# United States Department of Labor
# Employees' Compensation Appeals Board

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| **T.T., Appellant** | ) | |
| **and** | ) | **Docket No. 06-1982** |
| | ) | **Issued: January 8, 2007** |
| **DEPARTMENT OF THE NAVY, NAVY PUBLIC WORKS, San Diego, CA, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On August 18, 2006 appellant filed an appeal of an August 19, 2005 merit decision of the Office of Workers' Compensation Programs granting a schedule award for an 11 percent impairment of his left upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction in this case.

### ***ISSUE***

The issue is whether appellant has met his burden of proof to establish that he has more than an 11 percent impairment of his left upper extremity.

### ***FACTUAL HISTORY***

On February 14, 2003 appellant, a 40-year-old roofer, filed a traumatic injury claim for injuries sustained to his back and arm on February 13, 2003 when he fell from a roof in the course of his employment. The Office accepted his claim for left wrist fracture and lumbar compression fracture.

Appellant submitted a "Permanent and Stationary" report dated January 16, 2004 from his primary treating physician, Dr. Richard Yu, Board-certified in the field of family medicine. Noting appellant's accepted conditions, Dr. Yu opined that appellant had reached maximum medical improvement (MMI) as of January 16, 2004. He indicated that appellant was experiencing pain from 0 to 6/10 with activities involving heavy use of his left hand and wrist, and from 0 to 8/10 in his lower back when performing activities, such as prolonged sitting, bending and heavy lifting. Dr. Yu stated that appellant had loss of range of motion in his left wrist. Physical examination of the back revealed no tenderness on palpation over the spinous processes, bilateral sacroiliac joints, sacrum or coccyx, and no tenderness or tightness over bilateral lumbar paraspinals, iliocostalis and quadratus lumborum. Range of motion testing revealed forward flexion -- 3½" from the floor (normal = 5" or less); extension -- 30 degrees (normal = 30 degrees); lateral right and left bending -- 20 degrees respectively (normal = 20 degrees respectively); and right and left rotation -- 30 degrees respectively (normal = 30 degrees respectively). Testing of appellant's motor function was 5/5 for quadriceps (L3); ankle dorsiflexor (L4); big toe extension (L5); and ankle eversion (S1). Sensory testing showed that appellant was intact to light touch over the L1-S1 dermatomes. Patellar and Achilles reflexes were 2+/2+. Examination of the left hand showed no localized redness, ecchymosis, swelling or warmth, and no thenar, hypothenar atrophy. With palpation, Dr. Yu found no tenderness over snuff boxes, radial and ulnar styloids, or carpal bones. Flexor carpi radialis and flexor carpi ulnaris tendons were nontender. Radial and ulnar pulses were 2+ and symmetrical. Examination of the left wrist showed navicular tenderness to palpation. Range of motion testing revealed dorsiflexion: right -- 65 degrees, left -- 65 degrees (normal -- 65 degrees); palmar flexion: right -- 95 degrees, left -- 60 degrees (normal -- 70 degrees); ulnar deviation: right -- 40 degrees, left -- 40 degrees (normal -- 40 degrees); and radial deviation: right -- 20 degrees, left -- 20 degrees (normal -- 20 degrees). Motor function was 5/5. Jamar Dynamometer Grip Strength Testing revealed right-hand grip strength (dominant hand) of 163, 156, and 148 pounds, for an average grip strength of 155.7 pounds. Testing of the left hand revealed grip strength of 110, 100, and 98 pounds, for an average grip strength of 103.3 pounds. Dr. Yu noted that it is normal to expect a 10 percent increase in strength in the dominant hand versus the nondominant hand. He estimated that appellant's preinjury grip strength was approximately 140.1 pounds (140.1-103.3 divided by 140.1 x 100 = 26.2 percent).

On April 10, 2004 appellant requested a schedule award. The Office referred the case file to an orthopedic consultant, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon, for review and an opinion as to the degree of appellant's permanent physical impairment.

In a report dated May 6, 2004, Dr. Harris opined that appellant had an 11 percent total permanent impairment to his left upper extremity. Dr. Harris did not perform an examination of appellant. His report was based upon a review of the medical records, including imaging reports, the Office's decision and application of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Based upon the findings contained in Dr. Yu's January 16, 2004 report, Dr. Harris concluded that appellant had an 11 percent impairment of his left upper extremity. He found that appellant had no impairment for loss of motion of the left wrist. Pursuant to Table 16-34 at page 509, he determined that appellant had a 33 percent grip strength loss, resulting in a 10 percent left upper extremity impairment. He noted that appellant's grip strength loss appeared to be based both on actual muscle weakness resulting

from residuals of his scaphoid fracture as well as pain which interferes with function. Dr. Harris found that appellant had a Grade 4 pain/decreased sensation that interferes with some activity [25 percent] (Table 16-10, page 482) of the radial nerve (Table 16-15, page 492), resulting in a one percent impairment of the left upper extremity for pain that is forgotten with activity. Combining the totals, Dr. Harris found that appellant had an 11 percent impairment of his left upper extremity.

