United States Department of Labor
Employees' Compensation Appeals Board

J.H., Appellant	)	
and	)	**Docket No. 06-2180**
	)	**Issued: March 13, 2007**
DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, GA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 27, 2006 appellant filed a timely appeal from a June 23, 2006 schedule award by the Office of Workers' Compensation Programs for five percent impairment of the right upper extremity and four percent 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 issue.

ISSUE

The issue is whether appellant has more than a five percent impairment of his right upper extremity and a four percent impairment of his left upper extremity, for which he received a schedule award.

FACTUAL HISTORY

On July 18, 2005 appellant, then a 55-year-old pneudraulics system mechanic, filed an occupational disease claim alleging that he developed bilateral epicondylitis in the performance of duty. He did not stop work but began working light duty. The Office accepted his claim for "lateral epicondylitis elbow region, bilateral" on September 9, 2005.

In an October 26, 2005 report, Dr. Thomas Flesher III, a Board-certified orthopedic surgeon and appellant's treating physician, noted limitations in appellant's elbow flexion and extension bilaterally. He advised that appellant's elbow condition would not likely improve and released appellant from his treatment.

On November 7, 2005 appellant claimed a schedule award.

In a January 3, 2006 report, Dr. John W. Ellis, a Board-certified family medicine specialist, discussed appellant's complaints of pain, decreased range of motion and loss of strength in both arms. On examination of the right arm, he measured 120 degrees of flexion, -5 degrees of extension, 66 degrees of pronation and 70 degrees of supination. Dr. Ellis noted that these measurements equated to two percent for flexion, one percent for extension, one percent for pronation and zero percent for supination. On examination of the left arm, he measured 120 degrees of flexion, -5 degrees of extension, 60 degrees of pronation and 54 degrees of supination. Dr. Ellis noted that these measurements equated to two percent for flexion, one percent for extension, one percent for pronation and one percent for supination. He also noted results of grip strength testing for each extremity. Dr. Ellis stated that appellant had 30 percent impairment in both arms based on grip strength testing. He noted a calculation of "48.5-3/48.5 = .93 = 30" for the right arm and "44.6-7/44.6 = .84 = 30" percent for the left arm. Dr. Ellis concluded that appellant had a 30 percent permanent impairment to each arm based on decreased grip strength. He stated that he applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[1] in calculating appellant's impairment. Dr. Ellis noted that appellant's date of maximum medical improvement was October 26, 2005.

In a February 9, 2006 report, an Office medical adviser advised that Dr. Ellis's report was not adequate for an impairment rating as he improperly relied on grip strength loss in calculating impairment. The medical adviser recommended that appellant be referred to an appropriate specialist for an impairment rating.

On March 7, 2006 the Office referred appellant to Dr. Michael Shawn Smith, a Board-certified physiatrist, for a second opinion.

In an April 18, 2006 report, Dr. Smith examined appellant and offered an impairment rating. On examination of the right elbow, he found 120 degrees of flexion, -5 degrees of extension, 60 degrees of pronation and 60 degrees of supination. On examination of the left elbow, Dr. Smith found 130 degrees of flexion, -10 degrees of extension, 60 degrees of pronation and 60 degrees of supination. He also found that appellant had normal strength in his deltoids, biceps, triceps, brachial radialis, supinator and pronators. Dr. Smith noted that appellant had decreased grip strength bilaterally. He stated that he had applied the A.M.A., *Guides*, Figure 16-37, to determine appellant's impairment rating for loss of pronation and supination.[2] Dr. Smith applied the A.M.A., *Guides* to find that appellant had one percent upper extremity impairment related to abnormal supination and one percent impairment related to abnormal pronation bilaterally, for a total of two percent impairment for abnormal supination and pronation on each

[1] A.M.A., *Guides* (5th ed. 2001).

[2] A.M.A., *Guides*, 474, Figure 16-37.

elbow. He also found that appellant had two percent impairment for flexion and one percent impairment for extension on the right upper extremity. Finally, appellant had one percent impairment for flexion and one percent impairment for extension[3] resulting in two percent impairment for extension and flexion on the left upper extremity. Dr. Smith added the loss of range of motion values to find that appellant had five percent upper extremity impairment on the right side and four percent upper extremity impairment on the left side.

On May 15, 2006 an Office medical adviser reviewed Dr. Smith's report and agreed that appellant had five percent impairment for the right upper extremity and a four percent impairment rating for the left upper extremity due to loss of range of motion, based on the A.M.A., *Guides*, Figures 16-34 and 16-37, located on pages 471 and 474, respectively. The medical adviser found that appellant's date of maximum medical improvement was April 18, 2006, the date of Dr. Smith's evaluation.

