

On December 3, 2003 appellant, then a 44-year-old mail handler, filed a claim for traumatic injury, Form CA-1, alleging that he dislocated and fractured his left elbow that day when he fell after catching his foot on a power pallet lifter. Dr. Javier Rincon, a Board-certified family practitioner, conducted an x-ray of the elbow and noted a comminuted displaced fracture

of the radial head with multiple loose fragments. On December 13, 2006 Dr. Steven Grindel, a Board-certified orthopedic surgeon, performed an excision and replacement of appellant's left radial head and a repair of his left ulnar collateral ligament. By decision dated February 24, 2004, the Office accepted appellant's claim for left radial head fracture, left elbow dislocation and left ulnar collateral ligament tear. Appellant returned to work with permanent restrictions on March 2, 2004.

In a report dated February 15, 2005, Dr. Grindel stated that appellant had reached maximum medical improvement. He noted that appellant lacked 15 degrees of flexion in his left elbow and assigned a 20 percent permanent impairment rating of the left arm based on limitations in range of motion and pain with aggressive use.

On March 1, 2005 appellant filed a claim for a schedule award for permanent impairment to his left elbow.

On May 12, 2005 the Office provided Dr. Grindel with a form requesting specific information, to be determined by examination, about the extent of permanent impairment to appellant's left elbow.<sup>1</sup>

Dr. Grindel submitted the form and a narrative medical report on June 14, 2005.<sup>2</sup> He reported that appellant had left elbow pain ranging from 2 to eight out of 10, but that this did not interfere with daily activity.<sup>3</sup> Dr. Grindel found no loss of sensation in the left elbow, but noted a loss of 18 percent of extension. He estimated a 50 percent loss of flexion strength and 20 percent loss of extension strength.

The Office forwarded the medical record to an Office medical adviser for a determination of permanent impairment. On July 11, 2005 Dr. Ravi K. Ponnappan, an orthopedic surgeon, submitted an impairment rating. He utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) in rating a 14 percent impairment of appellant's left upper extremity. Dr. Ponnappan based his determination on appellant's history of arthroplasty of the radial head in his left elbow, complaints of moderate intermittent pain in the left elbow and objective findings of loss of elbow motion. He found that maximum medical improvement had been reached on February 15, 2005.

In rating sensory loss, Dr. Ponnappan identified the medial antebrachial cutaneous nerve under Table 16-15 which provides a maximum impairment for pain of five percent. He then found a Grade 3 deficit for distorted superficial tactile sensibility under Table 16-10, to rate pain at two percent.<sup>4</sup> Dr. Ponnappan also rated 2 percent for a 30 percent (Grade 3) pain/sensory

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<sup>1</sup> The Office also requested information about appellant's left wrist. Dr. Grindel did not respond to this request.

<sup>2</sup> The findings on the May 31, 2005 form are slightly different than the June 14, 2005 form.

<sup>3</sup> Dr. Grindel does not indicate which nerve distributions, if any, were involved in this pain.

<sup>4</sup> Dr. Ponnappan erroneously referred to Table 16-11, rather than pain and sensory deficit which is found on Table 16-10, page 482 and not motor deficits which are covered under Table 16-11, page 484. Additionally, his calculations are correct only when using Table 16-10, page 482, in conjunction with Table 16-15, page 492.

deficit in the distribution of the lateral antebrachial cutaneous nerve, for which a maximum impairment of 5 percent may be awarded. He awarded appellant an eight percent left upper extremity impairment for the radial head arthroplasty based on Table 16-27, page 506. Using Figure 16-34, page 472, Dr. Ponnappan also awarded a 2 percent left upper extremity impairment for the loss of elbow extension of 18 degrees. He noted, according to the A.M.A., *Guides*, page 508, no award for loss of strength of the presence of decreased motion. Dr. Ponnappan properly combined the impairments in accordance with the Combined Values Chart, page 604, to total 14 percent left upper extremity impairment.

In a decision dated January 30, 2006, the Office granted appellant a schedule award for a 14 percent permanent impairment of the left upper extremity, 43.68 weeks of compensation, for the period February 15 to December 17, 2005.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>5</sup> and its implementing regulation<sup>6</sup> 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. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standards applicable to all claimants.<sup>7</sup> Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.<sup>8</sup>

### **ANALYSIS**

The Board finds that the Office medical adviser, Dr. Ponnappan correctly followed the procedures outlined in the A.M.A., *Guides* in rating appellant's permanent impairment. Dr. Ponnappan based his determination on the examination performed by Dr. Grindel, a Board-certified orthopedic surgeon. Based on a finding of moderate intermittent pain in the left elbow, Dr. Ponnappan identified a 30 percent pain deficit in both the medial antebrachial cutaneous nerve and the lateral antebrachial cutaneous nerve.<sup>9</sup> These nerve distribution groups were properly utilized because they cover the elbow region of the arm.<sup>10</sup> The maximum impairment allowed for pain deficits for each of these nerves is five percent.<sup>11</sup> When multiplied by the 30 percent pain deficit found by Dr. Ponnappan, the result is an impairment rating of one and a half

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<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> 20 C.F.R. § 10.404(a).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>9</sup> See A.M.A., *Guides* 482, Table 16-10.

<sup>10</sup> *Id.* at 488, Figure 16-48.

<sup>11</sup> *Id.* at 492, Table 16-15.

percent. He properly rounded the impairment due to each of these nerves up to two percent, for a total of four percent impairment for elbow pain. Relying on Table 16-27, page 506, the Office medical adviser correctly awarded an impairment of eight percent for the isolated implant arthroplasty of the left radial head. Using Figure 16-34, page 472, to rate appellant's decreased extension, Dr. Ponnappan correctly rounded the 1.8 percent loss of motion to 2 percent, resulting in a 2 percent left upper extremity impairment. In accordance with the A.M.A., *Guides*, he did not rate appellant's decreased strength in the presence of decreased motion.<sup>12</sup> When the above left upper extremity impairment ratings are combined using the Combined Values Chart, page 604, the result is 14 percent. Accordingly, the Board finds that the Office medical adviser properly established the impairment rating and the Office correctly relied on it in issuing its schedule award.

The Board further finds that Dr. Grindel's rating of 20 percent impairment does not conform to the A.M.A., *Guides*. In a February 15, 2005 report, Dr. Grindel stated that appellant had a 20 percent permanent impairment. However, Dr. Grindel did not explain how he arrived at this rating and whether he used the A.M.A., *Guides*. He stated only that the rating was based on "limitations of motion and pain with aggressive use." This rationale does not contain the objective findings required to make an impairment rating using the A.M.A., *Guides* which are the only rating guidelines allowed under Office regulations. The Board finds that Dr. Grindel's 20 percent impairment rating is of diminished probative value as he did not conform to the protocols of the A.M.A., *Guides*.

### **CONCLUSION**

The Board finds that appellant has not established that he has more than a 14 percent permanent impairment of the left upper extremity, for which he received a schedule award.

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<sup>12</sup> See A.M.A., *Guides* 508, section 16.8a ("[d]ecreased strength *cannot* be rated in the presence of decreased motion, painful conditions, deformities or absence of parts (*e.g.*, thumb amputation) that prevent effective application of maximal force in the region being evaluated]"). (Emphasis in the original.)

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 30, 2006 is affirmed.

Issued: May 22, 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