

**United States Department of Labor
Employees' Compensation Appeals Board**

AUSTIN F. CLARK, Appellant)	
)	
and)	Docket No. 05-1065
)	Issued: January 12, 2006
DEPARTMENT OF THE NAVY, NAVAL)	
SURFACE WARFARE CENTER,)	
Silver Spring, MD, Employer)	

Appearances:
Austin F. Clark, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 11, 2005 appellant filed a timely appeal of a December 30, 2004 schedule award of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has a greater permanent impairment than the 49 percent of the right leg and 54 percent of the left leg for which he received a schedule award.

FACTUAL HISTORY

On March 9, 1989 appellant, then a 49-year-old foreman, filed a claim for compensation for a traumatic injury to his left shoulder sustained on March 7, 1989 while repairing downed power lines. On December 9, 1992 he sustained an injury to his right shoulder when he fell into a hatch. On May 24, 1994 appellant filed a claim for compensation for an occupational disease of carpal tunnel syndrome of both wrists. On February 3, 1998 he filed a claim for a traumatic

injury to his left arm and neck sustained on January 30, 1998 by attempting to open a high voltage switch door.

The Office accepted bilateral carpal tunnel syndrome, bilateral rotator cuff tears, bilateral ulnar nerve neuropathy, and arthritis of his right thumb carpometacarpal joint and authorized surgeries on his shoulders, wrists and right thumb.

On March 10, 1999 appellant filed a claim for a schedule award. In a June 14, 2004 report his attending physician, Dr. Daniel R. Ignacio, a Board-certified physiatrist, stated that results of electromyography and nerve conduction studies on that date were consistent with bilateral carpal tunnel syndrome, bilateral ulnar neuritis at the elbows and chronic cervical radiculopathy. Dr. Ignacio's examination of appellant's upper extremities on July 14, 2004 revealed, for the left shoulder, abduction to 110 degrees, forward flexion to 120 degrees, external rotation to 30 degrees, internal rotation to 25 degrees and extension to 30 degrees; for the left elbow, flexion to 80 degrees, extension to minus 20 degrees, and supination to 20 degrees; for the left wrist, dorsiflexion to 30 degrees, palmar flexion to 35 degrees, and radial adduction to 10 degrees. The right shoulder had abduction to 100 degrees, forward flexion to 110 degrees, external rotation to 25 degrees, internal rotation to 30 degrees, and extension to 40 degrees; the right elbow, flexion to 80 degrees, extension to minus 15 degrees, and supination to 20 degrees; the right wrist, dorsiflexion to 25 degrees, palmar flexion to 20 degrees, and radial adduction to 10 degrees; the right thumb, flexion to 60 degrees and extension to minus 20 degrees. Also seen was wasting of both shoulders, hypesthesia and weakness along the left hand and arm, diminished left biceps and triceps reflexes, and limited grip of the right hand. Dr. Ignacio concluded that appellant had a 97 percent impairment of the right arm: 30 percent for the shoulder, 20 percent for the elbow, 20 percent for the wrist, 7 percent for the thumb, and the remainder for weakness and sensory dysfunction. He concluded that appellant had a 95 percent impairment of the left arm: 30 percent for the shoulder, 20 percent for the elbow, 25 percent for the wrist, and 20 percent for weakness.

On August 12, 2004 Dr. Willie E. Thompson, a Board-certified orthopedic surgeon, reviewed Dr. Ignacio's reports as an Office medical adviser and stated that it was virtually impossible to sustain 95 and 97 percent arm impairments without having undergone major amputations at or near the shoulder level, that the reports were not a valid rating of appellant's impairment, and that an independent evaluation should be done.

On December 3, 2004 Dr. Richard E. Grant, a Board-certified orthopedic surgeon, reviewed Dr. Ignacio's reports as an Office medical adviser and, using the tables and figures of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, assigned percentages of impairment to the ranges of motion reported by Dr. Ignacio on July 14, 2004: for the right wrist, 6 percent for 25 degrees of dorsiflexion,¹ 7 percent for 20 degrees of palmar flexion,² and 2 percent for 10 degrees of radial deviation;³ for the right

¹ Figure 16-28, p. 467.

² Figure 16-28, p. 467.

