

complex, debridement of the lunotriquetral ligament and dorsal synovectomy. A second surgery was performed on January 8, 1999 and consisted of a limited carpal arthrodesis of the hamates, cpitate, lunate and triquetrum; the excision of the ulnar styloid nonunion; and a posterior interosseous neurectomy with fusion of distal radius bone graft. The Office paid appropriate compensation. Appellant was off duty from April 28, 1998 to May 28, 1999. He returned to work full duty on May 29, 1999.

In a June 22, 1999 report, Dr. Arthur P. Vasen, a Board-certified orthopedic hand surgeon, noted that appellant had returned to work and was doing well. He opined that appellant had reached maximum medical improvement although there would be some permanent impairment.

On March 8, 2001 appellant filed a Form CA-7 claim for a schedule award. In a January 10, 2001 letter, Dr. David Weiss, a Board-certified orthopedic surgeon, reviewed the history of injury and opined that he had 42 percent impairment to the right upper extremity as a result of loss of motion, loss of grip strength and resection arthroplasty of the right wrist. Utilizing the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), he advised that right wrist dorsiflexion of 35 degrees equaled a 4 percent impairment¹ and a right wrist palmar flexion of 55 degrees equaled a 1 percent impairment² for a total range of motion deficit of 5 percent. Dr. Weiss found that his measurements of 20 kilograms right grip strength versus a 44 kilogram left grip strength equaled a 20 percent strength impairment.³ He also noted that appellant's right wrist resection arthroplasty equaled a 24 percent impairment.⁴ Dr. Weiss found that the total combined right upper extremity impairment was 42 percent. In a March 23, 2001 letter, Dr. Steven Berkowitz, a Board-certified orthopedic surgeon, advised that he agreed with Dr. Weiss' impairment rating.

On August 23, 2001 the Office referred the medical evidence to an Office medical adviser for a determination of the impairment to appellant's right upper extremity. In an August 28, 2001 report, he noted that appellant had reached maximum medical improvement on June 22, 1999. The Office medical adviser took the measurements from Dr. Weiss' January 10, 2001 report and, utilizing the fourth edition of the A.M.A., *Guides*, determined that he had 28 percent impairment to the right upper extremity. He stated that the arthroplasty of the wrist (limited carpal bone fusions) was a 24 percent impairment.⁵ The right wrist dorsiflexion of 35 degrees equaled 4 percent impairment⁶ and a right wrist palmar flexion of 55 degrees equaled 1 percent impairment⁷ for a total range of motion deficit of 5 percent. Utilizing the Combined

¹ A.M.A., *Guides* 36, Figure 26.

² *Id.*

³ A.M.A., *Guides* 65, Table 34.

⁴ *Id.* at 61, Table 27.

⁵ *Id.*

⁶ A.M.A., *Guides* 36, Figure 26.

⁷ *Id.*

Values Chart at page 322, the Office medical adviser combined the 24 percent impairment with the 5 percent loss of motion impairment to find total impairment of the right upper extremity of 28 percent. He explained that, although Dr. Weiss had added in a 20 percent grip strength impairment, this was contrary to the A.M.A. *Guides*. At page 64, the A.M.A. *Guides* note that grip testing is subjective and difficult to control and that impairment rating protocols were based on anatomic impairments and only in rare cases should loss of grip strength be a factor. The Office medical adviser also opined that the loss of strength was already considered with the arthroplasty impairment rating.

By decision dated September 17, 2001, the Office granted appellant a schedule award for 28 percent loss of use of the right upper extremity.

In a letter dated October 5, 2001, appellant requested a hearing which was held on December 9, 2002. By decision dated February 26, 2003, an Office hearing representative found that the case was not in posture for decision as the schedule award was based on an incorrect edition of the A.M.A., *Guides*. The Office hearing representative remanded the case to the Office for further development.

