

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT V. DISALVATORE and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 02-2256; Submitted on the Record;
Issued January 17, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a 10 percent impairment of his right upper extremity for which he received a schedule award.

The Office of Workers' Compensation Programs accepted that on June 1, 1993 appellant, then a 39-year-old heavy mobile equipment mechanic, sustained right carpal tunnel syndrome in the performance of his duties.¹ Appropriate compensation benefits were paid, and appellant underwent a surgical right carpal tunnel release on October 21, 1998.

On March 4, 2000 appellant filed a claim for a schedule award for permanent impairment of his right upper extremity.

By report dated January 19, 2000 Dr. Nicholas P. Diamond, an osteopathic physician, reviewed appellant's history, presented physical examination results, and opined that, in accordance with the American Medical Association, *Guides to Evaluation of Permanent Impairment*, Fourth Edition,² appellant had a 2 percent impairment for right wrist range of motion deficit, and a 20 percent impairment for median nerve entrapment at the right wrist which, when combined, resulted in a 22 percent impairment of his right upper extremity. Dr. Diamond opined that appellant had reached maximum medical improvement on January 13, 2000.

On April 26, 2000 an Office medical adviser noted that Dr. Diamond characterized appellant's right median nerve entrapment as "moderate," but noted that this was not supported by the presurgical EMG/NCV (electromyogram/nerve conduction velocity) studies which

¹ The Office accepted in a separate claim for left carpal tunnel syndrome, for which appellant underwent surgery on December 23, 1986 and received a schedule award for a 15 percent left upper extremity impairment. Appellant is left hand dominant.

² Citing to Figure 20, p. 36 and Table 16, p. 57 of the A.M.A., *Guides*.

revealed mild right carpal tunnel syndrome, which was improved by the subsequent surgery. The medical adviser recommended a second opinion as to appellant's right upper extremity impairment.

The Office referred appellant, together with a statement of accepted facts, questions to be addressed, and the relevant case record, to Dr. Steven J. Valentino, an osteopathic surgeon and reconstructive surgeon. By report dated January 31, 2001, Dr. Valentino reviewed appellant's factual and medical history, presented his physical examination results, and diagnosed resolved carpal tunnel syndrome. Dr. Valentino referred to the A.M.A., *Guides*, Fourth Edition, Chapter III, pp. 3/54 through 3/56 to find that there was no evidence of sensory or motor deficits, resulting in a zero percent impairment of the right upper extremity. Dr. Valentino further found that there was no evidence of range of motion deficit, which would also result in a zero percent impairment. He noted that Table 16 on page 3/57 "indicates a percent impairment for mild median nerve entrapment about the wrist which is 10 percent of the upper extremity." Dr. Valentino opined that appellant had recovered from his right carpal tunnel syndrome well without residuals.

On March 7, 2001 an Office medical adviser reviewed the record and found that there was a conflict between the opinions of Drs. Diamond and Valentino, and recommended an impartial medical evaluation. The medical adviser noted that the Fifth Edition of the A.M.A., *Guides* had eliminated the table for peripheral nerve entrapment, and that FECA Bulletin No. 01-05 stipulated that impairment for carpal tunnel syndrome be rated on motor and sensory impairments.

On May 17, 2001 the Office referred appellant, together with a statement of accepted facts, questions to be addressed, and the relevant case record, to Dr. Herbert Stein, a Board-certified orthopedic hand surgeon, for an impartial medical examination.

By report dated July 25, 2001, Dr. Stein reviewed appellant's factual and medical history, noted his present complaints, provided physical examination results, and diagnosed status post right and left carpal tunnel release surgeries. Dr. Stein noted that appellant appeared to have normal sensation and a normal EMG and NCV in the right upper extremity, but had some residual symptoms of numbness in the ulnar three fingers of the right hand. He recommended a three percent permanent impairment for these symptoms based on the Fifth Edition of the A.M.A., *Guides*, p. 495, Item II. Dr. Stein further found that appellant had some restriction in range of wrist motion. He estimated that there was a two percent impairment of wrist flexion, two percent impairment of wrist extension, two percent impairment for ulnar deviation, and one percent impairment for radial deviation, which totaled seven percent impairment of the right upper extremity. When combined with 3 percent impairment for the carpal tunnel syndrome, the total was 10 percent permanent impairment of appellant's right upper extremity.

On August 21, 2001 the Office medical adviser concurred with Dr. Stein's calculations and conclusions.

On October 31, 2001 the Office granted appellant a schedule award for a 10 percent impairment of his right upper extremity for the period July 25, 2001 to February 28, 2002, a total of 31.20 weeks of compensation.

Appellant, through his representative, disagreed with the award and requested a hearing before an Office hearing representative. Appellant submitted an April 18, 2002 report from Dr. David Weiss, an osteopathic Board-certified orthopedic surgeon, who noted that, in accordance with the Fifth Edition of the A.M.A., *Guides*, appellant had a 2 percent impairment due to right wrist dorsiflexion, right grip strength deficit of 20 percent, and an impairment for pain of 3 percent, for a total combined right upper extremity impairment of 25 percent.

