

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SUSAN E. FICK and DEPARTMENT OF JUSTICE,  
FEDERAL CORRECTIONAL INSTITUTE, El Reno, Okla.

*Docket No. 97-2469; Submitted on the Record;  
Issued May 14, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has more than a three percent permanent impairment of the right upper extremity, for which she has received a schedule award.

In the present case, the Office of Workers' Compensation Programs accepted that appellant, a paralegal specialist, sustained a right elbow fracture on August 5, 1991 as a result of a fall in the performance of her federal employment. On November 20, 1996 the Office granted appellant a schedule award for a three percent permanent impairment of the right arm. The Office denied modification of this schedule award, after merit review, on April 25, 1997.

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> provides that, if there is a permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function. For consistent results and to insure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants in the evaluation of permanent physical impairment. The American Medical Association, (A.M.A.) *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>2</sup>

In support of her claim for a schedule award for permanent impairment of the right arm, appellant submitted three reports from her treating physician, Dr. Michael O. Williams, a Board-certified orthopedic surgeon. Only one of these three reports pertained to appellant's right elbow condition, a report dated August 17, 1992. The two other reports the Office received from Dr. Williams dated May 30, 1995 and April 30, 1996, pertained to appellant's left elbow. Appellant has explained that she broke her right elbow in 1991 and her left elbow in 1994, and

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *James A. England*, 47 ECAB 115 (1995).

that she had received a schedule award for the left elbow based upon Dr. Williams' evaluations. A schedule award for appellant's left upper extremity is not at issue in this case.

In the August 17, 1992 report pertaining to appellant's right elbow, Dr. Williams indicated that appellant had returned for a final follow-up of her fractured radial head and fractured capitellum, of the right elbow. He stated that on examination, she lacked about 10 degrees of full extension, 5 degrees of flexion, 5 degrees of supination, and 5 degrees of pronation, of the right elbow. Dr. Williams noted that x-rays showed some definite arthrosis in the radio-humeral joint of the elbow, but at the present time this was not affecting her mobility. He also noted that appellant had some arthrosis in the elbow which would worsen with time. Dr. Williams concluded that appellant had a 20 percent permanent impairment of the right elbow.

On January 18, 1996 an Office medical adviser reviewed the case record and noted that Dr. Williams' report did not conform with the A.M.A., *Guides*. The Board notes that the Office medical adviser referred to Dr. Williams' finding that appellant had reached maximum medical impairment on January 19, 1995 and that he had assigned impairment for pain and weakness, findings which were only made in Dr. Williams May 30, 1995 report regarding appellant's left elbow, rather than his August 17, 1992 report regarding appellant's right elbow. The Board finds nevertheless that Dr. Williams' report dated August 17, 1992 provided physical examination findings, but did not correlate these findings to the A.M.A., *Guides*. Dr. Williams' August 17, 1992 report therefore also did not conform to the Board's requirement that a schedule award evaluation be made pursuant to the A.M.A., *Guides*. The Board has long held that a medical opinion regarding permanent impairment which is not based upon the A.M.A., *Guides* the standard adopted by the Office and approved by the Board as appropriate for evaluating schedule losses, was of little probative value in determining the extent of a claimant's permanent impairment.<sup>3</sup> Because Dr. Williams' opinion regarding the degree of permanent impairment was of little probative value, the Office properly requested that the Office medical adviser review the record and determine the extent of appellant's permanent impairment of the right elbow pursuant to the A.M.A., *Guides*.

The Office thereafter referred appellant to Dr. J.D. McGovern, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. McGovern reported on September 10, 1996 that appellant had received maximum medical improvement in June 1992. He found that appellant's retained active range of motion of the right elbow in flexion was 150 degrees and pronation was 90 degrees. He stated that appellant's right elbow extension had loss of 20 degrees, for a 2 percent impairment and supination of 60 degrees, for a 1 percent impairment, pursuant to figures 32 and 35, page 40 through 41 of the fourth edition of the A.M.A., *Guides*. Dr. McGovern noted that appellant had dull aching pain three or four times a week, and a slight decreased sensation over the median nerve, but that this was not part of the accepted condition. Dr. McGovern concluded that appellant had a three percent impairment of the right upper extremity. On October 2, 1996 an Office medical adviser reviewed Dr. McGovern's report and indicated that pursuant to figures 32 and 35, on pages 40 through 41 of the fourth edition of the

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<sup>3</sup> James Kennedy, Jr., 40 ECAB 620 (1989).

A.M.A., *Guides* appellant had a three percent permanent impairment of the right upper extremity.

The Board has reviewed the physical examination findings provided by both Dr. Williams and Dr. McGovern, pursuant to the A.M.A., *Guides*. Both Dr. Williams and Dr. McGovern findings support an award for three percent permanent impairment of the right elbow, pursuant to figures 32 and 35 of the A.M.A., *Guides*.<sup>4</sup> There is no medical evidence of record that appellant has more than a three percent permanent impairment of the right upper extremity due to loss of motion of the right elbow. Finally, while Dr. Williams and Dr. McGovern noted in passing some indications of arthrosis, pain, and loss of sensation, none of the medical reports of record describe such in sufficient detail for the Office to determine whether appellant has sustained a permanent impairment from such. Dr. Williams noted some arthrosis, but not affecting mobility; Dr. McGovern noted some pain, three or four times a week; and some loss of sensation, but not due to the accepted condition. These general findings are not specific enough to be evaluated pursuant to the A.M.A., *Guides*. Appellant may submit a further medical report if she has in fact sustained an additional uncompensated impairment of the right elbow.

The decision of the Office of Workers' Compensation Programs dated April 25, 1997 is hereby affirmed.

Dated, Washington, D.C.  
May 14, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>4</sup> Dr. Williams' examination findings indicate a one percent impairment of the right elbow due to loss of flexion, one percent impairment due to loss of supination, and one percent impairment due to loss of pronation. Dr. McGovern's findings indicate a two percent impairment for loss of extension and a one percent impairment due to loss of supination.