

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHEILA MARTINEZ and DEPARTMENT OF THE ARMY,
RED RIVER ARMY DEPOT, Texarkana, TX

*Docket No. 99-948; Submitted on the Record;
Issued June 21, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a three percent permanent impairment of the right arm.

On July 12, 1996 appellant, then a 36-year-old rubber worker, was emptying shot out of a roadwheel when a hoist hooked onto a metal grate and yanked the roadwheel upward, jerking appellant's right arm. Appellant complained of pain in the right elbow. The Office of Workers' Compensation Programs accepted appellant's claim for lateral epicondylitis of the right arm. On March 18, 1997 appellant underwent surgery for an ostectomy of the lateral epicondyle with removal of scar tissue and reattachment of the extensors of the wrist to the lateral epicondylar area. Appellant underwent additional surgery in the same area on April 20, 1998. The Office paid temporary total disability compensation for the periods appellant did not work, including the period April 20 through August 25, 1998.

On August 27, 1998 appellant filed a claim for a schedule award. In a December 24, 1998 decision, the Office issued a schedule award for a three percent permanent impairment of the right arm.

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

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants,

¹ 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁴

In an August 28, 1998 report, Dr. Jeffrey T. DeHaan, a Board-certified orthopedic surgeon, commented that appellant had reached maximum medical improvement as of August 20, 1998. He reported that appellant had mild restriction in full extension and full flexion. Dr. DeHaan noted objective evidence of deficits in strength as noted in a functional capacity study. He indicated that subjectively appellant had persistent pain and discomfort in the elbow as well as tightness.

Dr. DeHaan submitted the report from an August 4, 1998 functional capacity study. The report indicated that appellant had ranges of motion in the right wrist of 50 degrees flexion, 62 degrees extension, 18 degrees radial deviation and 42 degrees ulnar deviation. The report noted that in the right elbow appellant had 126 degrees of flexion and -4 degrees of extension. The report indicated that the motion of all other joints was normal. No measurements of supination and pronation were reported. The report further noted that appellant had a grip strength of 70 pounds in the right arm and 97 pounds in the left arm. The report concluded that appellant had a 2 percent impairment due to loss of flexion in the wrist, a 1 percent permanent impairment for loss of flexion in the elbow and a 10 percent permanent impairment for loss of strength for a total permanent impairment of 13 percent.

In a December 10, 1998 memorandum, an Office medical adviser concurred in the calculation of a one percent permanent impairment for loss of flexion in the right elbow and a two percent permanent impairment for loss of flexion in the right wrist. He noted that pronation and supination of the elbow was not measured and assumed to be normal. The medical adviser stated that tested grip strength in the right of 70 pounds was within normal limits. He noted Dr. DeHaan based his calculation on the comparison of the strength of both arms. The medical adviser pointed out, however, that the A.M.A., *Guides* did not recognize the difference in the two sides and therefore the values of the A.M.A., *Guides* had to be used. He stated that, based on these values, appellant had no impairment due to loss of strength.

The Office medical adviser properly determined appellant's permanent impairment due to loss of flexion in the wrist and elbow. However, he noted that measurements for supination and pronation were not taken and were assumed to be normal. The functional capacity report submitted by Dr. DeHaan highlighted the loss of flexion in the wrist and elbow and indicated that the motion in all other joints was normal. This statement is ambiguous on whether the ranges of motion for supination and pronation of the right elbow were normal. In light of this ambiguity, it cannot be assumed that the ranges of motion for supination and pronation were normal. The case must therefore be remanded for measuring those ranges of motion.

³ (4th ed. 1993).

⁴ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

Dr. DeHaan also indicated that appellant complained of persistent pain and tightness in the right elbow. The Office medical adviser, however, did not consider appellant's pain in determining appellant's permanent impairment. On remand, the Office medical adviser should consider appellant's pain in determining appellant's schedule award.

Therefore, on remand, the Office should obtain from Dr. DeHaan a measurement of appellant's supination and pronation in the right elbow. The Office should then refer the case to an Office medical adviser for an evaluation of the extent of appellant's permanent impairment, including consideration of pain. After further development as it may find necessary the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs, dated December 24, 1998, is hereby set aside and the case remanded for further development as set forth in this decision.

Dated, Washington, D.C.
June 21, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member