A hearing was held on March 12, 2002 at which appellant testified. By decision dated June 6, 2002, the hearing representative affirmed the schedule award, noting the impartial medical examiner's report, constituted the weight of the medical evidence. The hearing representative noted that, although Dr. Weiss provided a higher impairment rating, it was not made in accordance with the A.M.A., *Guides*.

The Board finds that appellant has no greater than a 10 percent impairment of his right upper extremity for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ set forth the number of weeks of compensation payable to employees sustaining permanent loss, or loss of use, of scheduled members of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.⁵ However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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*, Fifth Edition, has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁶

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.⁷ However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment.

³ 5 U.S.C § 8101 *et seq.*; see 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.304.

⁵ 5 U.S.C. § 8107(c)(19).

⁶ 20 C.F.R. § 10.404. FECA Transmittal No. 02-12 (issued August 30, 2002) explains that all permanent impairment awards determined on or after February 1, 2001 should be based on the Fifth Edition of the A.M.A., *Guides*. The fifth edition was first published in 2001.

⁷ See *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

In this case appellant's physician, Dr. Diamond, estimated 22 percent right upper extremity impairment, allowing 20 percent for moderate median nerve entrapment under the Fourth Edition of the A.M.A., *Guides*.

The second opinion physician, Dr. Valentino, however, found that appellant had resolved carpal tunnel syndrome, and estimated 10 percent right upper extremity impairment due to mild median nerve entrapment under the Fourth Edition of the A.M.A., *Guides*.

The Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

The Office properly found a conflict between Dr. Diamond and Dr. Valentino as to the extent of appellant's right upper extremity impairment and referred appellant to Dr. Stein for an impartial medical examination. As the Fifth Edition of the A.M.A., *Guides* became effective for all impairment ratings made after February 1, 2001, the Office advised Dr. Stein that it was the edition of the A.M.A., *Guides* to apply in estimating the degree of appellant's impairment.⁸

Dr. Stein utilized the Fifth Edition of the A.M.A., *Guides* to his findings upon examination and evaluation of appellant. On July 25, 2001 he determined that appellant had no greater than a 10 percent permanent impairment of his right upper extremity. Dr. Stein based his rating upon finding that appellant had normal sensation and a normal EMG and NCV in the right upper extremity, but demonstrated residual symptoms of numbness in the ulnar three fingers of the right hand. Dr. Stein recommended a three percent permanent impairment based on the Fifth Edition of the A.M.A., *Guides*, p. 495, Item II. He further found that appellant had some restriction in range of wrist motion; two percent impairment of wrist flexion, two percent impairment of wrist extension, two percent impairment of ulnar deviation and one percent impairment of radial deviation which, when totaled, equaled a seven percent impairment of the right upper extremity. The 3 percent impairment for abnormal sensory and motor latencies, when combined with the loss of range of motion, total 10 percent impairment of appellant's right upper extremity. No impairment was given for peripheral nerve entrapment as the Fifth Edition provides that impairment for carpal tunnel syndrome be rated on motor and sensory impairments only. Dr. Stein's conclusions were properly based upon the Fifth Edition of the A.M.A., *Guides*.

Where there exists a conflict of medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well-rationalized and based upon a proper factual background, is entitled to special weight.⁹

In this case Dr. Stein's report is well rationalized and based upon a proper factual and medical background as well as upon the currently applicable standards, such that it is entitled to special weight. Accordingly, Dr. Stein's opinion constitutes the weight of the medical evidence

⁸ See *supra* note 6 and accompanying text.

⁹ *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

of record and establishes that appellant has no greater than a 10 percent permanent impairment of the right upper extremity.

Appellant submitted an additional medical report from Dr. Weiss, who opined that appellant had a 2 percent impairment due to right wrist dorsiflexion, a right grip strength deficit of 20 percent, and an impairment for pain of 3 percent, for a total combined right upper extremity impairment of 25 percent. However, the hearing representative properly found that that, although Dr. Weiss provided a higher impairment rating, it was not made in accordance with the A.M.A., *Guides*. At page 494, the Fifth Edition of the A.M.A., *Guides* provides that, “in compression neuropathies, additional impairment values are not given for decreased grip strength.” Subtracting the allowance for impairment to grip strength made by Dr. Weiss, resulted in appellant’s right upper extremity total impairment equaling five percent, which is less than the schedule award. Therefore, Dr. Weiss’s opinion does not support that appellant has greater than a 10 percent permanent right upper extremity impairment.

Accordingly, the decision of the Office of Workers’ Compensation Programs dated June 6, 2002 is hereby affirmed.

Dated, Washington, DC
January 17, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member