

On April 30, 2002 appellant filed a Form CA-7 claim for a schedule award based on loss of use of his right and left upper extremities.

In a report dated February 25, 2003, Dr. John Gragnani, Board-certified in physical and rehabilitative medicine, found that appellant had a 10 percent impairment of the right upper extremity and an 8 percent impairment of the left upper extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*). He stated:

“[T]he pie charts of Figures 16-28 and 16-31 were utilized for range of motion of the wrists. For the right upper extremity, extension of 58 degrees yields 0 percent impairment. Flexion of 50 degrees is 2 percent impairment. From Figure 16-31 for radial and ulnar deviation, radial deviation of 40 degrees is 0 impairment and ulnar deviation of 42 percent is 0 percent impairment. From Tables 16-10 and 16-11, no motor loss is noted and Grade 5 strength is recorded for the grip strengths. From Figure 16-10, distorted superficial tactile sensibility is suggested, Grade 4, for 20 percent sensory deficit, times 39 percent from Table 16-15, page 492, for median nerve below the mid forearm, yielding 7.8 percent. This 7.8 percent is rounded up to 8 percent and combined with the 2 percent for the loss of range of motion at the right wrist. These 2 values are combined via the table on page 604, yielding 10 percent for the right upper extremity rating.”

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“The left upper extremity was rated in the same manner. Sensory changes for the left median nerve were estimated at Grade 4 from Table 16-10. This was taken times 39 percent for the median nerve below mid forearm, yielding 7.9 sensory deficit. No motor deficit was estimated. For range of motion measurements, the pie charts of Figures 16-28 and 16-31 were again utilized. Flexion of 64 degrees is 0 percent impairment. Extension of 62 percent is 0 percent impairment. From Figure 16-31, radial deviation of 32 percent is 0 percent impairment. Ulnar deviation of 30 percent is 0 percent impairment. Therefore, the rating for the left upper extremity is based on sensory changes only and is equivalent to eight percent.”

In an impairment evaluation dated March 7, 2003, an Office medical adviser, adopted Dr. Gragnani’s findings and conclusions. He agreed that appellant had a 10 percent impairment of his right upper extremity and an 8 percent impairment of his left upper extremity based on the A.M.A., *Guides*.

On March 18, 2003 the Office granted appellant schedule awards for a 10 percent impairment of the right upper extremity and an 8 percent impairment of the left upper extremity for the period February 25, 2003 to March 24, 2004 for a total of 56.16 weeks of compensation.

By letter dated June 26, 2003, appellant requested reconsideration.

By decision dated March 2, 2004, the Office denied modification of the March 18, 2003 schedule award decision.

In a letter received by the Office on August 2, 2004, appellant requested reconsideration. He submitted treatment notes from the Veterans Administration Medical Center which documented examinations and findings pertaining to his head, neck and carpal tunnel condition from November 11, 2003 through July 20, 2004.

By decision dated May 12, 2005, the Office denied modification of the March 2, 2004 schedule award decision.

By letter dated June 20, 2005, appellant requested reconsideration. He submitted treatment notes from April to May 2005 which indicate testing for head, neck and bilateral carpal tunnel conditions. The reports did not contain any impairment ratings rendered pursuant to the A.M.A., *Guides*.

By decision dated July 11, 2005, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included pertinent new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for permanent loss or loss of use, of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.² The Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.³

ANALYSIS -- ISSUE 1

The Office medical adviser determined that appellant had a 10 percent impairment of his right upper extremity and an 8 percent impairment of his left upper extremity, based on Dr. Gragnani's February 25, 2003 report. He derived these ratings based on loss of range of motion of the wrists, which is discussed in Chapter 16.4(g) at page 466 of the A.M.A., *Guides*:

“For each wrist functional unit of motion, impairment curves [are] derived according to the basic formula, A + E plus F and expressed on a 100 percent motion unit scale. These impairment curves [are] converted to pie charts of upper

¹ 5 U.S.C. §§ 8101-8193.; see 5 U.S.C. § 8107(c).

