

that appellant sustained a right elbow epicondylitis causally related to his federal employment as a pharmacy technician, and the Office issued a schedule award for a five percent permanent impairment of the right arm based on loss of elbow range of motion and pain. In a decision dated November 18, 1996, the Board affirmed the November 18, 1994 Office decision on the grounds that the medical evidence supported the permanent impairment determination.¹

Appellant filed a notice of recurrence of disability (Form CA-2a) for March 5, 1997. He indicated that he stopped work on March 5, 1997 and returned to work on March 6, 1997. Appellant also indicated that he worked light duty with limited lifting and repetitive motion. The reverse of the claim form indicated that he used sick leave for eight hours on March 5, 1997 and six hours per week through April 4, 1997. By letter dated June 24, 1997, the Office advised appellant that it accepted the recurrence of March 5, 1997 as causally related to the employment injury.

In a letter dated January 4, 2002, the Office advised appellant that his “recurrence of September 14, 2001” had been accepted. He was advised to submit a CA-7 claim for compensation if he had lost time from work and had not already filed a claim for compensation. The record does not contain a copy of a Form CA-2a or CA-7 with respect to a recurrence of disability on September 14, 2001.

Appellant was referred for a functional capacity evaluation on June 19 and 20, 2002 by an attending physician, Dr. C.J. Yoon, Board-certified in physical medicine and rehabilitation. With respect to range of motion for the right elbow, the report provided results of 120 degrees of flexion, 11 degrees of extension; for the right forearm, 65 degrees of pronation and supination; and for the right wrist, 80 degrees of flexion and 55 degrees of extension. In a report dated July 22, 2002, Dr. Yoon noted that appellant underwent the functional capacity evaluation and that he had some range of motion limitations for the right arm. He also noted that appellant reported pain in his right elbow at level 2 out of 10.

By report dated February 4, 2004, an Office medical adviser reviewed the medical evidence and opined that appellant had a seven percent permanent impairment to the right arm under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). The medical adviser found that for loss of range of motion in the right elbow, he had a two percent impairment for loss of flexion, one percent for loss of extension, one percent for loss of pronation and one percent for loss of supination. For the right wrist, a one percent impairment for loss of extension. The medical adviser further found a one percent impairment for pain in the distribution of the radial nerve at the right elbow.

In a decision dated March 17, 2004, the Office issued a schedule award for an additional two percent permanent impairment to the right arm. The award ran for 6.24 weeks from June 22, 2002. The pay rate for compensation purposes was \$381.37.

Appellant requested reconsideration in a letter dated March 26, 2004. He questioned whether the pay rate of the award was proper; he noted that the Office had accepted a recurrence on September 14, 2001.

¹ Docket No. 95-807 (issued November 18, 1996).

In a decision dated July 8, 2004, the Office denied modification of the prior decision. With respect to pay rate, the Office stated that there was no established work-related disability for work as a result of the recurrences and, therefore, the pay rate used was appropriate.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Federal Employees' Compensation Act provides that, if there is 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.² Neither the Act, nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³

ANALYSIS -- ISSUE 1

In the present case, the Office medical adviser applied the loss of range of motion findings for the right elbow and wrist to the applicable provisions of the A.M.A., *Guides*. With respect to flexion and extension of the elbow, Figure 16-34 provides that 120 degrees of flexion is a 2 percent arm impairment and 11 degrees of extension results in a 1 percent impairment.⁴ For pronation and supination, Figure 16-37 indicates that 65 degrees results in a 1 percent impairment for pronation and 1 percent for supination.⁵ As to the wrist, 55 degrees of extension is a 1 percent impairment; 80 degrees of flexion is not a ratable impairment.⁶ Therefore, for the loss of range of motion there is a six percent impairment.

The medical adviser also noted that appellant reported right elbow pain. He identified the radial nerve, which has a maximum impairment of five percent under Table 16-15.⁷ The impairment was graded at 20 percent of the maximum based on Table 16-10, for a 1 percent impairment.⁸ The Board finds no evidence of a greater impairment with respect to pain due to a nerve injury.

The impairment for loss of range of motion and pain is, therefore, a seven percent impairment of the right arm. The medical adviser provided a reasoned opinion based on the

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

³ A. *George Lampo*, 45 ECAB 441 (1994).

⁴ A.M.A., *Guide* at 472 Figure 16-34.

⁵ *Id.* at 474, Figure 16-37.

⁶ *Id.* at 467, Figure 16-28.

⁷ *Id.* at 492, Table 16-15.

⁸ *Id.* at 482, Table 16-10. The A.M.A., *Guides* state that the table is to be used for pain that is due to a nerve injury, not for pain in the distribution of a nerve that has not been injured.

evidence with respect to the degree of permanent impairment. There is no other probative medical evidence on the issue. Appellant received an award for a five percent impairment on November 18, 1994. Accordingly, the Board finds that the Office properly issued an award for an additional two percent in this case. The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use, of the arm, the maximum number of weeks of compensation is 312 weeks. Since appellant's impairment was an additional 2 percent, he is entitled to 6.24 weeks from the date of maximum medical improvement.

LEGAL PRECEDENT -- ISSUE 2

Under 5 U.S.C. § 8101(4), “‘monthly pay’ means the monthly pay at the time of injury or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater”

ANALYSIS -- ISSUE 2

The Office used a pay rate for compensation purposes of \$381.37 per week, which represents the pay rate as of January 7, 1991 the initial date of disability associated with this claim. As noted above, there apparently were two CA-2a's filed with this claim, on March 5, 1997 and September 14, 2001. The Office makes a brief finding that there was no disability for work and, therefore, the pay rate would not be based on either of those dates. In order to properly adjudicate the issue, the Office must make more detailed findings based on the evidence of record. For example, appellant indicated in his March 5, 1997 CA-2a, that he had worked light duty; it is not clear for what particular periods he worked light duty. The use of a pay rate based on a recurrence of disability date requires that an employee resume regular full-time employment and the Office should make findings as to when appellant did return to regular full-time employment.

The record indicated that appellant was off work on March 5, 1997 and used sick leave and then used intermittent hours of sick leave through April 4, 2002. The Office did not discuss section 8101(4) with respect to the specific facts in the case and make a proper determination as to whether compensable disability recurred on March 5, 1997. As to the September 14, 2001 recurrence, the record did not contain the CA-2a filed, nor is it clear whether appellant had any specific dates of disability associated with the claim. On return of the case record the Office should consider all of the relevant evidence and make an appropriate finding as to the proper pay rate for compensation purposes in this case.

CONCLUSION

The Board finds that the probative medical evidence of record does not establish more than a seven percent permanent impairment to the right arm, for which appellant received schedule awards on November 18, 1994 and March 17, 2004. On the issue of pay rate the Office did not properly develop the record and make findings on whether compensable disability

recurred more than six months after resumption of regular full-time work under 5 U.S.C. § 8101(4).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 8 and March 17, 2004 are affirmed with respect to the percentage of permanent impairment; the decisions are set aside on the issue of pay rate and the case remanded for further development of the evidence.

Issued: January 3, 2005
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member