

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVELYN LANGSTON and DEPARTMENT OF THE ARMY,
DENTAL CLINIC, Fort Hood, TX

*Docket No. 00-2773; Submitted on the Record;
Issued August 6, 2001*

DECISION and ORDER

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

The issue is whether appellant has more than 56 percent permanent impairment of her left upper extremity for which she received a schedule award.

This case has previously been before the Board on appeal. In the February 8, 1999 decision, the Board found that in calculating appellant's permanent impairment for schedule award purposes, the Office of Workers' Compensation Programs failed to consider impairment ratings for pain, for loss of range of motion of the left wrist and for loss of range of motion of the left long and little fingers.¹ The Board remanded the case to the Office to consider the additional range of motion figures provided by appellant's attending physician and for additional development of the medical evidence regarding any permanent impairment due to pain. The facts and circumstances of the case as set out in the Board's prior decision are adopted herein by reference.

Following the Board's February 8, 1999 decision, the Office requested that the district medical adviser review the medical evidence and address the Board's concerns. By decision dated August 5, 1999, the Office denied appellant's claim for an additional schedule award finding that she had a 54 percent permanent impairment of her left upper extremity. Appellant requested reconsideration on July 27, 2000 and by decision dated August 14, 2000, the Office denied modification of its prior decision.

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

Under section 8107 of the Federal Employees' Compensation Act² and section 10.304 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of

¹ Docket No. 97-1154.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

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 for all claimants the Office adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁵

The district medical adviser completed a report on July 22, 1999 and properly applied the A.M.A., *Guides* to the range of motion figures provided by Dr. William G. Stanley, an osteopath, who provided the original impairment rating as well as a supplemental report.⁶ The district medical adviser concluded that appellant had a 47 percent impairment of her left upper extremity due to loss of range of motion of her wrist, thumb and fingers. The district medical adviser then noted that a prior medical adviser had concluded that appellant had 30 percent impairment due to loss of strength based on the grip strength measurements provided by Dr. Stanley and had not provided an impairment rating for pain. He noted that in the January 23, 1996 report Dr. Stanley provided an impairment rating of 15 percent for loss of strength and pain in the hand. The district medical adviser stated:

“Strength evaluation and pain evaluation are gray areas in the fourth edition of the [A.M.A., *Guides*]. In general, the A.M.A., *Guides* include consideration for pain in each of the separate sections ... and warns against the use of grip strength in an evaluation.... In my opinion, the inclusion of the marked [range of motion] limitation of the fingers along with a grip strength determination which contain duplication. Therefore, I have used the examining physician’s assessment of pain and strength loss, rather than [the prior adviser’s] calculation.”

The district medical adviser then combined a 14 percent impairment due to pain and loss of strength of the left upper extremity with the impairment rating for loss of range of motion for an impairment rating of 54 percent of the left upper extremity.

The Board notes that although the July 22, 1999 report of the district medical adviser provides reasoning for excluding the grip strength impairment as offered by Dr. Stanley and the previous examiner, he did not offer any explanation correlating the 14 percent upper extremity impairment for loss of strength and pain with the A.M.A., *Guides*. The Board is unable to determine from a review of the reports of either Dr. Stanley or the district medical adviser how this rating was determined.

The Board has held that before the A.M.A., *Guides* can be utilized, a description of appellant’s impairment must be obtained from appellant’s physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active

⁴ A.M.A., *Guides* (4th ed. 1993).

⁵ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ Dr. Stanley’s August 5, 1998 report indicated that appellant experienced a decrease in her two point discrimination on her ring and little fingers along the ulnar nerve from three millimeter (mm) to seven mm. A.M.A., *Guides*, 21, Figure 4; 22, Figure 5.

and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁷

The medical evidence in this case is deficient as the Board is unable to determine how appellant's attending physician and the district medical adviser determined that a 14 percent upper extremity impairment for pain and loss of strength⁸ was reached in accordance with the A.M.A., *Guides*. On remand, the Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate Board-certified physician to determine the extent of her permanent impairment due to her accepted left upper extremity conditions. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

The August 14, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this decision of the Board.

Dated, Washington, DC
August 6, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁷ *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

⁸ The Board notes that a prior medical adviser correlated his grip strength impairments based on the figures provided by Dr. Stanley and the appropriate provision of the A.M.A., *Guides*. A.M.A., *Guides*, 65, Table 34.