U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES E. WELLS and DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, OK

Docket No. 99-1971; Submitted on the Record;
Issued October 13, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 12 percent impairment of the right upper extremity for which he received a schedule award.

On September 20, 1995 appellant, then a 49-year-old aircraft mechanic, filed a claim alleging that he sustained an injury to his right arm on September 19, 1995 in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for a ruptured distal biceps tendon and authorized an October 6, 1995 reattachment of the distal biceps tendon rupture. Appellant resumed his regular employment duties on November 15, 1995.

On September 26, 1997 appellant filed a claim for a schedule award. In support of his claim, appellant submitted a report dated April 11, 1996 from Dr. J. Calvin Johnson, a Board-certified orthopedic surgeon and his attending physician, who found that he had reached maximum medical improvement on that date. Dr. Johnson opined that, according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) appellant had a 20 percent permanent impairment of the right upper extremity due to limited motion.

By letter dated June 21, 1996, the Office requested that Dr. Johnson provide a more detailed description of appellant's impairment. The Office specifically requested that Dr. Johnson provide range of motion findings and refer to the tables and pages of the A.M.A., *Guides* in support of his findings.

In a report dated June 25, 1996, Dr. Johnson indicated that he had based appellant's impairment determination on "decreased strength, degeneration and range of motion of the shoulder and elbow" and reiterated that he had a 20 percent impairment of the right upper extremity.

The Office again requested that Dr. Johnson clarify his findings. In a report dated July 16, 1996, Dr. Johnson related:

> "Range of motion shows 25 to 140 [degrees] of the right elbow. Pronation of the right shows 70 degrees and 55 degrees of supination. Strength is graded as 4/5 in the biceps. Again the disability is rated at 20 [percent]."

An Office medical adviser reviewed Dr. Johnson's June 25 and July 16, 1996 reports and noted that the physician had found that appellant had abnormal motion of the right shoulder but had provided no range of motion findings for the shoulder. He recommended referring appellant for a second opinion evaluation.

In a letter dated February 25, 1998, the Office again requested a detailed medical report from Dr. Johnson addressing appellant's degree of permanent impairment. Dr. Johnson did not respond to the Office's request.

By letter dated April 7, 1998, the Office referred appellant, together with a statement of accepted facts, to Dr. John Hughes, an osteopath, for a second opinion evaluation.

In a report dated April 22, 1998, Dr. Hughes stated:

> "The range of motion of [appellant's] right elbow shows a normal pronation and a 10 [degree] restriction of supination. He lacks 10 [degrees] of full flexion. He has what appears to be full extension. There is no neurological impairment in the right arm…."

Dr. Hughes concluded that appellant had a 15 percent impairment of the right upper extremity based on loss of motion of the right elbow as described on pages 40 and 41 of the A.M.A., *Guides*.

An Office medical adviser reviewed Dr. Hughes April 22, 1998 report and found that, based on his range of motion findings, appellant had a one percent impairment of the right upper extremity. The Office medical adviser opined:

> "This report does not meet the requirements of [Office] regulations for a schedule[ ]award determination because there is a discrepancy between the 15 [percent] impairment that Dr. Hughes reports and the substantiating ROM (range of motion) figures that he provides. He also does not mention any strength estimate."

On May 20, 1998 the Office referred appellant to Dr. John Tompkins, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated June 16, 1998, Dr. Tompkins related the following regarding appellant's right elbow:

> "[Appellant] has a well[-]healed anterior incision as well as a well[-]healed posterolateral incision. He has full extension but lacks 10 degrees of flexion compared with the opposite side. He lacks 10 degrees of supination and lacks 10

> degrees of pronation. His strength is moderately decreased in flexion as well as supination when compared with his left (non-dominant) arm. The contour of his biceps tendon is almost normal but seems to be slightly contracted compared with his opposite arm. There is some atrophy of his right arm compared with the left; the circumference of the right arm measures about 1.2 [centimeters] less than his left arm. His grip strength using the Jamar is only 37 [kilograms] for the right hand [versus] 39 [kilograms] for the [non-dominant] left hand."