On June 10, 2003 the Office provided the Office medical adviser with a brief history of the case and requested that a schedule award be determined in accordance with the fifth edition of the A.M.A., *Guides*. In a June 10, 2003 report, the Office medical adviser advised that appellant reached maximum medical improvement on June 22, 1999. Utilizing the fifth edition of the A.M.A., *Guides*, the Office medical adviser determined that he had a 27 percent impairment to the right upper extremity. The resection arthroplasty of the wrist (limited carpal bone fusion) equaled 22 percent impairment.⁸ The right wrist dorsiflexion of 35 degrees equaled 5 percent impairment⁹ and a right wrist palmar flexion of 55 degrees equaled 0¹⁰ percent impairment for a total range of motion deficit of 5 percent. The Office medical adviser explained that Dr. Weiss' 20 percent impairment for loss of strength was subjective and, according to the A.M.A., *Guides*, anatomical impairments should be used when available.¹¹ He further noted that loss of strength was included in the limited fusion data as Dr. Weiss found no forearm atrophy. The Office medical adviser rated total right upper extremity impairment at 27 percent.

By decision dated June 23, 2003, the Office denied appellant's claim for an additional impairment based on the Office medical adviser as the weight of the evidence.

In a letter dated June 25, 2003, appellant requested a hearing. By decision dated December 31, 2003, an Office hearing representative found that several aspects of the Office medical adviser's report of June 10, 2003 required clarification. This pertained to the 22 percent

⁸ A.M.A., *Guides* (5th ed.) 506, Table 16-27, however, provide a 10 percent impairment for resection of the carpal bone.

⁹ A.M.A., *Guides* 467, Figure 16-28.

¹⁰ *Id.*

¹¹ *Id.* at 508.

impairment rating for appellant's wrist surgeries, whether he had any impairment for loss of range of motion of the wrist, and whether he had impairment due to loss of palmar flexion. Accordingly, the Office hearing representative set aside the Office's June 23, 2003 decision and remanded the case for further development.

On March 17, 2004 the Office forwarded the medical records and a list of questions to the Office medical adviser. In a March 17, 2004 report, he responded to the questions posed by the Office. With respect to the 22 percent impairment assigned for impairment due to appellant's wrist surgery, the Office medical adviser explained that an excision of the ulnar styloid was the same procedure as a resection of the ulnar head and represented a 10 percent impairment under Table 16-27.¹² Appellant also had a fusion of four proximal bones. The Office medical adviser noted that there was no listing in the A.M.A., *Guides* and opined the closest rating was that of proximal row carpectomy which represented a 12 percent upper extremity impairment under Table 16-27.¹³ The total impairment due to arthroplasty surgeries was 22 percent. With respect to appellant's loss of range of motion for the wrist, he stated that 1 percent impairment could be added since a palmar flexion of 55 degrees was midway between 50 degrees and 2 percent impairment and 60 degrees or 0 percent impairment.¹⁴ The Office medical adviser noted that 36 degrees of dorsiflexion was midway between 30 degrees or 5 percent impairment and 40 degrees or 4 percent impairment and noted that an impairment rating of 4.5 percent would be more accurate.¹⁵ He opined that appellant had a total loss of motion of 5.5 percent. The Office medical adviser then utilized the Combined Values Chart and combined the 5.5 percent loss of motion impairment with the 22 percent impairment after resection arthroplasty to total 27 percent upper extremity impairment.

By decision dated March 19, 2004, the Office denied appellant's claim for additional impairment, finding that the Office medical adviser's report did not support an increase over the 28 percent impairment previously awarded.

In a letter dated March 24, 2004, appellant requested a hearing which was held on November 30, 2004. In a decision dated April 12, 2005, an Office hearing representative affirmed the March 19, 2004 decision. The Office hearing representative found that there was no updated medical report in file which addressed his impairment status utilizing the fifth edition of the A.M.A., *Guides*. As the January 10, 2001 report of Dr. Weiss was based on the fourth edition of the A.M.A., *Guides*, it did not create a conflict in the medical opinion evidence.

On appeal, appellant argues that there is a conflict in medical opinion evidence between the Office medical adviser and Dr. Weiss, as it relates to his impairment beyond the 28 percent to the right upper extremity.

¹² *Id.* at 506, Table 16-27.

¹³ *Id.*

¹⁴ *Id.* at 467, Figure 16-28.

