U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL L. GALLEGOS and DEPARTMENT OF THE AIR FORCE, KELLY AIR FORCE BASE, San Antonio, Tex.

Docket No. 96-1050; Submitted on the Record;
Issued June 22, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant has more than an additional three percent permanent impairment of the right hand for which he received a schedule award.

On May 11, 1984 appellant, then an aircraft mechanic for the Department of the Air Force, sustained a twisting injury to his right hand, while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for reinjury of an old unhealed fracture of the hamate of his right hand and approved surgery in the form of a fusion of the right hamate to the ring and little finger metacarpals. On August 7, 1985 the Office awarded appellant a three percent schedule award for the right hand for the period March 18 through May 8, 1985. Appellant resigned from the employing establishment in 1987 and, although his hand remained symptomatic, he continued to work for different employers.

On November 24, 1991 appellant filed a claim for an additional schedule award. Appellant submitted a February 4, 1995 medical report, from Dr. Donna M. Boehme, a Board-certified orthopedic surgeon. In her report, Dr. Boehme reported that appellant stated that he has pain on the ulnar aspect of his hand and that it radiates up to his neck. Dr. Boehme noted that appellant had decreased sensation on the dorsal side of the right hand that is dorsal and ulnar. Dr. Boehme opined that appellant had a two percent impairment for the ulnar deviation. Dr. Boehme further stated that appellant's grip strength on the right is 100 versus 135 on the left side. Because appellant is right handed, Dr. Boehme stated that she would give him an additional eight percent impairment for this lack of grip strength on the right. She further stated that because of the scar and decreased sensation on the ulnar aspect of the hand, she would give appellant an additional five percent impairment. It appears that Dr. Boehme used the Texas Workers' Compensation Act in rendering her impairment rating.

The Office referred appellant to Dr. David Roberts, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a medical report dated October 13, 1995, Dr. Roberts indicated that appellant was working regular duty as a jet engine mechanic. The doctor noted

appellant's complaints of increasing pain over the ulnar aspect of the right hand with radiation from the mid-forearm to the ring and little fingers of the hand. On examination, the finger range of motion including the MCP, PIP and DIP was normal in all fingers of the right hand. Dr. Roberts found, however, that appellant's wrist range of motion was decreased. Dr. Roberts noted that appellant had normal flexion and extension of the right wrist, but that his radial deviation was decreased to 28 degrees and ulnar deviation was 22 degrees in the right wrist. Grip strength was tested with a Jamar dynamometer and was 110 pounds on the right side and 138 pounds in the normal left hand. Dr. Roberts noted that appellant is right hand dominant. Following the American Medical Association, *Guide to the Evaluation of Permanent Impairment*[1], Dr. Roberts found no impairment for sensory deficit, finger range of motion, wrist flexion and extension. He further calculated that appellant's radial deviation of 28 degrees resulted in 0 (zero) percent impairment of the upper extremity. However, Dr. Roberts calculated that the 22 percent ulnar deviation of the right wrist resulted in a 2 percent ulnar deviation of the right upper extremity.[2] Utilizing Table 34, page 65 of the A.M.A., *Guides*, Dr. Roberts calculated a 10 percent upper extremity impairment due to decreased right grip strength by comparing the 110 pound grip strength on the right to the "normal" left hand grip strength of 138 pounds. Using the formula in the A.M.A., *Guides*,[3] he calculated a 20 percent strength loss under which, pursuant to the A.M.A., *Guides*, yielded a 10 percent upper extremity impairment.[4] Dr. Roberts therefore recommended a total right upper extremity impairment of 12 percent, combining the right upper extremity impairment of 10 percent with the 2 percent for the right ulnar deviation.

In a medical report dated November 15, 1995, an Office medical adviser, reviewed the medical evidence of record and the A.M.A., *Guides*. Based on the figures provided by Dr. Roberts' October 13, 1995 medical report, the Office medical adviser agreed with Dr. Roberts that appellant exhibited a 2 percent loss of motion for ulnar deviation. He further felt that appellant's pain, as it was described, was of sufficient severity and clinical importance to merit a specific impairment value. Utilizing Table 11,[5] the Office medical adviser classified appellant as having Grade 3 pain, pain which interfered with activity, of the upper extremity due to pain or sensory deficit resulting from a peripheral nerve disorder which equated to a 60 percent value. He then utilized Table 15[6] to find that the maximum percentage upper extremity

[1] A.M.A., *Guides* (4th ed. 1993).

[2] *Id*. at 76, figure 29.

[3] A.M.A., *Guides*, at 65.

[4] *Id.* at 65, Table 34. Table 34 calculates loss of strength based on grip strength as determined by a formula of abnormal strength subtracted from normal strength and then divided by normal strength to yield a percentage of strength loss index. The grip strength of one arm is compared with the grip strength of the opposite arm which is assumed to be normal. If both arms are affected then separate tables are provided for calculating grip strength or pinch strength. In this case, Dr. Roberts subtracted the 138 pound grip strength of the normal left hand from the 110 pound grip strength of the right hand and then divided by the 138 pound grip strength of the left hand to determine that appellant had a 20 percent strength loss index. Under Table 34, a 20 percent strength loss index equals a 10 percent permanent impairment. A.M.A., *Guides*, pp. 64-65 (4th ed. 1994).

