U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLIFFORD PERRY and DEPARTMENT OF THE ARMY, WALTER REED ARMY MEDICAL CENTER, Washington, D.C.

Docket No. 97-2060; Submitted on the Record;
Issued April 7, 1999

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT, A. PETER KANJORSKI

The issue is whether appellant has established more than a 10 percent impairment of the left arm, for which he received a schedule award

On November 18, 1994 appellant filed a claim for a traumatic injury to his left arm which occurred when glass punctured his left elbow. The Office of Workers' Compensation Programs accepted appellant's claim for a left elbow laceration and left ulnar nerve entrapment, and authorized a decompression of the left ulnar nerve which was performed on November 22, 1994.

On November 22, 1995 the Office received appellant's request for a schedule award. By letter dated October 15, 1996, the Office informed appellant that due to his employment-related surgery in June 1996 he had not yet reached maximum medical improvement and was therefore not yet entitled to a schedule award.

In a report dated November 13, 1996, Dr. Richard K. Osenbach, an employing establishment physician and appellant's attending physician, related that appellant experienced intermittent pain and a "mild loss of sensation in the ulnar distribution of the hand." He obtained range of motion findings within normal limits for appellant's elbow as follows: 140 degrees flexion; 0 degrees extension; 80 degrees pronation; and 80 degrees supination. Dr. Osenbach graded appellant's pain due to his ulnar nerve injury as 60 percent according to Table 11 on page 48 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (fourth edition 1993). He multiplied the 60 percent graded impairment due to pain by the 7 percent maximum impairment to the ulnar nerve pursuant to Table 15 on page 54 of the A.M.A., *Guides* and concluded that appellant had a 4 percent impairment of his upper extremity due to pain. Dr. Osenbach further found that appellant had a Grade 4 or 25 percent impairment due to loss of strength according to Table 12 on page 49 of the A.M.A., *Guides*. He multiplied the 25 percent impairment due to loss of strength by the 35 percent maximum impairment for the affected ulnar nerve under Table 15 on page 54 of the A.M.A., *Guides* and concluded that

appellant had an 11 percent impairment due to motor deficit. He further found that appellant obtained maximum medical improvement on November 13, 1996.

In reports dated November 13, 1996, Dr. Mark A. Lovell, an employing establishment physician, listed range of motion findings for appellant's fingers, hand and wrist, and shoulder.[1]

On April 8, 1997 an Office medical adviser reviewed Dr. Osenbach's report and found that appellant had a 10 percent permanent impairment of the left upper extremity due to ulnar nerve entrapment at the elbow pursuant to Table 16 on page 57 of the A.M.A., *Guides*.

By decision dated May 2, 1997, the Office granted appellant a schedule award for a 10 percent permanent impairment of the left arm. The period of the award ran for 31.20 weeks from November 13, 1996 to June 19, 1997.

In a letter dated May 21, 1997, appellant requested reconsideration of the Office's decision. By decision dated June 26, 1997, the Office found that the evidence submitted with appellant's request for reconsideration was insufficient to warrant a merit review of the prior decision.

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

Under section 8107 of the Federal Employees' Compensation Act[2] and section 10.304 of the implementing federal regulations,[3] schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations 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* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[4]

Impairments due to ulnar nerve entrapment may be evaluated by two separate methods under the A.M.A., *Guides* including the method used by the Office medical adviser to correlate impairment under Table 16 on page 57 entitled "Upper Extremity Impairment Due to Entrapment Neuropathy." Under Table 16, mild entrapment of the ulnar nerve at the elbow constitutes a 10 percent impairment of the right upper extremity.[5] The Board notes, however,

[1] The Board notes that any impairment in range of motion of appellant's fingers, hand, wrist or shoulder due to his employment injury is already included in the impairment rating due to his nerve injury. The A.M.A., *Guides*, Chapter 3, *The Musculoskeletal System*, 3.1k, "*Impairment of the Upper Extremity Due to Peripheral Nervous System Disorders* states at page 46: If an impairment results strictly from a peripheral nerve lesion, the physician should not apply impairment percents from sections 3.1(f) through 3.1(j) (pp. 24 through 45) of this chapter, because a duplication and an unwarranted increase in the impairment percent would result."

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.304.

[4] *James J. Hjort*, 45 ECAB 595 (1994).

[5] A.M.A., *Guides* 57, Table 16.

that the Office medical adviser did not address the specific findings provided by Dr. Osenbach to support the use of Table 16 over the other alternative method of grading the nerve root impairment by identifying the nerve and evaluating the degree of pain and loss of strength. Office procedures provide that if more than one method of evaluating an impairment is present, the Office medical adviser should provide medical rationale supporting his selection.[6] In this case, the Office medical adviser did not use the same method for calculating appellant's percentage of impairment as the attending physician and the Office physician did not explain why he did not use the attending physician's method. On remand, the Office should either use the method of calculating appellant's schedule award utilized by his physician or, if an alternative method is used in calculating appellant's schedule award, the Office should explain the reason for selecting one method over another.[7]

The decision of the Office of Workers' Compensation Programs dated May 2, 1997 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
April 7, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d)(1) (November 1998).

[7] Appellant filed his appeal with the Board on May 27, 1997. On June 26, 1997 the Office denied appellant's request for reconsideration of his schedule award. As this decision was issued after appellant filed his appeal with the Board and involved the same issue before the Board while the Board had jurisdiction over the case, it is null and void. *Douglas E. Billings*, 41 ECAB 880 (1990).