

By letter dated July 12, 2007, the Office referred appellant to Dr. Thomas B. Grollman, a Board-certified orthopedic surgeon, for a second opinion. In a medical report dated August 24, 2007, Dr. Grollman noted that appellant sustained a ruptured distal biceps tendon at work on February 20, 2001. On examination, appellant had residual atrophy and deformity secondary to the rupture of the distal biceps tendon of the right arm and elbow. Dr. Grollman rated appellant's impairment as follows:

“[Appellant] does have the mild weakness of his right elbow flexion as a direct result of the February 20, 2001 injury. I refer the reader to page 510, [T]able 16-35 of the [American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001)]. For the mild strength deficit of elbow flexion is equal to a five percent impairment of the right upper extremity and for the mild deficit of supination strength is equal to four percent impairment of the right upper extremity. Combining or adding these two values equals to a total of nine percent impairment of the right upper extremity resulting from the injury of February 20, 2001.”

By memorandum dated January 15, 2008, the Office referred appellant's record to an Office medical adviser. On January 25, 2008 the Office medical adviser reviewed the medical record and agreed with Dr. Grollman's assessment that appellant had a nine percent impairment of the right upper extremity.

By decision dated March 14, 2008, the Office issued a schedule award for a nine percent impairment of the right upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations,² 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, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³ 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, 2007.⁴

ANALYSIS

The Board finds that the Office properly determined that appellant had a nine percent impairment of his right upper extremity. Utilizing Table 16-35 of the A.M.A., *Guides*, both

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ *Id.* at § 10.404(a).

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

Dr. Grollman and the Office medical adviser found that appellant had five percent impairment based on weakness of elbow flexion and four percent impairment for weakness of elbow supination, or a total impairment of nine percent of the right upper extremity.⁵ There is no probative medical evidence establishing that appellant has greater impairment to his right upper extremity.

CONCLUSION

The Board finds that appellant has nine percent impairment of his right upper extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 14, 2008 is affirmed.

Issued: February 5, 2009
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

⁵ A.M.A., *Guides* 510, Table 16-35.