¹⁵ *Id.*

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹⁶ and its implementing regulation¹⁷ sets 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. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Office has adopted the A.M.A., *Guides* as the appropriate standard for evaluating scheduled losses. As of February 1, 2001, all new schedule awards are based on the fifth edition of the A.M.A., *Guides*.¹⁸

ANALYSIS

The Office denied appellant's request for an increased schedule award beyond the 28 percent previously awarded for the right upper extremity. The Office hearing representative found that the Office medical adviser's impairment rating of 27 percent of the right upper extremity was properly based on the fifth edition of the A.M.A., *Guides*.

The Board notes that the Office medical adviser properly determined that appellant had 22 percent impairment after his two surgical procedures by adopting the information contained in the operative reports to the A.M.A., *Guides*, Table 16-27. He explained that an excision of the ulnar styloid produced the identical anatomic result as a resection of the ulnar head and was a 10 percent impairment.¹⁹ The Office medical adviser noted that, although there was no listing in the A.M.A., *Guides* for a fusion of the four proximal bones, the equivalent was that of "proximal row carpectomy" which was a 12 percent upper extremity impairment.²⁰ He then adopted Dr. Weiss' finding regarding range of motion to the A.M.A., *Guides*. The Office medical adviser determined that a palmar flexion of 55 degrees equated 1 percent impairment and 36 degrees of dorsiflexion equated to 4.5 percent impairment.²¹ He opined that appellant had a total impairment of range of motion of 5.5 percent of the upper extremity. The Board notes that the Office medical adviser should have rounded up the 5.5 percent total loss of motion impairment to 6 percent.²² The Office medical adviser then properly utilized the Combined Values Chart. The Board notes that a 6 percent loss of motion impairment combined with the 22 percent impairment due to resection arthroplasty totals 27 percent total upper extremity impairment.

¹⁶ 5 U.S.C. § 8107.

¹⁷ 20 C.F.R. § 10.404 (1999).

¹⁸ *Rose V. Ford*, 55 ECAB ____ (Docket No. 04-15, issued April 6, 2004); see FECA Bulletin No. 01-05 (issued January 29, 2001).

¹⁹ *Id.*, at 506, Table 16-27.

²⁰ *Id.*

²¹ *Id.* at 467, Figure 16-28.

²² See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3. 700.3(6) (June 2003).

The Board finds that a conflict in opinion did not arise when the Office medical adviser applied Dr. Weiss' physical findings to the A.M.A. *Guides*. The Office's procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.²³ Although Dr. Weiss accorded a 20 percent impairment rating for grip strength loss, the Office medical adviser properly found that the A.M.A., *Guides* prefers anatomical impairments when available.²⁴ The A.M.A., *Guides* provides that strength deficits measured by functional tests should only rarely be included in the calculation of an upper extremity impairment.²⁵ Moreover, the A.M.A., *Guides* at 16.8 note further that decreased strength "cannot" be rated in the presence of decreased motion, as was reported by Dr. Weiss. There is no explanation from Dr. Weiss or any other physician of any circumstances that would warrant evaluating strength loss under section 16.8 of the A.M.A., *Guides*,²⁶ in light of the restrictive language found in this section of the A.M.A., *Guides*.²⁷

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* to find that appellant has no more than the 28 percent impairment of the right upper extremity for which he received a schedule award. He has failed to provide probative rationalized medical evidence that he has greater than the 28 percent impairment already awarded.

CONCLUSION

Appellant has not established that he is entitled to greater than the 28 percent impairment for loss of use, of his right upper extremity for which he has received a schedule award from the Office.

²³ See *Thomas J. Fragale*, 55 ECAB ____ (Docket No. 04-835, issued July 8, 2004). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

²⁴ A.M.A., *Guides* 508; *Phillip H. Conte*, 56 ECAB ____ (Docket No. 04-1524, issued December 22, 2004).

²⁵ See *Linda R. Sherman*, 56 ECAB ____ (Docket No. 04-1510, issued October 14, 2004).

²⁶ A.M.A., *Guides* 507-11.

²⁷ See *James R. Taylor*, 56 ECAB ____ (Docket No. 05-135, issued May 13, 2005) (the fifth edition of the A.M.A., *Guides* provides that, loss of strength should be rated separately only if it is based on an unrelated cause or mechanism; otherwise the impairment ratings based on objective anatomic findings take precedence).

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2006
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