

¹ OWCP File No. xxxxxx999 (master file).

his employment duties. The Office accepted this claim for right ulnar neuropathy.² On August 3, 2004 appellant received a schedule award for a 14 percent impairment of his right upper extremity.

A conflict arose between Dr. David Weiss, appellant's osteopath, and the Office medical adviser on the extent of appellant's right upper extremity impairment. Dr. Weiss found 21 percent impairment while the Office medical adviser found 14 percent impairment. The Office referred appellant, together with the case record and a statement of accepted facts, to Dr. William H. Spellman, a Board-certified orthopedic surgeon, to resolve the conflict.

On May 7, 2008 Dr. Spellman related the history appellant provided and his current complaint. He noted that appellant was currently receiving no treatment and taking no medication for his right upper extremity. Dr. Spellman physically examined appellant's upper extremities and reported his findings. On inspection, the morphology of the upper arms, elbows, forearms, wrists and hands was unremarkable. No atrophic changes were present. There was no swelling at the elbows or wrists or distal joints. There was no tenderness on bony and soft tissue palpation. Tinel's sign was negative symmetrically at the Guyon's canal and both elbows. Phalen's sign was negative symmetrically. Dr. Spellman noted full and painless range of motion of the elbows, wrists and distal joints symmetrically and all joints were stable.

There were no indurations or tenderness on palpation of the entirety of both hands. Multiple tests were negative. Motor strength was grossly full proximally and distally, including the intrinsic and extrinsic muscles of the hands. Dr. Spellman reported his findings on grip strength testing, noted that full distal pulses were present, and stated that sensation to light touch was grossly full.

After reviewing selected medical records, Dr. Spellman explained that appellant's physical examination was not consistent with his having any limitation or impairment to his right upper extremity. Further treatment and restrictions were not indicated. Dr. Spellman concluded: "I appreciate the previous observations from which impairments were calculated, however, these are no longer relevant, as there is not a physical problem with his right upper extremity, including the wrist and hand."

On June 17, 2009 the Office denied appellant's claim for an additional schedule award. On December 9, 2009 an Office hearing representative affirmed, finding that Dr. Spellman's opinion represented the weight of the medical opinion evidence and established that appellant did not have more than a 14 percent impairment of his right upper extremity.

Appellant's representative argues on appeal that it does not appear Dr. Spellman received a statement of accepted facts. He argues that Dr. Spellman did not discuss the right elbow condition to any degree. Appellant's representative notes that Dr. Spellman did not believe appellant received any treatment after 1996, when clearly he did. He also takes issue with Dr. Spellman's physical examination: there were no range of motion or strength measurements, virtually no sensory evaluation of the right upper extremity and no Semmes Weinstein testing.

² OWCP File No. xxxxxx621 (subsidiary file).

“In this regard, it is suggested that a proper AMA [American Medical Association] evaluation was not conducted.”

LEGAL PRECEDENT

Section 8107 of the Federal Employees’ Compensation Act³ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides to the Evaluation of Permanent Impairment*.⁴

If there is 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 an examination.⁵ When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁶

ANALYSIS

When a conflict in medical opinion arose on the extent of appellant’s impairment, the Office properly referred appellant to an impartial medical specialist. It provided Dr. Spellman, a Board-certified orthopedic surgeon, with the relevant case files and a statement of accepted facts so he could base his opinion on a proper factual and medical history. Dr. Spellman reviewed the history that appellant provided and his current complaint that he could produce transient paresthesias extending to the ring and little finger by tapping or putting slight pressure on the medial side of his right elbow. He physically examined appellant’s upper extremities, however, and reported no Tinel’s sign at the elbow or Guyon’s canal.

Indeed, it was Dr. Spellman’s inability to find anything physically wrong with the right upper extremity that led him to conclude appellant had no impairment. If appellant exhibited no flexor tenosynovitis in the fifth finger and no ulnar neuropathy on the right, there was no longer any basis to rate impairment causally related to the accepted medical diagnoses.

The Board finds that Dr. Spellman’s opinion is well reasoned and based on a proper factual and medical history, and therefore carries special weight in resolving the conflict. As the weight of the medical evidence establishes that appellant has no more than a 14 percent

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, the Office should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

⁵ 5 U.S.C. § 8123(a).

⁶ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

impairment of his right upper extremity, the Board will affirm the Office's December 9, 2009 decision.

Appellant's representative argues that Dr. Spellman did not receive a statement of accepted facts. Several documents in the record, an internal memorandum and referral form indicate that the Office provided the document. The questions to the referee physician advise that the attached statement of accepted facts provided the factual summary of the relevant facts accepted by the Office and instructed the physician to use the statement of accepted facts as the only factual framework for his opinion. A new statement of accepted facts appears in the record on the same date as these referral documents. The letter to Dr. Spellman refers him to the enclosed statement of accepted facts.

Appellant's representative argues that Dr. Spellman incorrectly believed appellant received no treatment after 1996; Dr. Spellman was merely relating the history from appellant: "[Appellant] states that as well as he can recall, he had no further treatment after 1995 or 1996." This creates no suggestion that Dr. Spellman, who had appellant's entire case record before him, based his opinion on an incomplete understanding of the factual and medical history.

As for Dr. Spellman's physical examination of appellant, appellant's representative argues that it was not a proper evaluation under the A.M.A., *Guides*. There was no need for an evaluation of impairment under the A.M.A., *Guides* where findings on physical examination revealed no evidence of the accepted diagnoses. Dr. Spellman did examine appellant's right elbow, wrist and hand and could find nothing physically wrong. As there was simply no evidence of flexor tenosynovitis in the fifth finger or ulnar neuropathy on the right, an evaluation of impairment using the protocols of the A.M.A., *Guides* became moot.

CONCLUSION

The Board finds that appellant is not entitled to an increased schedule award.

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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