Dr. Tompkins opined that appellant reached maximum medical improvement on June 1, 1997. Applying the provisions of the A.M.A., *Guides*, he determined that appellant had a one percent impairment due to a loss of pronation and a one percent impairment due to a loss of flexion. Dr. Tompkins further found that appellant had a 10 percent loss of elbow strength according to Table 34 on page 64 of the A.M.A., *Guides*. He combined the 10 percent impairment due to loss of strength with the 2 percent impairment due to loss of range of motion and concluded that appellant had a total upper extremity impairment of 12 percent.

On July 11, 1998 an Office medical adviser found that Dr. Tompkins had not provided adequate range of motion findings for appellant's elbow. By letter dated July 20, 1998, the Office requested that Dr. Tompkins provide detailed range of motion findings for the elbow. In a letter dated July 24, 1998, Dr. Tompkins noted that he had "clearly documented" appellant's elbow range of motion measurements in his June 16, 1998 report.

In a report dated March 9, 1999, an Office medical adviser concurred with Dr. Tompkins' finding that appellant had a 2 percent impairment due to loss of range of motion. Specifically, the Office medical adviser determined that 130 degrees flexion constituted a 1 percent impairment,[1] 0 degrees extension constituted no impairment,[2] 70 degrees pronation constituted a 1 percent impairment,[3] and 70 degrees supination constituted no impairment.[4] The Office medical adviser added the one percent impairment due to loss of pronation with the one percent impairment due to loss of flexion for a total impairment due to loss of motion of two percent.[5] He further stated:

> "Dr. Tompkins estimates 10 [percent] loss of strength around the elbow. This seems reasonable but is subjective. He also includes grip strength of 37 [kilograms] in the right hand. Using this grip strength and [Tables] 32 [and] 34 on [page] 64 we arrive at the same amount of impairment."

[1] A.M.A., *Guides* at 40, Figure 32.

[2] *Id.*

[3] *Id.* at 41, Figure 35.

[4] *Id.*

[5] *Id.* at 41.

The Office medical adviser combined the 10 percent impairment due to loss of strength with the 2 percent impairment due to loss of range of motion and concluded that appellant had a 12 percent permanent impairment of the right upper extremity.

In a decision dated March 23, 1999, the Office issued appellant a schedule award for a 12 percent permanent impairment of his right upper extremity. The period of the award ran for 37.44 weeks from June 1, 1997 to February 18, 1998.

The Board finds that appellant has no more than a 12 percent impairment of the right upper extremity for which he received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act,[6] and section 10.304 of the implementing federal regulations,[7] 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.[8]

In this case, the Office referred appellant for a second opinion evaluation after appellant's attending physician did not provide a report in accordance with the A.M.A., *Guides*. After the Office medical adviser found that the second opinion physician did not provide findings properly supported by the A.M.A., *Guides*, the Office appropriately referred appellant for another second opinion examination with Dr. Tompkins, a Board-certified orthopedic surgeon. In a report dated June 16, 1998, he found that appellant had a 12 percent permanent impairment of his right upper extremity based on loss of range of motion of the elbow and loss of strength. The Office medical adviser properly applied the A.M.A., *Guides* to Dr. Tompkins' findings and concurred with his conclusion that appellant has a 12 percent impairment of the right upper extremity. As both Dr. Tompkins and the Office medical adviser properly utilized the A.M.A., *Guides* in reaching their conclusions, these reports constitute the weight of the medical evidence.[9]

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.304.

[8] *James J. Hjort*, 45 ECAB 595 (1994).

[9] *Joseph Santaniello*, 42 ECAB 710 (1991).

The decision of the Office of Workers' Compensation Programs dated March 23, 1999 is hereby affirmed.

Dated, Washington, DC
October 13, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member