

MARK J. BRADY, Appellant

and

**U.S. POSTAL SERVICE, SOUTHEASTERN
PROCESSING & DISTRIBUTION CENTER,
Southeastern, PA, Employer**

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Case Submitted on the Record

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

On July 8, 2005 appellant, through his attorney, filed an appeal from a merit decision of a hearing representative of the Office of Workers' Compensation Programs dated March 4, 2005, finding that he had no ratable impairment of the left upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

The issue is whether appellant has a ratable impairment of the left upper extremity such that he is entitled to a schedule award.

FACTUAL HISTORY

On March 4, 1998 appellant, then a 34-year-old mail handler, filed an occupational disease claim alleging that he sustained lateral epicondylitis of the left elbow due to factors of his federal employment.¹ The Office accepted appellant's claim for left elbow lateral epicondylitis.

Dr. John J. Pell, a Board-certified orthopedic surgeon and appellant's attending physician, performed an excision of lipoma and lateral epicondyle release on the left side on April 17, 1998. In a report dated August 17, 1998, he noted that his "symptoms have abated."²

By letter dated June 26, 2001, appellant, through his attorney, requested a schedule award. He submitted a report dated May 31, 2001 from Dr. David Weiss, an osteopath, who noted appellant's complaints of intermittent elbow pain on both sides with the pain currently 0 to 1 on a 10-point scale. On examination of the left elbow he found "tenderness over the lateral epicondyle extending into the lateral extensor mechanism." Dr. Weiss concluded that appellant had a loss of motor strength of the radial nerve in the left wrist which equaled a nine percent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).³ He further found that appellant had a 10 percent impairment due to loss of grip strength⁴ which he combined with the 9 percent impairment due to loss of motor strength to find an 18 percent impairment of the left upper extremity.⁵

An Office medical adviser reviewed Dr. Weiss' report on July 2, 2001 and found that he "did not explain how a radial nerve weakness (or grip strength as he duplicates impairment) is due to an epicondylitis. I do not see the connection as it is the ulnar nerve, not the radial, which goes by the lateral epicondyle and may be affected by surgery there." Dr. Weiss recommended a second opinion examination.

On July 16, 2001 the Office referred appellant to Dr. Anthony W. Salem, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an impairment evaluation dated August 23, 2001, he found that appellant had completely recovered from his surgery with no nerve damage and no ratable impairment.

¹ The Office initially denied appellant's claim in a decision dated May 5, 1998; however, on August 14, 1998 a hearing representative set aside the May 5, 1998 decision and remanded the case for further factual and medical development.

² In a report dated December 3, 1998, Dr. Richard J. Mandel, a Board-certified orthopedic surgeon, who performed a second opinion evaluation on the issue of whether appellant's epicondylitis was employment related, opined that his prognosis was "excellent" and noted that appellant was performing his usual employment without restriction. He noted that appellant had "minimal subjective discomfort" but no objective findings and a loss of 10 degrees hyperextension of the elbow which he characterized as "not of functional significance."

³ A.M.A., *Guides* at 485, 492, Tables 16-11, 16-15.

⁴ *Id.* at 509, Table 16-34.

⁵ Dr. Weiss further made findings regarding the degree of appellant's right upper extremity impairment; however, the right upper extremity is not at issue in this case.

In a decision dated August 29, 2001, the Office denied appellant's claim for a schedule award on the grounds that he had no ratable impairment of his left upper extremity due to his employment injury.

Appellant requested an oral hearing on August 31, 2001 which was held on February 28, 2002. In a decision dated April 8, 2002, the hearing representative set aside the August 28, 2001 decision after finding that Dr. Salem did not perform all the measurements required under the A.M.A., *Guide* or explain how he found that appellant had normal strength and range of motion without reference to the A.M.A., *Guides*.

On April 26, 2002 the Office referred appellant to Dr. Steven J. Valentino, an osteopathic Board-certified orthopedic surgeon, for a second opinion examination. In a report dated May 15, 2002,⁶ he noted that appellant was "asymptomatic" unless it is "very cold and rainy weather." On physical examination Dr. Valentino listed normal findings on examination of the shoulders, elbows, wrists and hands with full range of motion. He measured range of motion for the left elbow as 180 degrees flexion, 0 degrees extension, 80 degrees pronation and 80 degrees supination. Dr. Valentino noted that appellant had grip strength of 45 kilograms on the right and 42 kilograms on the left "compatible with right hand dominance" with no loss of sensation. He diagnosed resolved left elbow lateral epicondylitis and stated:

"There is no evidence of any disability or impairment. [Appellant] has no weakness. He has full range of motion and currently is asymptomatic. I agree with Dr. Salem that [appellant] had an excellent recovery and has no evidence of ongoing impairment or disability. [His] impairment rating regarding his left elbow work[-]related injury is zero percent. There is no loss of function due to pain, discomfort or sensory alteration. There is no loss of function due to limitation of motion or ankylosis, muscle atrophy, weakness and no additional factors, such as, use of a brace or loss of limb."

On June 11, 2002 an Office medical adviser reviewed Dr. Valentino's May 15, 2001 report and concurred with his findings and conclusions.

By decision dated June 21, 2002, the Office denied appellant's claim for a schedule award on the grounds that he had no ratable impairment of the left upper extremity.

On June 28, 2002 appellant, through his attorney, requested an oral hearing. At the hearing, held on December 1, 2004, appellant stated that he had pain in his left elbow "[e]very once in a while" with heavy work or rainy, cold days. Counsel argued that Dr. Valentino's measurements were insufficient to show normal range of motion as he compared the left side to the right side, which was also injured.

