U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS C. DELLER and DEPARTMENT OF THE AIR FORCE, AEROSPACE MAINTENANCE & REGENERATION CENTER, DAVIS-MONTHAN AIR FORCE BASE, AZ

Docket No. 99-1217; Submitted on the Record;
Issued August 16, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON, A. PETER KANJORSKI

The issue is whether appellant has more than a 21 percent permanent impairment to his right upper extremity.

The Office of Workers' Compensation Programs accepted appellant's claim for a right elbow epicondylitis. Appellant was terminated from his employment on September 26, 1998 because there was no longer light-duty work within his restrictions. On November 12, 1998 appellant requested a schedule award.

By decision dated December 4, 1998, the Office granted appellant a schedule award for a 21 percent impairment to the right upper extremity for the period October 20, 1998 to January 21, 2000.

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

The schedule award provision of the Federal Employees' Compensation Act[1] provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body. The Act does not, however, specify the manner by which the percentage loss of a member, function, or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.[2] For consistent results and to ensure equal justice under the law to all claimants, good administrative practice

[1] 5 U.S.C. § 8107 *et seq.*

[2] *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.[3]

In the present case, in a report dated October 20, 1998, appellant's treating physician, Dr. Carl W. Dasse, a Board-certified family practitioner with a specialty in occupational medicine, used the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1994) to calculate the degree of appellant's impairment to his right upper extremity. Under the A.M.A., *Guides* (4th ed. 1994), he used Table 32, page 65, which lists the average grip strength by age in a test population, to determine that, as a 46-year-old man, appellant's normal grip strength was 49 kilograms (kg). Using a dynamometer, Dr. Dasse determined that appellant had an average grip strength of 18 kg in the right dominant hand. Applying the formula for determining grip strength under Table 34, page 65, he determined that appellant had a 63 percent loss of strength in the right hand which equaled a 30 percent impairment to the right upper extremity. To obtain the figure of 30 percent, Dr. Dasse divided the difference of the normal grip strength of 49 kg by appellant's actual grip strength of 18 kg, by the normal grip strength, *i.e.*, (49-18)/49, which equaled 63 percent and under Table 34, converted to a 30 percent impairment. Dr. Dasse stated that appellant reached maximum medical improvement on October 20, 1998.

In a report dated November 19, 1998, a referral physician, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon, agreed with Dr. Dasse that appellant's grip strength in the dominant right hand was 18 kg which equated to a 63 percent grip strength loss. He did not reference the A.M.A., *Guides* but appeared to use them because he stated that under Table 34, page 65, appellant's 63 percent grip strength loss equated to 21 percent impairment.

Under the A.M.A., *Guides*, loss of grip strength is determined by a formula of abnormal strength subtracted from normal strength and then divided by normal strength to yield a percentage of strength loss index. The grip strength of the affected hand is compared with the grip strength of the opposite extremity, which is assumed to be normal. If both extremities are affected, the strength measurements are compared to the average normal strengths listed in Tables 31 to 33.[4] If only one extremity or hand is affected, however, the grip strength of the impaired hand should be based on the measured value of the unimpaired hand's grip strength, not the average value reported in Table 32. Inasmuch as there is no indication from the record that appellant's left upper extremity was affected or otherwise impaired, the grip strength of appellant's right hand should have been calculated based on the measured value of the grip strength of appellant's left hand. However, neither appellant's treating physician, Dr. Dasse, nor the referral physician, Dr. Harris, had figures for the grip strength of appellant's left hand in order to make the appropriate calculation pursuant to Table 34, page 65 of the A.M.A., *Guides* (4th ed. 1994).

The A.M.A., *Guides* (4th ed. 1994) emphasizes that because strength measurements are functional tests influenced by subjective factors that are difficult to control, and the A.M.A.,

[3] *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

[4] A.M.A., *Guides*, pp. 64-65 (4th ed. 1993).

Guides are mostly based on anatomic impairment, the A.M.A., *Guides* do not assign a large role to such measurements.[5] However, the A.M.A., *Guides* state that in a rare case, if the examiner believes the patient's loss of strength represents an impairing factor has not been considered adequately, the loss of strength may be rated separately.[6] They state that the loss of strength impairment would be combined with the other upper extremity impairments using the Combined Values Chart on page 322.[7]

In the present case, since both the treating and referral physicians believed that it was necessary to measure the degree of appellant's impairment by his grip strength and there was no other factor on which to base a schedule award, this constitutes the rare case referred to in the A.M.A., *Guides* (4th ed. 1994) where measurement of the loss of grip strength is appropriate. As previously stated, the treating and referral physicians did not use the A.M.A., *Guides* properly in determining appellant's grip strength as they lacked a measurement for the grip strength of appellant's left hand. The case must therefore be remanded for further development. On remand, the appropriate physicians must obtain a figure for the grip strength of appellant's left hand, and use that figure for determining appellant's loss of strength for the right hand pursuant to the formula under Table 34. Upon further development as is necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated December 4, 1998 is hereby set aside, and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, D.C.
August 16, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[5] A.M.A., *Guides* (4th ed. 1994).

[6] *Id.*

[7] *Id.*