² 5 U.S.C. § 8107(c)(19).

³ 20 C.F.R. § 10.404.

extremity impairment by applying their relative upper extremity functional value as a conversion factor (Figures 16-28 and 16-31). The upper extremity impairment due to abnormal wrist motion is calculated from the pie charts by *adding* directly together the upper extremity impairment contributed by each motion unit.

“The actual range-of-motion measurements are recorded and applied to the various impairment pie charts. *Impairment values for motion measurements falling between those shown in the pie chart may be adjusted or interpolated proportionally in the corresponding interval.*” (Emphasis in the original).”

Employing the formula outlined above, Dr. Gragnani relied on Figure 16-31 to calculate a loss of flexion of 50 degrees, which totaled a 2 percent impairment based on radial and ulnar deviation. Dr. Gragnani then relied on Table 16-10 at page 482 to record a Grade 4, 20 percent sensory deficit based on distorted superficial tactile sensibility. Utilizing Table 16-15, Dr. Gragnani multiplied the 20 percent sensory deficit times the 39 percent maximum impairment value for the median nerve below the mid forearm, which resulted in an upper extremity impairment of 7.8 percent. He rounded this to eight percent and combined it with the two percent impairment for loss of range of motion. When combined at the Combined Values Chart at page 604, this yielded a 10 percent total impairment for the right upper extremity.

Dr. Gragnani arrived at his eight percent rating for the left upper extremity using the same method he used to calculate the impairment for the right upper extremity. He derived a Grade 4 impairment for sensory changes for the left median nerve from Table 16-10, which measured 20 percent and multiplied this figure times 39 percent for the median nerve below mid forearm based on Table 16-15, which produced a 7.8 sensory deficit, rounded to 8 percent. Dr. Gragnani found no range of motion impairment for the left wrist under the pie charts of Figures 16-28 and 16-31.⁴ Accordingly, he calculated an eight percent rating for the left upper extremity based on sensory deficit alone. The Office medical adviser then adopted Dr. Gragnani’s findings and conclusions and found that appellant had a 10 percent impairment of his right upper extremity and an 8 percent impairment of his left upper extremity based on the A.M.A., *Guides*.

The Board finds that appellant has a 10 percent impairment of his right upper extremity and an 8 percent impairment of his left upper extremity based on the A.M.A., *Guides*. There is no other probative medical evidence establishing that he sustained greater impairment

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by constituting

⁴ As noted above, Dr. Gragnani calculated flexion of 64 degrees, which amounted to 0 percent impairment, extension of 62 percent, 0 percent impairment, pursuant to Figure 16-28. Using Figure 16-31, Dr. Gragnani calculated radial deviation of 32 percent, which totaled a 0 percent impairment, and ulnar deviation of 30 percent, for a 0 percent impairment.

relevant and pertinent evidence not previously considered by the Office.⁵ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁶

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence he submitted is not pertinent to the issue on appeal. Appellant submitted treatment notes which indicated that he underwent testing for head, neck and bilateral carpal tunnel conditions. However, these treatment notes do not contain any impairment evaluation or rating. This evidence is not relevant to the underlying issue in this case which is the extent of appellant's right and left upper extremity impairment. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁷ Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law, nor did it advance a point of law or fact not previously considered by the Office. The Office properly refused to reopen his claim for a review on the merits.

CONCLUSION

The Board finds that appellant has no more than a 10 percent impairment to his right upper extremity and an 8 percent impairment to his left upper extremity. The Board also finds that the Office properly refused to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

⁶ *Howard A. Williams*, 45 ECAB 853 (1994).

⁷ *See David J. McDonald*, 50 ECAB 185 (1998).

ORDER

IT IS HEREBY ORDERED THAT the July 11 and May 12, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 7, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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