On May 20, 2004 the Office granted appellant a schedule award for an 11 percent permanent impairment of his left upper extremity, based on Dr. Harris' May 6, 2004 report. The Office found that the date of MMI was January 16, 2004. The period of the schedule award was 34.32 weeks, from January 16 through May 15, 2004.

On May 17, 2005 appellant requested reconsideration, contending that his schedule award did not adequately reflect the extent of his permanent impairment, and that the award was incorrectly calculated. Appellant submitted reports from Dr. Yu dated June 29, 2004 and May 12, 2005 confirming that palmar flexion was 95 degrees on the right and 60 degrees on the left. Dr. Yu opined that, while normal palmar flexion is 70 degrees for the general population, normal for appellant is 95 degrees.

By decision dated August 19, 2005, the Office denied modification of its May 20, 2004 schedule award decision.

## ***LEGAL PRECEDENT***

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] set 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 in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of the Office.[3] For consistent results and to ensure equal justice under the law to 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 implementing regulation as the appropriate standard for evaluating schedule losses.[4]

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and

[1] 5 U.S.C. §§ 8101 *et seq.*

[2] 20 C.F.R. § 10.404.

[3] *Linda R. Sherman*, 56 ECAB ___ (Docket No. 04-1510, issued October 14, 2004); *Daniel C. Goings*, 37 ECAB 781, 783-84 (1986).

[4] *Ronald R. Kraynak*, 53 ECAB 130, 132 (2001).

percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[5]

Grip strength is used to evaluate power weaknesses related to the structures in the hand wrist or forearm.[6] The A.M.A., *Guides* does not encourage the use of grip strength as an impairment rating because strength measurements are functional tests influenced by subjective factors that are difficult to control, and the A.M.A., *Guides*, for the most part, is based on anatomic impairment. Thus, the A.M.A., *Guides* does not assign a large role to such measurements. Only in rare cases should grip strength be used and only when it represents an impairing factor that has not been otherwise considered adequately.[7] Otherwise, the impairment ratings based on objective anatomic findings take precedence.[8]

## ***ANALYSIS***

The Office properly referred this case to Dr. Harris, a medical consultant, for an opinion on the percentage of permanent impairment to appellant's left upper extremity. However, the Board finds that this case is not in posture for a decision regarding the extent of impairment, as Dr. Harris did not adequately explain how his impairment ratings were reached.

Dr. Harris based his assessment on the clinical findings contained in the January 16, 2004 report of appellant's treating physician, Dr. Yu. He found that appellant had no impairment for loss of motion of the left wrist. Dr. Harris determined that appellant had a Grade 4 pain/decreased sensation that interferes with some activity [25 percent] (Table 16-10, page 482) of the radial nerve (Table 16-15, page 492), resulting in a one percent impairment of the left upper extremity for pain that is forgotten with activity. Pursuant to Table 16-34 at page 509, Dr. Harris concluded that appellant had a 33 percent grip strength loss, resulting in a 10 percent left upper extremity impairment. Combining the totals, he found that appellant had an 11 percent impairment of his left upper extremity. As noted above, the A.M.A., *Guides* permits a separate rating for grip strength only in rare cases where loss of strength is not considered adequately by other methods.[9] Although Dr. Harris noted that appellant's grip strength loss appeared to be based both on actual muscle weakness resulting from residuals of his scaphoid fracture as well as pain which interferes with function, he failed to explain why he believed appellant's condition warranted this additional impairment due to loss of strength. Absent such an explanation, an additional impairment rating based on grip strength is not warranted, and the impairment rating based on objective anatomic findings should take precedence.[10]

[5] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

[6] *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

[7] *Mary L. Henninger*, 52 ECAB 408, 409 (2001).

[8] A.M.A., *Guides* 508.

[9] *Id.*

[10] *Id.*

Dr. Harris concluded that appellant had a 10 percent left upper extremity impairment as a result of a 33 percent grip strength loss, pursuant to Table 16-34 at page 509. The Board notes that a 33 percent grip strength loss would actually result in a 20 percent left upper extremity impairment according to Table 16-34. Dr. Harris has not adequately explained why any such impairment rating is warranted in this case.

Although Dr. Yu opined that appellant had a loss of range of motion in his left wrist, Dr. Harris found that appellant had no impairment for loss of motion. However, he did not refer to the appropriate Table in the A.M.A., *Guides* or explain how he arrived at his conclusion.

The Board will remand the case to the Office to undertake additional development of the medical evidence to appropriately determine appellant's permanent impairment for schedule award purposes. On remand the Office should develop the medical evidence, as appropriate to determine the extent of permanent impairment due to his accepted employment injury under the A.M.A., *Guides*.

## ***CONCLUSION***

The Board finds that this case is not in posture for decision. The record is not sufficiently detailed to establish appellant's impairment rating in accordance with the applicable provisions of the A.M.A., *Guides,* and must be remanded for additional development of the medical evidence.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the August 19, 2005 decision of the Office of Workers' Compensation Programs is set aside and remanded for additional development consistent with this decision of the Board.

Issued: January 8, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board