[5] A.M.A., *Guides* at 48.

[6] A.M.A., *Guides* at 54.

impairment for the ulnar nerve, below midforearm, was 7 percent. Multiplying the two figures (60 percent times 7 percent), the Office medical adviser obtained a 4 percent impairment rating for pain. Combining the 2 percent ulnar deviation rating with the 4 percent pain rating, the Office medical adviser rendered a 6 percent permanent partial impairment of the right upper extremity. Contrary to Dr. Roberts' recommendation, the Office medical adviser found that appellant did not have any reduction in grip strength and, thus, no impairment value was warranted. The Office medical adviser found that appellant's 110 pound right grip strength equated to 50 kilograms. He noted that appellant's right grip strength was slightly above the average by utilizing Table 32,[7] which denotes the normal grip strength of appellant, then 36, was 49.2 kilograms. Noting that the A.M.A., *Guides*, utilize normal values and not comparison with the other extremity as a reference, the Office medical adviser found that appellant did not have any reduction in grip strength and, thus, no impairment value was warranted. The Office medical adviser opined that maximum medical improvement was reached on October 13, 1995, the date of Dr. Roberts' report.

By letter dated November 29, 1995, the Office granted appellant a schedule award for an additional 3 percent permanent partial impairment of the right hand for the period October 13 to December 3, 1995, for a total of 7.32 weeks of compensation.

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

Under section 8107 of the Federal Employees' Compensation Act[8] and section 10.304 of the implementing federal regulations,[9] schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations 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 A.M.A., *Guides* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[10]

Initially, the Board notes that Dr. Roberts and the Office medical adviser who reviewed Dr. Robert's report both concluded that appellant's work-related permanent impairment pertain to the right upper extremity, not the hand. Yet the Office's November 29, 1995 schedule award decision awarded compensation for permanent impairment of the hand and provided no explanation as to why the schedule award was not made for the arm. Where the residuals of an injury to a member of the body specified in the schedule award provisions of the Act extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into

[7] A.M.A., *Guides* at 65.

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.304.

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

the hand, of a hand into the arm, or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member.[11]

In concluding that appellant had a 6 percent right arm impairment, the Office medical adviser reviewed Dr. Roberts' report, together with the other medical evidence of record and assigned a percentage of impairment pursuant to the A.M.A., *Guides*, to the findings reported by Dr. Roberts.

In this case, the Office medical adviser correctly applied the A.M.A., *Guides* as noted above in determining the degree of appellant's impairment for ulnar deviation. He further found that the pain appellant experienced was of sufficient severity and clinical importance to merit a specific impairment value. The Office medical adviser correctly applied the A.M.A., *Guides* in arriving at his 4 percent impairment rating for pain.[12]

However, it appears the Office medical adviser disagreed with Dr. Roberts with regard to grip strength. The Office medical adviser used Table 34 to establish "normal" grip strength. However, the A.M.A., *Guides* provide for comparing the grip strength rating with that of the "opposite extremity, which is usually normal." Only when both extremities are involved does the A.M.A., *Guides* direct the evaluator to use the average strength listed in Table 32.[13] The A.M.A., *Guides* then directs the evaluator to determine index loss of strength in the manner Dr. Roberts did to determine upper extremity impairment by applying the resulting percentage of strength loss to the ranges in Table 34.[14]

In view of this, the Board will remand the case for further development as to the extent of impairment due to loss of strength. The case will be remanded to the Office for such further development as it finds appropriate to be followed by a *de novo* decision on appellant's entitlement to a schedule award.[15]

[11] *Tonya D. Bell*, 43 ECAB 845 (1992), *Ronald M. Klar*, 31 ECAB 136, 138 (1979); *Sam Jones*, 25 ECAB 163, 164 (1974).

[12] *See* A.M.A., *Guides*, Table 11, page 48 and Table 15, page 54 for pain, ulnar never, below midforearm.

[13] A.M.A., *Guides* at 64.

[14] *Id.* at 64-65, Table 34.

[15] On appeal, appellant contends that the schedule award should have covered an earlier period. However, it is well established that the period covered by a schedule award commences on the date the employee reaches maximum medical improvement from residuals of the employment injury. This is a determination that is, in each case, to be made on the basis of the medical evidence; *see Joseph R. Waples*, 44 ECAB 936 (1993). In this case, the Office medical adviser's November 15, 1995 report opined that October 13, 1995, the date of Dr. Roberts' examination, was the date of maximum medical improvement. As there is no persuasive medical evidence to the contrary, the Board finds that the Office properly determined the date of maximum medical improvement.

The decision of the Office Workers' Compensation Programs dated November 29, 1995 is hereby set aside and remanded.

Dated, Washington, D.C.
June 22, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member