

The Board directed the Office to clarify the percentage of impairment to each arm that had previously been awarded and to determine if the medical evidence showed a greater impairment. The history of the case was provided in the Board's prior decisions and is incorporated herein by reference.

Following return of the case, the Office referred the case to an Office medical adviser. In a report dated September 17, 2008, the medical adviser noted that he had reviewed the case twice previously and had questioned the ulnar nerve findings of the referee physician, Dr. Hely. The Office medical adviser noted that there was "a lot of confusion" as to the actual schedule award for each arm and Dr. Hely had given "very vague data in his [June 13, 2002] report especially for the left upper extremity." As to a 2005 supplemental report from Dr. Hely, the medical adviser noted he had previously reviewed the report and found "there was poor supporting data for the ulnar nerve lesion. His report was rather confusing." The medical adviser concluded that the Office had given a total of 47 percent for both upper extremities.

By decision dated October 2, 2008, the Office found that appellant had received 27 percent impairment for the right arm, 20 percent for the left arm and was not entitled to a further award. Appellant requested a hearing before an Office hearing representative, which was held on May 19, 2009.

By decision dated June 24, 2009, the hearing representative found that the record established that appellant had received schedule awards for 32 percent to the right arm and 28 percent for the left arm. In addition, the hearing representative found Dr. Hely's reports constituted the weight of the medical evidence and appellant was not entitled to an additional award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulations⁴ 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.⁵ The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ See *Ronald R. Kraynak*, 53 ECAB 130 (2001); *August M. Buffa*, 12 ECAB 324 (1961).

⁶ 20 C.F.R. § 10.404 (1999).

ANALYSIS

The Office did not make appropriate findings on the issues in its October 2, 2008 decision as directed by the Board in its July 3, 2008 decision. An Office hearing representative, however, did provide a detailed review of the Office's prior schedule award decision in this case and concluded that appellant had received awards for 32 percent in the right arm and 28 percent in the left arm. On appeal, appellant does not contest the hearing representative's finding in this regard.

The remaining issue is whether the medical evidence supports a greater impairment. Appellant had been referred to Dr. Hely as a referee physician to resolve a conflict in the medical evidence.⁷ The initial report was dated June 13, 2002, with a brief supplemental report dated February 11, 2005. As noted by appellant, Dr. Hely did not provide detailed physical examination findings. He did not, for example, provide specific range of motion results. The Office's own medical adviser refers to Dr. Hely's reports as being "vague" with "poor supporting data" and he finds the reports "confusing." The Board also notes that the initial examination by Dr. Hely was more than four years prior to the last schedule award dated November 17, 2006.

The Board finds that the reports of Dr. Hely were not sufficient to resolve the conflict in the medical evidence. To be entitled to special weight, a referee physician must provide a rationalized medical opinion based on a complete background.⁸ Given the significant time elapsed since Dr. Hely's report, the case will be remanded for referral to a new referee examiner for a rationalized opinion as to whether appellant has more than a 32 percent right arm impairment or a 28 percent left arm impairment causally related to her federal employment.⁹ After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds the conflict in the medical evidence was not resolved and the case requires further development of the medical evidence.

⁷ See 5 U.S.C. § 8123(a).

⁸ *Richard R. LeMay*, 56 ECAB 341 (2005).

⁹ As of May 1, 2009, the 6th edition of the A.M.A., *Guides* is to be used for schedule award determinations. FECA Bulletin No. 09-03 (issued March 15, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 24, 2009 and October 2, 2008 are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 13, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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