

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RONALD L. GIARD and DEPARTMENT OF THE NAVY,  
AIR SYSTEMS COMMAND, San Diego, CA

*Docket No. 01-183; Submitted on the Record;  
Issued July 25, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has more than a three percent permanent impairment of the right and left upper extremity.

On October 16, 1997 appellant, then a 43-year-old sheet metal mechanic, filed a claim alleging that he developed left and right elbow tendinitis which was causally related to his federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral epicondylitis. Appellant was removed from his position on January 2, 1999.<sup>1</sup>

Accompanying appellant's claim were several reports from Dr. Robert H. Moore, Board-certified in preventative medicine, which diagnosed appellant with chronic left epicondylitis, recurrent right epicondylitis and strain of the muscles attached to these areas.

Appellant submitted medical reports from Dr. Richard M. Braun, a Board-certified orthopedic surgeon, dated June 2 and November 1, 1999; a progress note from Dr. Braun dated December 13, 1999; and electromyography (EMG) studies performed by Dr. David Stein, a Board-certified neurologist, dated November 18, 1999. Dr. Braun's report dated June 2, 1999 indicated a history of appellant's injury. He noted appellant's complaints of bilateral elbow pain; pain and numbness in his hands; and appellant's inability to use his hands for grasping, turning or lifting items. Dr. Braun noted upon physical examination appellant's elbows had full range of motion from 180 degrees extension to full 125 degrees flexion; the forearm showed normal rotation; wrist and hand motion was normal; the Jamar grip meter was used to an average of 20 pounds on the left and 20 pounds on the right with pain in the lateral epicondylar region of the elbow to the extent that appellant requested to discontinue use of the grip meter. With the elbow

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<sup>1</sup> In a letter dated December 22, 1998, the employing establishment indicated that appellant was removed from his position effective January 2, 1999 due to his physical limitations which precluded appellant from performing his full duties efficiently and safely. Appellant participated in vocational rehabilitation services and underwent training for the position of computer systems engineer. Appellant secured employment with a private company effective June 5, 2000.

flexed to 90 degrees appellant generated 80 pounds of grip strength on the left side and 50 pounds of grip strength on the right side without pain; there was no evidence of carpal tunnel syndrome; the Phalen's and Tinel's test were negative; no tenderness along the inner aspect of the elbow, anterior aspect of the forearm or the dorsal aspect of the proximal forearm; and a negative Spurling's test. Dr. Braun diagnosed appellant with lateral epicondylitis bilaterally with possible neurogenic symptoms involving the upper limbs producing numbness. He noted that appellant could no longer work as a sheet metal mechanic as his disability precluded him from forceful activities in his hands and forearms. Dr. Braun noted this involved loss of one-half of his preinjury capacity for forceful grasping, twisting and tool use. He further noted that there was a causal relationship between appellant's work activities and his development of pain leading to disability in both upper limbs. He noted appellant's condition was permanent and stationary. Dr. Braun's November 1, 1999 report noted that appellant continued to experience pain in the right elbow. He noted the pain was limiting appellant's grip strength to 18 pounds of grip strength when the elbow was extended compared to 40 pounds of grip strength when the elbow was flexed with tenderness along the radial nerve. Dr. Braun indicated that appellant reported intermittent episodes of numbness in his hands and recommended electrodiagnostic studies. The progress note dated December 13, 1999 diagnosed appellant with bilateral epicondylitis and noted that the neurological consultation revealed normal results. The electrodiagnostic studies revealed normal nerve conduction velocity and EMG testing of the bilateral upper extremities including the cervical paraspinal muscles. Dr. Stein also noted that the bilateral median and ulnar late responses were normal.

On January 23, 2000 appellant filed a claim for a schedule award.

Dr. Braun's reports and the case record were referred to the Office's medical consultant who, in an April 3, 2000 report, determined that appellant sustained a three percent impairment of both the left upper extremity and right upper extremity. In accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (fourth edition 1993) (A.M.A., *Guides*) the medical consultant determined that appellant had a Grade 3 pain/decreased sensation which did interfere with function 60 percent<sup>2</sup> of the radial nerve.<sup>3</sup> This resulted in a three percent impairment for pain which interfered with function in each upper extremity. The medical consultant concluded that appellant had a three percent impairment of the right upper extremity and left upper extremity which resulted from the accepted work injury of June 9, 1996, with the date of maximum medical improvement of December 13, 1999.