³ Figure 16-31, p. 469.

shoulder, 4 percent for 100 degrees of abduction,⁴ 5 percent for 110 degrees of forward flexion,⁵ 1 percent for 25 degrees of external rotation,⁶ and 4 percent for 30 degrees of internal rotation.⁷ Adding these percentages (15 for the wrist and 14 for the shoulder) to a 20 percent impairment for moderate carpal tunnel syndrome, he concluded that appellant had a 49 percent impairment of the right arm. For the left arm, Dr. Grant assigned, for the left wrist, 5 percent for 30 degrees of dorsiflexion,⁸ 44 percent for 35 degrees of palmar flexion,⁹ and 2 percent for 10 degrees of radial deviation;¹⁰ for the left elbow, 10 percent for 80 degrees of flexion,¹¹ 2 percent for minus 20 degrees of extension,¹² and 3 percent for 20 degrees of supination;¹³ for the left shoulder, 3 percent for 110 degrees of abduction,¹⁴ 4 percent for 120 degrees of forward flexion,¹⁵ and 1 percent for 30 degrees of external rotation.¹⁶ Adding these percentages (6 for the wrist, 20 for the elbow, and 8 for the shoulder) to a 20 percent impairment for moderate carpal tunnel syndrome, he concluded that appellant had a 54 percent impairment of the left arm.

On December 30, 2004 the Office issued appellant a schedule award for a 54 percent permanent impairment of the left arm and a 49 percent permanent impairment of the right arm.

LEGAL PRECEDENT

The schedule award provision of the Act¹⁷ and its implementing regulation¹⁸ 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

⁴ Figure 16-43, p. 477.

⁵ Figure 16-40, p. 476.

⁶ Figure 16-46, p. 479.

⁷ Figure 16-46, p. 479.

⁸ Figure 16-28, p. 467.

⁹ Figure 16-28, p. 467.

¹⁰ Figure 16-31, p. 469.

¹¹ Figure 16-34, p. 472.

¹² Figure 16-34, p. 472.

¹³ Figure 16-37, p. 474.

¹⁴ Figure 16-43, p. 477.

¹⁵ Figure 16-40, p. 476.

¹⁶ Figure 16-46, p. 479.

¹⁷ 5 U.S.C. § 8107.

¹⁸ 20 C.F.R. § 10.404 (1999).

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.

Before the A.M.A., *Guides* may be utilized, a description of the impairment must be obtained from an examining physician. This description must be in sufficient detail so that a claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹⁹ Where the examining physician does not rate the impairment using the A.M.A., *Guides*, it is appropriate for an Office medical adviser to apply the A.M.A., *Guides* to the findings reported on examination.²⁰ When the Office medical adviser provides the only evaluation that conforms to the A.M.A., *Guides*, that evaluation constitutes the weight of the medical evidence.²¹

ANALYSIS

Appellant's Board-certified physiatrist, Dr. Ignacio, described his permanent impairment of the arms in a June 14, 2004, providing detailed ranges of motion of his shoulders, elbows, wrists and right thumb. Dr. Ignacio then concluded that appellant had a 97 percent impairment of the right arm and a 95 percent impairment of the left arm. He did not, however, explain how he derived at the impairments he reported for each joint from the reported ranges of motion. There is no indication that his rating was done using the A.M.A., *Guides*. Dr. Ignacio also added 20 percent for weakness for each arm, but Table 17-2 of the A.M.A., *Guides* indicates that muscle strength cannot be combined with loss of motion in rating impairments.

As Dr. Ignacio's estimate of the percentage of impairment of appellant's arms was not done using the A.M.A., *Guides*, it was proper for an Office medical adviser to apply the tables of the A.M.A., *Guides* to Dr. Ignacio's findings on examination. The Board has compared the Office medical adviser's assignments of percentages of impairment to those provided in the figures of the A.M.A., *Guides*, and concludes that each assignment was correct, with the exception of 44 percent for 35 degrees of palmar flexion of the left wrist. This was obviously a typographical error, as Figure 16-28 provides for 4 percent for this loss of motion. The Office medical adviser corrected this error in adding the percentages for the motion impairments in arriving at a 54 percent impairment for the left arm.

The Office medical adviser, however, did not assign a percentage of impairment to each loss of motion reported by Dr. Ignacio in his June 14, 2004 report. Specifically, he did not address internal rotation and extension of the left shoulder, extension of the right shoulder, or any of reported losses of motion of the right elbow. The medical adviser also did not rate appellant's sensory loss of the left arm, which can be combined with loss of motion according to

¹⁹ *Roel Santos*, 41 ECAB 1001 (1990).

²⁰ *Lena P. Huntley*, 46 ECAB 643 (1995).

²¹ *John L. McClenic*, 48 ECAB 552 (1997). If the clinical findings are fully described, any knowledgeable observer may check the findings with the criteria of the A.M.A., *Guides*. A.M.A., *Guides* 17 (5th ed. 2001).

Table 17-2. The case will be remanded to the Office for an Office medical adviser to address these additional impairments.

CONCLUSION

The Office medical adviser correctly applied the figures of the A.M.A., *Guides* to most of Dr. Ignacio's findings. The case will be remanded to the Office for such application to the additional findings noted above.

ORDER

IT IS HEREBY ORDERED THAT the December 30, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board, to be followed by issuance of appropriate schedule awards for the permanent impairments of appellant's arms.

Issued: January 12, 2006
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