In a report dated January 3, 2005, Dr. Weiss opined that it was the radial nerve which "travels on the lateral aspect of the arm and lateral epicondyle and not the ulnar nerve." He further discussed his motor strength findings and stated that it was "reasonable that a patient

⁶ Dr. Valentino indicated that the date of the report was May 15, 2001; however, it is apparent that this is a typographical error.

suffering from chronic elbow epicondylitis would have decompensation of the muscles in its forearms and a corresponding grip strength deficit.”

In a decision dated March 4, 2005, the hearing representative affirmed the June 21, 2002 decision, finding that Dr. Valentino’s opinion represented the weight of the medical evidence and established that appellant had no ratable left upper extremity impairment.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act⁷ and its implementing regulations,⁸ 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 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standards applicable to all claimants.⁹ The Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.¹⁰

ANALYSIS

The Office accepted that appellant sustained lateral epicondylitis of the left elbow. He filed a claim for a schedule award and submitted a report from Dr. Weiss dated May 31, 2001. He discussed appellant’s complaints of intermittent elbow pain with his current pain 0 to 1 on a 10-point scale. Dr. Weiss noted findings of tenderness over the lateral epicondyle and determined that appellant had a 9 percent impairment of the left upper extremity due to motor strength deficit of the left wrist at the radial nerve¹¹ and a 10 percent impairment due to loss of grip strength.¹² He combined the impairment findings and concluded that appellant had an 18 percent impairment of the left upper extremity. Dr. Weiss did not, however, provide any medical rationale explaining how minimal subjective complaints and objective findings resulted in an 18 percent impairment of the left upper extremity.¹³ Additionally, he provided impairment ratings for both loss of grip strength and motor weakness of the radial nerve. The A.M.A., *Guides* states, “Motor weakness associated with disorders of the peripheral nerve system ... are evaluated according to guidelines described in [s]ection 16.5....”¹⁴ Dr. Weiss rated appellant’s

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ 20 C.F.R. § 10.404(a).

¹⁰ See FECA Bulletin No. 01-05 (issued January 20, 2001).

¹¹ A.M.A., *Guides* at 485, 492, Tables 16-11, 16-15.

¹² *Id.* at 509, Table 16-34.

¹³ The Board has held that a medical opinion not fortified by medical rationale is of little probative value. See *Annie L. Billingsley*, 50 ECAB 210 (1998).

¹⁴ A.M.A., *Guides* at 508.

motor weakness of the radial nerve according to section 16.5, he should not have provided an impairment rating for loss of grip strength. Thus, his opinion does not conform to the A.M.A., *Guides* and is of diminished probative value.

In a report dated January 3, 2005, Dr. Weiss opined that the radial nerve rather than the ulnar nerve traveled by the lateral epicondyle.¹⁵ He found that it was “reasonable that a patient suffering from chronic elbow epicondylitis would have decompensation of the muscles in [his] forearms and a corresponding grip strength deficit.” Dr. Weiss’ finding that lateral epicondylitis could cause loss of muscle strength in the forearms and loss of grip strength is a general finding, not specific to appellant and thus, of little probative value.¹⁶

In order to clarify the nature and extent of appellant’s impairment, the Office properly referred him to Dr. Valentino for a second opinion examination. In a report dated May 15, 2002, he noted that appellant had no complaints except when the weather was rainy and very cold. Dr. Valentino found that appellant had no impairment due to loss of range of motion of the left elbow as he retained 180 degrees of flexion, 0 degrees extension, 80 degrees pronation and 80 degrees supination.¹⁷ He further found that his grip strength of 42 kilograms on the left and 45 kilograms on the right was “compatible with right hand dominance.” Dr. Valentino concluded that appellant had no evidence of any impairment with no loss of function resulting from pain, weakness, sensory loss, ankylosis or atrophy. An Office medical adviser reviewed Dr. Valentino’s report and concurred with his determination.

Dr. Valentino provided detailed findings on examination and explained that appellant had no objective residuals of his accepted left lateral epicondylitis. He found that appellant had no impairment due to pain, weakness, loss of sensation or atrophy that would constitute a ratable impairment. Dr. Valentino listed essentially normal findings on examination and concluded that he had “no evidence of any disability or impairment.” The Board finds that his report, which was based on a thorough review of the medical record and contained detailed findings on examination supporting his conclusions, is sufficient to represent the weight of the medical evidence in this case. The Office, therefore, properly found that appellant had no ratable permanent impairment of the left upper extremity.

On appeal, appellant’s attorney contends that Dr. Valentino’s opinion is flawed. He further maintains that the record contains a conflict in medical opinion on the issue of whether appellant has a ratable impairment of the left upper extremity necessitating referral to an impartial medical examiner. For the reasons noted, however, the Board finds that Dr. Valentino’s opinion represents the weight of the evidence and establishes that he has no impairment of the left upper extremity. As his report outweighs the report of Dr. Weiss, who misapplied the A.M.A., *Guides*, there is no conflict in medical opinion.

¹⁵ An Office medical adviser reviewed Dr. Weiss’ July 2, 2001 report and noted that he did not explain why lateral epicondylitis caused a radial rather than ulnar nerve impairment. He further noted that his grip strength impairment duplicated his nerve weakness finding.

¹⁶ Medical evidence to be of probative value, must be specific to appellant rather than general in nature; *see Durwood H. Nolin*, 46 ECAB 818 (1995).

¹⁷ A.M.A., *Guides* at 472, 474 Figures 16-34, 16-37.

CONCLUSION

The Board finds that appellant has not established a ratable impairment of the left upper extremity such that he is entitled to a schedule award

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 4, 2005 is affirmed.

Issued: September 16, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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