

On January 3, 1997 appellant, then a 45-year-old mail handler, filed a claim for compensation for a traumatic injury to his right arm sustained on that date when an all-purpose container he was pulling became stuck on a steel plate. The Office accepted that this injury resulted in right elbow lateral epicondylitis and authorized surgery for this condition.

On February 20, 2003 Dr. Gregg M. O'Malley, a Board-certified orthopedic surgeon, performed a right elbow fasciectomy and ostectomy. In a July 31, 2003 report, Dr. O'Malley stated that examination revealed some tenderness at the surgical site, full elbow range of motion, and no motor or sensory deficits. Dr. O'Malley stated that he did not anticipate any partial permanent impairment, as virtually everyone who underwent this surgery became completely asymptomatic if given enough time. In a November 4, 2003 report, Dr. O'Malley stated that appellant had reached maximum medical improvement and requested that an independent medical examiner rate any permanent impairment, as he did not evaluate his own patients in order to remain objective.

On November 28, 2003 the Office authorized Dr. O'Malley to refer appellant to an appropriate medical specialist to evaluate any permanent impairment. On June 4, 2004 appellant filed a claim for a schedule award, and submitted a February 10, 2004 report from Dr. J. David Lynch, a Board-certified physiatrist to whom Dr. O'Malley referred appellant. Examination revealed right elbow motion of 0 to 136 degrees, supination and pronation of 88 degrees, hand grasping of 46 kilograms (kg) on the right compared to 48 to 50 kg on the left, 5/5 strength, intact sensation for pinprick and normal grip strength. Dr. Lynch stated that appellant had reached maximum medical improvement and needed no further testing or treatment. He concluded:

“He does not have any permanent objective abnormal findings. His strength is normal. No atrophy. No sensory changes. Normal ROM [range of motion]. He has continued to have pain in the elbow which may be lifelong, but is not to the point where it requires any treatment, and is manageable.

“Based on the [American Medical Association,] *Guides to the Evaluation of Permanent Impairment*, 5<sup>th</sup> edition [appellant] does not have any upper extremity impairment.”

By decision dated July 8, 2004, the Office found that appellant did not have a permanent impairment of the right arm. Following a hearing on January 27, 2004, an Office hearing representative, by a March 9, 2005 decision, found that the evidence did not establish that appellant had any permanent partial impairment of the right arm.

### **LEGAL PRECEDENT**

Appellant has the burden of proving by the weight of the reliable, probative and substantial medical evidence that his employment injury resulted in a permanent impairment.<sup>1</sup> The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of

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<sup>1</sup> *Russell E. Grove*, 14 ECAB 288 (1963).

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

the body. 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

### **ANALYSIS**

Appellant has not met his burden of proving that he has a permanent impairment of his right arm that would entitle him to a schedule award. The only medical report addressing a permanent impairment -- the February 10, 2004 report from Dr. Lynch -- concluded that appellant did not have any permanent impairment of the right arm based on the fifth edition of the A.M.A., *Guides*. Comparison of Dr. Lynch's findings on examination to the appropriate tables of the A.M.A., *Guides* indicates that appellant has a zero percent permanent impairment of the injured right arm.<sup>4</sup> Dr. Lynch reported normal strength, no sensory changes, normal range of motion and manageable pain.

### **CONCLUSION**

As appellant has not submitted medical evidence showing that he has a permanent impairment of his right arm, he has not met his burden of proof to establish entitlement to a schedule award.

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<sup>4</sup> Figure 16-34 indicates full range of flexion and extension is from 0 to 140 degrees. Figure 16-37 indicates full ranges of supination and pronation are to 80 degrees. Table 16-32 indicates average grip strength of males 50 to 59 years old is 45.9 kg.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 9, 2005 and July 8, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 22, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board