

December 8, 2005 appellant returned to work in a limited-duty capacity. He resumed his regular letter carrier duties on January 4, 2006.

Appellant filed a claim for a schedule award on September 18, 2007. In a report dated June 21, 2007, Dr. Nicholas P. Diamond, a pain management specialist, found 48 percent impairment of the left upper extremity. His overall rating included components for sensory deficit (2 percent), loss of grip strength (30 percent), and “4/5 motor strength deficit left elbow” (24 percent).

The Office subsequently referred the case file, including Dr. Diamond’s impairment rating, to its district medical adviser, Dr. Arnold T. Berman, a Board-certified orthopedic surgeon. In a report dated September 15, 2007, Dr. Berman disagreed with Dr. Diamond’s 30 percent rating for loss of grip strength. He explained that decreased strength cannot be rated in the presence of decreased motion and painful conditions. As both of these factors were present during Dr. Diamond’s examination, an award for grip strength was inappropriate. While he disagreed with the grip strength rating, Dr. Berman concurred with the two percent award for sensory deficit involving the ulnar nerve. Additionally, he found three percent impairment for loss of motion in the elbow. Dr. Berman also recommended an additional three percent impairment for pain. However, he did not specifically comment on Dr. Diamond’s 24 percent impairment rating for “4/5 motor strength deficit left elbow.”

By decision dated October 16, 2007, the Office granted a schedule award for six percent impairment of the left upper extremity. The award covered a period of 131.04 days (18.72 weeks) from June 21 to October 30, 2007.

Appellant requested an oral hearing, which was held on February 26, 2008. In a decision dated May 6, 2008, the hearing representative affirmed the Office’s October 16, 2007 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees’ Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.¹ 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 implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.² Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).³

¹ The Act provides that for a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks’ compensation. 5 U.S.C. § 8107(c)(1) (2006).

² 20 C.F.R. § 10.404 (2008).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

ANALYSIS

The case is not in posture for decision. Although the district medical adviser properly explained why Dr. Diamond's 30 percent grip strength rating was inappropriate under the A.M.A., *Guides*,⁴ he neglected to address the propriety of Dr. Diamond's 24 percent impairment rating for "4/5 motor strength deficit left elbow." This apparent oversight necessitates a remand for further review. The district medical adviser also failed to justify an additional three percent impairment for pain. Dr. Berman cited Figure 18-1, A.M.A., *Guides* 574, as support for assigning additional impairment due to pain.⁵ But he neglected to explain why his other ratings for sensory deficit and loss of motion did not adequately address the full extent of appellant's left upper extremity impairment. Absent such explanation, the district medical adviser's additional three percent rating for pain is unjustified. Accordingly, the case is remanded to the Office for further medical development, after which the Office shall issue a *de novo* decision regarding appellant's entitlement to a schedule award.

CONCLUSION

The Board finds that the case is not in posture for decision.

⁴ Decreased strength cannot be rated in the presence of "decreased motion" or "painful conditions" that prevent effective application of maximal force in the region being evaluated. A.M.A., *Guides* 508, section 16.8a.

⁵ The A.M.A., *Guides* limit the circumstances under which a pain-related impairment may be assessed under Chapter 18. If an impairment can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*, such as Chapters 13, 16 and 17, then pain-related impairments should not be assessed using Chapter 18. See A.M.A., *Guides* 571, section 18.3b. The A.M.A., *Guides* provide for an incremental adjustment of up to three percent for pain when the conventional rating system does not adequately encompass the burden of the individual's condition. Where the pain-related impairment appears to increase the burden of the individual's condition "slightly," the physician can increase the percentage found under the conventional rating system by up to three percent. See A.M.A., *Guides* 573, section 18.3d; A.M.A., *Guides* 574, Figure 18-1.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: April 20, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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