

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

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**D.G, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Chicago, IL, Employer**

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**Docket No. 17-0506  
Issued: July 26, 2017**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 5, 2017 appellant filed a timely appeal from a November 17, 2016 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 has met his burden of proof to establish permanent impairment of his right upper extremity thereby warranting a schedule award.

**FACTUAL HISTORY**

On October 4, 2009 appellant, then a 50-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging an injury to his right upper extremity as a result of repetitively lifting, pushing, and pulling cases of mail with his right upper extremity. He first

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

became aware of his condition and realized it resulted from his employment on March 2, 2009. Appellant stopped work on March 1, 2009.

OWCP accepted appellant's claim for right brachial neuritis and right cubital tunnel syndrome. It paid disability compensation and placed him on the periodic rolls effective September 24, 2010.<sup>2</sup>

On March 16, 2016 appellant filed a claim for a schedule award (Form CA-7).

In a letter dated March 28, 2016, OWCP requested that appellant provide a medical report from his treating physician with an opinion as to whether appellant had reached maximum medical improvement (MMI) and whether he had a permanent impairment, utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Appellant was afforded 30 days to submit the additional evidence.

Appellant submitted an April 6, 2016 report by Dr. Migdonia M. DeloSantos, a Board-certified family practitioner, who indicated that appellant had been under her care for a work-related neck and right arm injury sustained on March 2, 2009. Dr. DeloSantos related that he had undergone extensive physical and medicinal therapy and had reached MMI for his injury. She reported that the extension of appellant's right arm was less than 50 degrees before he experienced pain. Dr. DeloSantos explained that he could no longer complete his duties as a letter handler because of the pain.

In a handwritten April 11, 2016 letter, appellant noted that he had worked for the employing establishment for over 30 years and would still be working for them if not for his condition.

Dr. DeloSantos submitted another report dated September 8, 2016. She related that appellant had a brachial neuritis injury to his neck and right arm on March 2, 2009, which caused shooting pains down the right arm. Dr. DeloSantos noted that he had reached MMI. She reiterated that appellant had less than 50 degrees of pain-free extension in the right arm and that he could no longer perform his letter handler duties.

In a decision dated November 17, 2016, OWCP denied appellant's claim for a schedule award. It found that the medical evidence of record failed to establish a permanent impairment to his right upper extremity as a result of his accepted conditions.

### **LEGAL PRECEDENT**

Section 8149 of FECA delegates to the Secretary of Labor the authority to prescribe rules and regulations for the administration and enforcement of FECA. The Secretary of Labor has

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<sup>2</sup> On May 28, 2015 OWCP issued a decision terminating appellant's entitlement to compensation for wage-loss and schedule award effective May 30, 2015 in accordance with 5 U.S.C. § 8106(c)(2) because he refused an offer of suitable work. On June 4, 2015 appellant requested an oral hearing before an OWCP hearing representative. By decision dated January 27, 2016, an OWCP hearing representative reversed the May 28, 2015 decision.

vested the authority to implement FECA program with the Director of OWCP.<sup>3</sup> Section 8107 of FECA 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>4</sup> FECA, 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. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>5</sup>

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>6</sup> The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.<sup>7</sup>

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning (ICF), Disability and Health.<sup>8</sup> Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment class for the diagnosed condition Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).<sup>9</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>10</sup>

For example, impairment due to cubital tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text in section 15.4f of the A.M.A., *Guides*.<sup>11</sup> In Table 15-23, grade modifier levels (ranging from 0 to 4) are described for the categories test findings, history, and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down by one percent based on functional scale, an assessment of impact on daily living activities.<sup>12</sup>

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<sup>3</sup> See 20 C.F.R. §§ 1.1-1.4.

<sup>4</sup> For a complete loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

<sup>5</sup> 20 C.F.R. § 10.404. See also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>6</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *id.* Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (February 2013).

<sup>7</sup> *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>8</sup> A.M.A., *Guides*, at section 1.3, The ICF, Disability and Health: A Contemporary Model of Disablement.

<sup>9</sup> *Id.* at 385-419.

<sup>10</sup> *Id.* at 411.

<sup>11</sup> *Id.* at 433-50

<sup>12</sup> *Id.* at 448-50.

## ANALYSIS

The issue on appeal is whether appellant established permanent impairment of his right upper extremity as a result of his accepted right cubital tunnel or brachial neuritis conditions.

The Board finds that appellant has failed to meet his burden of proof to establish a permanent impairment of his right upper extremity.

To support a schedule award, the file must contain competent medical evidence which shows that appellant has reached MMI, the date MMI occurred, and which describes the impairment in sufficient detail for the claims examiner to visualize the character and degree of impairment. The medical evidence must also provide a percentage of impairment based on a specific diagnosis, pursuant to the A.M.A., *Guides*.<sup>13</sup> If a claimant requests a schedule award, but has not submitted such evidence, the claimant should be requested to submit it.<sup>14</sup> If the claimant does not provide an impairment evaluation from his physician when requested, and there is no indication of permanent impairment in the medical evidence of file, the claims examiner may proceed with a formal denial of the award.<sup>15</sup>

The only evidence appellant submitted in support of his schedule award claim were reports from Dr. DelosSantos. Dr. DelosSantos noted that he had reached MMI and that extension of his right arm was less than 50 degrees. This evidence, however, did not provide sufficient information which would allow the claims examiner or the Board to visualize the character and degree of permanent impairment for either diagnosis of cubital tunnel syndrome or brachial neuritis. As previously noted, impairment due to cubital tunnel syndrome is evaluated under the scheme found in Table 15-23 of the A.M.A., *Guides*. In Table 15-23, grade modifier levels (ranging from 0 to 4) are described for the categories test findings, history, and physical findings. Dr. DelosSantos did not provide sufficient findings to rate appellant's permanent impairment pursuant to the applicable grade modifiers. Furthermore, she did not attempt to rate his permanent impairment pursuant to the A.M.A., *Guides*.<sup>16</sup>

Accordingly, appellant has not established that he has a permanent impairment for schedule award purposes. He has, therefore, not met his burden of proof.

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

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<sup>13</sup> *L.R.*, Docket No. 16-1796 (issued January 13, 2017).

<sup>14</sup> *B.R.*, Docket No. 16-1844 (issued March 8, 2017).

<sup>15</sup> *Id.*

<sup>16</sup> *See supra* note 14. For discussion of rating permanent impairment due to brachial plexus neuritis see *P.H.*, Docket No. 13-1760 (issued May 7, 2014).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish permanent impairment of his right upper extremity thereby warranting a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 17, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board