By decision dated June 23, 2006, the Office granted appellant a schedule award for five percent impairment of the right upper extremity and four percent impairment of the left upper extremity. The period of the award ran for 28.08 weeks from April 18 to June 10, 2006.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulation[5] set 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 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.[6]

Chapter 16 of the fifth edition of the A.M.A., *Guides* provides the framework for assessing upper extremity impairments.[7] Section 16.4 provides that in evaluating abnormal motion both active and passive motion measurements are necessary to evaluate the joint motion under the appropriate charts and these should be added to obtain the total motion impairment.[8] Grip strength is used to evaluate power weaknesses related to the structures in the hand, wrist, or forearm. The A.M.A., *Guides* do not encourage the use of grip strength as an impairment rating

[3] The Board notes that Dr. Smith lists 11 percent impairment for 10 degrees of extension for the left arm. This appears to be a typographical error; Figure 16-34 of the A.M.A., *Guides* provides that 10 degrees of extension warrants one percent impairment.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999).

[6] *See id.*

[7] A.M.A., *Guides* 433-521.

[8] *Id.* at 451-52.

because strength measurements are functional tests influenced by subjective factors that are difficult to control and the A.M.A., *Guides* is, for the most part, based on anatomic impairment. Thus the A.M.A., *Guides* does not assign a large role to such measurements. Only in rare cases should grip strength be used and only when it represents an impairing factor that has not been otherwise considered adequately. The A.M.A., *Guides* states that, otherwise, the impairment ratings based on objective anatomic findings take precedence.[9]

ANALYSIS

The Office accepted that appellant developed bilateral epicondylitis in the performance of duty. In support of his schedule award request, appellant submitted a January 3, 2006 impairment evaluation from Dr. Ellis, who listed range of motion findings for each arm. However, Dr. Ellis did not ultimately rate impairment based on lost motion. Instead, he found that appellant had 30 percent impairment to both the right and left arms based on loss of grip strength. Dr. Ellis did not attribute any impairment to pain or weakness due to peripheral nerve system impairment.

As noted, the A.M.A., *Guides* do not encourage the use of loss of grip strength for an impairment rating because strength measurements are functional tests influenced by subjective factors that are difficult to control. The A.M.A., *Guides* indicate that only in rare cases should grip strength be used and only when it represents an impairing factor that has not been otherwise considered adequately. Furthermore, section 16.7d of the A.M.A., *Guides* indicate that for conditions such as epicondylitis, impairment on the basis of weakness of grip strength should only be considered where an individual has had a tendon rupture or has undergone surgery to correct the condition and may have some permanent weakness of grip as a result of the tendon rupture or the surgery.[10] In this case, there is no evidence of tendon rupture or surgery to correct appellant's condition. The impairment rating provided by Dr. Ellis is of diminished probative value.

Dr. Smith, an Office referral physician, examined appellant on April 18, 2006 and provided an impairment rating based on loss of range of motion. On examination of the right arm, Dr. Smith found that appellant had 120 degrees of flexion, -5 degrees of extension, 60 degrees of pronation and 60 degrees of supination. Accordingly, appellant had two percent impairment for flexion,[11] one percent impairment for extension,[12] one percent impairment for pronation[13] and one percent impairment for supination,[14] for a total of five percent impairment of the right upper extremity. On examination of the left upper extremity, Dr. Smith found that appellant had 130 degrees of flexion, -10 degrees of extension, 60 degrees of pronation and 60

[9] *Id.* at 508; *see Phillip H. Conte*, 56 ECAB __ (Docket No. 04-1524, issued December 22, 2004).

[10] *See* A.M.A., *Guides* 507.

[11] *Id*. at 472, Figure 16-34.

[12] *Id.*

[13] *Id*. at 474 Figure 16-37.

[14] *Id.*

degrees of supination. Accordingly, appellant had one percent impairment for extension,[15] one percent impairment for flexion,[16] one percent impairment for pronation[17] and one percent impairment for supination,[18] for a total of four percent impairment of the left upper extremity. The Board finds that Dr. Smith's impairment ratings comport with Figures 16-34 and 16-37 in the A.M.A., *Guides*.[19] Dr. Smith found no other basis on which to attribute impairment under the A.M.A., *Guides*.

The Office medical adviser reviewed Dr. Smith's impairment evaluation on May 15, 2006. The medical adviser concurred with Dr. Smith's impairment rating based on loss of range of motion, confirming the evaluation with the A.M.A., *Guides*, Figures 16-34 and 16-37, as noted above. Consequently, the weight of the medical evidence establishes that, pursuant to the A.M.A., *Guides*, appellant has no more than five percent impairment for the right upper extremity and four percent impairment for the left upper extremity.

On appeal, appellant contends that the Office should have accepted Dr. Ellis's 30 percent impairment rating. However, Dr. Ellis' impairment rating was based on decreased grip strength, a method of impairment evaluation that is qualified for use under the A.M.A., *Guides.* Appellant also asserts that he has a greater impairment due to pain. The Board notes, however, that Dr. Smith conducted his evaluation in accordance with the A.M.A., *Guides* and did not provide an impairment rating for pain. Similarly, Dr. Ellis did not provide any rating for pain under the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant has no more than a five percent impairment rating for his right upper extremity and a four percent impairment rating for his left upper extremity.

[15] *Id*. at 472, Figure 16-34.

[16] *Id.*

[17] *Id*. at 474, Figure 16-37.

[18] *Id.*

[19] Dr. Smith's range of motion findings are also similar to range of motion findings provided by Dr. Ellis.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 23, 2006 is affirmed.

Issued: March 13, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board