

In a report dated October 6, 2004, Dr. George Rodriguez, provided a history and results on examination. With respect to a permanent impairment, he measured grip strength and identified Table 16-34 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). Dr. Rodriguez opined that appellant had a 30 percent permanent impairment to the right arm based on an 83 percent loss of grip strength.

An Office medical adviser reviewed the medical evidence and opined that Dr. Rodriguez had incorrectly applied the A.M.A., *Guides*. The medical adviser opined that appellant had a 7 percent impairment based on sensory deficit and pain; he identified Tables 16-13 and 16-10, along with Figure 18-1.

The Office referred appellant along with his medical records for a second opinion evaluation by Dr. Kevin Hanley, a Board-certified orthopedic surgeon, who in a report dated February 9, 2005, provided a history and results on examination. He stated that the A.M.A., *Guides* limited grip strength impairments to rare cases that such an impairment was not adequately considered by other methods. Dr. Hanley opined that he did not believe that appellant's "loss of strength was an impairing factor and obviously his performance on the Jamar dynamometer rules out this test in any case." He further stated "there are no other objective findings on my physical examination upon which to base any type of impairment rating" and he concluded that appellant had no ratable impairment.

The Office determined that a conflict existed pursuant to 5 U.S.C. § 8123(a) and referred appellant to Dr. David Pashman, a Board-certified orthopedic surgeon, who in a report dated April 18, 2005, provided a history and results on examination. He provided results of grip strength from a Jamar dynamometer, stating that it "appears to be a valid study" but noted that "there may be a lack of maximal effort" by appellant. Dr. Pashman reported that appellant had full range of motion, with "questionable hypothesis about the dorsoradial sensory branch of the ulnar nerve on the dorsum of the right hand." He referred to Table 16-11 and found that "percent of motor deficit based on pain would be between in a range of 1 [to] 25 percent" since appellant had complete range of motion against gravity with some resistance. The impartial specialist then noted that, under Table 16-15, the maximum percent of upper extremity impairment due to ulnar nerve dysfunction "radial palmar digital of little finger" is two percent. He concluded, "[t]hus, based on the fact that [appellant's] weakness is primarily secondary to pain inhibition and the objective estimate of sensory nerve deficit is only two percent with a decreased strength deficit, I would estimate his permanent impairment rating between five to seven percent."

In a report dated August 1, 2005, an Office medical adviser stated that he believed seven percent was fair, as it was based on documented sensory loss and was a compromise. By decision dated August 15, 2005, the Office issued a schedule award for a seven percent permanent impairment to the right arm. The period of the award was 21.84 weeks commencing October 6, 2004.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.404 of the implementing federal regulation,² schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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. The A.M.A., *Guides* has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

The Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination.⁴ The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁵

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁶

ANALYSIS

The Office found that a conflict in the medical evidence existed between Dr. Rodriguez and Dr. Hanley. The impartial medical specialist, Dr. Pashman, must provide a report that is sufficient to resolve the conflict. However, Dr. Pashman did not adequately address the issues presented. He provided results on grip strength testing, but did not clearly address the question of whether this was an appropriate method of impairment of evaluation in this case. Dr. Pashman indicated that appellant did not give maximal effort, but since there was a clear disagreement between Dr. Rodriguez and Dr. Hanley on the appropriateness of grip strength evaluation under the A.M.A., *Guides*, the impartial medical specialist must properly resolve this

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.404.

³ *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁴ 5 U.S.C. § 8123.

⁵ 20 C.F.R. § 10.321 (1999).

⁶ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

issue.⁷ In addition, Dr. Pashman did not explain how he arrived at his conclusion that appellant had a “five to seven” percent impairment. Table 16-11 is the table for grading upper extremity motor deficit impairment, and Dr. Pashman graded the impairment at Grade 4, or between 1 and 25 percent of the maximum for the identified nerve.⁸ Under Table 16-15 the two percent maximum impairment referred to by Dr. Pashman (for radial palmar digital nerve of the little finger) is for sensory deficit, not motor deficit.⁹ Dr. Pashman did not cite any other tables or explain how the five to seven percent impairment was calculated. The Office medical adviser did not provide additional explanation.¹⁰ The Board finds that the conflict in the medical evidence regarding a schedule award was not properly resolved. In this situation, the Office has a responsibility to secure a supplemental report from the impartial specialist that corrects the defect in the original opinion.¹¹ The case accordingly will be remanded to the Office to secure a medical report that properly resolves the conflict. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

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

⁷ As noted by Dr. Hanley, the A.M.A., *Guides* state that loss of grip strength is used only when it represents an impairing factor that has not been adequately considered by other methods. A.M.A., *Guides* 508.

⁸ A.M.A., *Guides* 484, Table 16-11.

⁹ *Id.* at 492, Table 16-15.

¹⁰ An Office medical adviser may review the opinion, but the resolution of the conflict is the responsibility of the impartial medical specialist. See *Richard R. Lemay*, 56 ECAB ___ (Docket No. 04-1652, issued February 16, 2005). The Board notes that the December 27, 2004 medical adviser’s report discussed specific tables, but that was in reference to the report of Dr. Rodriguez, not the impartial medical specialist.

¹¹ See *Guiseppe Aversa*, 55 ECAB ___ (Docket No. 03-2042, issued December 12, 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 15, 2005 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 9, 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