should have been calculated based on a percentage of 312 weeks, rather than 75 weeks.

LEGAL PRECEDENT

An increased schedule award may be based on new employment exposure; however, additional occupational exposure is not a prerequisite. A claim for an increased schedule award based on additional exposure constitutes a new claim.⁷ Absent additional employment exposure, an increased schedule award may also be based on evidence demonstrating that the progression of an employment-related condition has resulted in a greater impairment than previously calculated.⁸

Section 8108 of the Federal Employees' Compensation Act⁹ provides for the reduction of compensation for subsequent injury to the same member:

“The period of compensation payable under the schedule in section 8107(c) ... is reduced by the period of compensation paid or payable under the schedule for an earlier injury if --

(1) compensation in both cases is for disability of the same member or function or different parts of the same member or function or for disfigurement; and

(2) the Secretary of Labor finds that compensation payable for the later disability in whole or in part would duplicate the compensation payable for the preexisting disability.”

ANALYSIS

To date appellant has received four schedule awards for impairment to her right upper extremity totaling 68 percent. On December 19, 1995 she received an award for a 46 percent impairment of her right upper extremity due to carpal tunnel syndrome. On June 23, 2000 the Office granted an additional award for a five percent impairment of the right hand. Appellant had surgery on July 7, 2000 for right middle finger trigger release and on September 4, 2001 she underwent arthroplasty with resection of the right thumb CMC joint. Following right thumb surgery, she received two more schedule awards. The September 24, 2002 and February 2, 2005 awards were both for 11 percent right upper extremity impairments.¹⁰ Both awards appear based on the same September 4, 2001 resection arthroplasty of the right thumb CMC joint. The Office medical adviser, Dr. Thompson, reviewed the claim on September 18, 2002 and again on October 6, 2004. In both instances he calculated an 11 percent right upper extremity impairment for resection arthroplasty of the right thumb CMC joint. Notwithstanding his December 15,

⁷ *Paul Fierstein*, 51 ECAB 381, 385 (2000).

⁸ *Linda T. Brown*, 51 ECAB 115 (1999).

⁹ 5 U.S.C. § 8108.

¹⁰ Appellant also received compensation for a nine percent left upper extremity impairment in the September 24, 2002 schedule award.

2004 assertion to the contrary, the record indicates that the February 3, 2005 award is a duplicate of the 11 percent right upper extremity award appellant received on September 24, 2002.

Appellant has received compensation for a 68 percent impairment of the right upper extremity, plus additional compensation for a 5 percent impairment of the right hand. On appeal she argues that the Office should have awarded the full 29 percent upper extremity impairment Dr. Sadr calculated in his November 24, 2003 and March 19, 2004 reports. The Office medical adviser and Dr. Sadr agreed that appellant's September 4, 2001 surgery represented an 11 percent right upper extremity impairment under the Table 16-27, A.M.A., *Guides*, page 506.¹¹ However, Dr. Sadr indicated in a March 19, 2004 report that her right grip strength measurement of 19 kilograms was 35 percent less than expected, which corresponds to a 20 percent right upper extremity impairment. He advised that this impairment should be combined with the 11 percent impairment for a total right upper extremity impairment of 29 percent; however, this does not conform with Table 16-18, which provides a maximum impairment value for the upper extremities due to disorders of specific joints.

When the Office medical adviser reviewed the record he did not specifically address whether appellant's reported loss of strength warranted separate consideration as indicated by Dr. Sadr. While the second 11 percent award for the September 4, 2001 resection arthroplasty was improper, there is still an unresolved issue of whether she is entitled to an award for loss of strength in the right upper extremity. The case is, therefore, remanded for further development to determine whether appellant has additional impairment for loss of grip strength. Further development is also necessary to determine whether any additional compensation is appropriate under section 8108 of the Act.¹² After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹¹ The Act 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. 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001). Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); FECA Bulletin No. 01-05 (January 29, 2001).

¹² 5 U.S.C. § 8108; *see Tammy L. Meehan*, 53 ECAB 229, 231 (2001).

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2005 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further consideration consistent with this decision.

Issued: September 9, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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