

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

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M.W., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Chino, CA, Employer )

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**Docket No. 17-0829  
Issued: July 19, 2017**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On March 3, 2017 appellant filed a timely appeal from a January 30, 2017 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 established permanent impairment of her right upper extremity due to her accepted federal employment injury.

**FACTUAL HISTORY**

On June 24, 2015 appellant, then a 47-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 20, 2015 she fractured her right wrist while delivering a parcel. She stopped work on June 23, 2015. On August 3, 2015 OWCP accepted appellant's

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

claim for a closed fracture of part of the right ulna and a closed fracture of the right carpal bone. It paid wage-loss compensation and medical benefits on the supplemental rolls commencing August 6, 2015.

In a diagnostic report dated August 7, 2015, Dr. Li-Chang Lien, a Board-certified diagnostic radiologist, examined the results of a magnetic resonance imaging (MRI) scan of appellant's right wrist and found no evidence of an occult fracture or ligamentous injury. He noted mild-to-moderate extensor carpi ulnaris tendinopathy/tenosynovitis without lateral subluxation or sub-sheath tear, and no other internal derangements.

In a report dated July 25, 2016, Dr. Usha M. Raghavan, a Board-certified internist, stated that appellant had reached maximum medical improvement.

On October 11, 2016 appellant filed a claim for a schedule award (Form CA-7). On October 25, 2016 OWCP notified appellant that it had not received any medical evidence in support of her schedule award claim. It afforded her 30 days to submit additional evidence.

On October 25, 2016 OWCP referred appellant for a second opinion examination with Dr. Steven M. Ma, a Board-certified orthopedic surgeon, for evaluation to determine whether she had permanent impairment of her right upper extremity. On November 22, 2016 Dr. Ma reviewed appellant's medical history and provided examination findings. He found 180 degrees of forward flexion, 50 degrees of extension, 180 degrees of abduction, and 50 degrees of adduction of the shoulders bilaterally. Examining the wrists, Dr. Ma found 60 degrees of dorsiflexion and volar flexion, 20 degrees of radial deviation, and 30 degrees of ulnar deviation. He stated that appellant had full range of motion of the shoulder and wrists bilaterally. Dr. Ma noted negative tests for Tinel's sign, Phalen's test, Finkelstein's test, and Allen's test. Using the diagnosis-based method of impairment rating, for a contusion of the wrist, he rendered an impairment rating of zero percent based upon the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Dr. Ma referenced Table 15-3, noted that appellant suffered no residuals of her work-related injury, and rendered a date of maximum medical improvement of July 25, 2016.

OWCP forwarded the case record and a statement of accepted facts to an OWCP medical adviser on December 28, 2016. On January 23, 2017 the medical adviser also using the diagnosis-based method, diagnosed right ulna fracture and right wrist contusion. He referenced Table 15-3 and concurred with Dr. Ma's zero percent permanent impairment rating for appellant's right wrist.

By decision dated January 30, 2017, OWCP denied appellant's claim for a schedule award, finding that she had no permanent impairment of her right upper extremity.

### **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 vested the authority to implement the FECA program with the Director of OWCP.<sup>2</sup> Section 8107

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<sup>2</sup> See 20 C.F.R. §§ 1.1-1.4.

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>3</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>4</sup>

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>5</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>6</sup>

### ANALYSIS

The issue on appeal is whether appellant has established permanent impairment of her right upper extremity, causally related to her accepted federal employment injury. The Board finds that the medical evidence of record does not establish permanent impairment.

Although appellant had not submitted a report from a treating physician which evaluated and rated her permanent impairment, OWCP referred appellant to Dr. Ma for an evaluation to determine whether she had right upper extremity permanent impairment.

On November 22, 2016 Dr. Ma, OWCP's second opinion physician, reviewed appellant's medical history. He provided his examination findings. Dr. Ma also noted negative Tinel's, Phalen's, Finkelstein's, and Allen's tests. He rendered an impairment rating of zero percent permanent based upon the sixth edition of the A.M.A., *Guides*. Dr. Ma referenced Table 15-3 for the wrist in rendering this impairment rating. He diagnosed a contusion of the wrist and found full range of motion, no residuals of her work-related injury, and a date of maximum medical improvement of July 25, 2016.

On January 23, 2017 the district medical adviser (DMA), analyzing Dr. Ma's report, referenced appellant's right ulna fracture and her right wrist contusion as the diagnoses upon which the impairment rating was based. According to Table 15-3 the DMA, concurred with Dr. Ma's zero percent impairment rating for appellant's right wrist, for either diagnosis as appellant had no residual findings.<sup>7</sup>

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<sup>3</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>4</sup> 20 C.F.R. § 10.404. *See also Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>5</sup> *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

<sup>6</sup> *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>7</sup> A.M.A., *Guides* 395-96 at Table 15-3.

Neither Dr. Ma nor the DMA found any evidence of permanent impairment of her right wrist. The medical evidence of record establishes that appellant has no permanent impairment of the right upper extremity. As such, the Board finds that OWCP properly denied appellant's claim for schedule award compensation.

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.

**CONCLUSION**

The Board finds that OWCP properly denied appellant's claim for schedule award compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 30, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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