

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TIMOTHY GIFFIN and DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE, Sharpsburg, MD

*Docket No. 98-411; Submitted on the Record;
Issued November 15, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 24 percent permanent impairment to the left arm.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a cartilage tear in his left wrist on July 3, 1986. By decision dated July 1, 1996, the Office issue a schedule award for a 24 percent permanent impairment of the left arm.

In a decision dated February 10, 1997, an Office hearing representative determined that a conflict existed between an Office medical adviser and an attending physician, Dr. Allan H. Macht, a surgeon, as to the degree of appellant's permanent impairment. The case was remanded for further development and resolution of the conflict.¹ The Office referred appellant to Dr. Prafull K. Dave, a Board-certified neurologist, for examination. Dr. Dave submitted reports dated May 30 and July 11, 1997.

In a decision dated August 5, 1997, the Office determined that appellant did not have more than a 24 percent permanent impairment to the left arm.

The Board has reviewed the record and finds that the case is not in posture for decision.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither the Act nor the regulations specify the manner in which the percentage of

¹ The hearing representative also affirmed a November 28, 1995 wage-earning capacity determination. Appellant did not request that the Board review the wage-earning capacity decisions; the appeal and accompanying argument were specifically directed to the August 5, 1997 schedule award decision. Subsequent to the filing of this appeal, the Office issued a January 15, 1998 reconsideration decision on the wage-earning capacity determination.

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule

impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.³

In this case, the Board finds that the reports of Dr. Dave are insufficient to resolve a conflict in the medical evidence. The July 1, 1996 schedule award of a 24 percent permanent impairment was based on a loss of range of motion for the left wrist. An Office medical adviser had applied the A.M.A., *Guides* to the range of motion findings reported by an attending physician, Dr. Donald Patterson, an orthopedic surgeon. The impartial medical specialist, Dr. Dave, reported flexion and extension of the left wrist at 10 to 15 degrees, which under the A.M.A., *Guides* would result in 7 to 8 percent for each of those impairments.⁴ He also reported limited deviation of the wrist, which may establish additional impairment.⁵ Dr. Dave, however, limited his assessment to impairment based on pain, noting Table 11 and concluding that appellant had “about a 20 percent impairment of the upper extremity.” There is no mention of impairment for loss of range of motion; in addition, Dr. Dave did not identify the nerve(s) and the appropriate Table in determining the impairment for pain.⁶ Dr. Dave’s supplemental report dated July 11, 1997, discussing the opinion of Dr. Macht, does not explain why range of motion was not used in an impairment rating,⁷ or otherwise explain his impairment rating based on pain.

Accordingly, the Board finds that Dr. Dave’s reports are of limited probative value on the degree of permanent impairment under the A.M.A., *Guides* and do not resolve the issue of whether appellant has more than a 24 percent permanent impairment. The case will be remanded to the Office to secure medical evidence that properly resolves the issue.⁸

The decision of the Office of Workers’ Compensation Programs dated August 5, 1997 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

³ A. George Lampo, 45 ECAB 441 (1994).

⁴ A.M.A., *Guides* (4th ed. 1993) at 36, Figure 26.

⁵ Dr. Dave reported medial and lateral deviation was limited “by about five degrees,” but it is unclear whether he meant five degrees from normal or was limited to five degrees. Impairments for radial and ulnar deviation are found at p. 37, Figure 28 of the A.M.A., *Guides*.

⁶ Table 11 provides a method a grading the severity of the impairment, but the initial step is to identify the nerve and the maximum impairment due to sensory deficit or pain.

⁷ In discussing Dr. Macht’s impairment rating, Dr. Dave stated that it was based entirely on weakness and atrophy, but in fact Dr. Macht had included loss of range of motion in his calculations.

⁸ Appellant argued that Dr. Dave was not qualified to render an opinion, since he was a neurologist, not an orthopedic surgeon. Since appellant’s impairment to the left arm may include a neurological component, it was not unreasonable to select a Board-certified neurologist. The medical report, however, must include specific findings on loss of range of motion and any other relevant impairment under the A.M.A., *Guides*.

Dated, Washington, D.C.
November 15, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member