Based on the Office medical consultant's review of Dr. Braun's report, the EMG results and case record, in a decision dated July 20, 2000, the Office granted appellant a schedule award for three percent impairment each, for both the left and right upper extremity.

By letter dated August 15, 2000, appellant requested reconsideration of the Office decision dated July 20, 2000 and submitted a duplicate copy of Dr. Braun's report dated

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<sup>2</sup> See page 48, Table 11 of the A.M.A., *Guides*.

<sup>3</sup> See page 54, Table 15 of the A.M.A., *Guides*.

June 2, 1999. In a letter dated September 25, 2000, appellant appealed his claim to the Employees' Compensation Appeals Board.<sup>4</sup>

The Board finds that appellant has no more than a three percent impairment of both the left upper extremity and right upper extremity.

Section 8107 of the Federal Employees' Compensation Act 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, however, does not specify the manner by which the percentage of loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.<sup>5</sup> For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides*, as the standard for determining the percentage of permanent impairment, and the Board has concurred in such adoption.<sup>6</sup>

The Board has carefully reviewed Dr. Braun's reports which determined appellant's left upper extremity impairment and notes that Dr. Braun did not adequately explain how his determination was reached in accordance with the relevant protocols of the A.M.A., *Guides*.<sup>7</sup> Dr. Braun noted figures for range of motion for appellant's elbows from 180 degrees extension to full 125 degrees flexion; the Jamar grip meter is used to an average of 20 pounds on the left and 20 pounds on the right with pain in the lateral epicondylar region of the elbow; and with the elbow flexed to 90 degrees appellant generated 80 pounds of grip strength on the left side and 50 pounds of grip strength on the right side without pain. However, Dr. Braun did not provide an impairment rating in conformance with the A.M.A., *Guides*. He neither referenced the A.M.A., *Guides* nor did he cite to tables or charts for an impairment rating determination.

The medical consultant who reviewed Dr. Braun's report correlated findings from Dr. Braun's reports to specific provisions in the A.M.A., *Guides*. The medical consultant noted Dr. Braun's physical findings in his report dated June 2, 1999 which demonstrated appellant had full and symmetric range of motion of both elbows, without motor weakness, instability or neurologic deficit. He noted Dr. Braun's diagnosis of bilateral/lateral epicondylitis of the elbows. The medical consultant's opinion specifically noted appellant's pain in the lateral epicondylar region of the elbow which interfered with appellant's function. He indicated that appellant had a Grade 3 pain/decreased sensation which interfered with function, which he determined to be 60 percent, and cited to Table 11(a), page 48 of the A.M.A., *Guides*. He further noted the maximum percentage of upper extremity impairment for the radial nerve was five percent, using Table 15, page 54 of the A.M.A., *Guides*. Pursuant to the procedure scheme set

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<sup>4</sup> In a decision dated October 18, 2000, the Office made a loss of wage-earning capacity determination that appellant's actual earnings as a junior networking administrator represented his wage-earning capacity. The Board notes that appellant did not appeal this decision and therefore this issue is not before the Board.

<sup>5</sup> *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

<sup>6</sup> *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961); *Francis John Kilcoyne*, 38 ECAB 168 (1987).

<sup>7</sup> See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

forth in Table 11(b), page 48 of the A.M.A., *Guides*, the medical consultant multiplied the severity of the sensory deficit, 60 percent,<sup>8</sup> by the maximum impairment value, five percent,<sup>9</sup> and obtained a three percent upper extremity impairment for each structure. The medical consultant concluded that appellant sustained a three percent impairment of both the right and left upper extremities.

The Board therefore finds that the Office medical adviser properly applied the A.M.A., *Guides* in finding that appellant had a three percent impairment of both the left upper extremity and right upper extremity due to his elbow condition.

The Board therefore finds that the weight of the evidence rests with the calculations of the Office medical adviser. Appellant is therefore entitled to a schedule award for no more than three percent impairment of both the left upper extremity and right upper extremity.

The decision of the Office of Workers' Compensation Programs dated July 20, 2000 is hereby affirmed.

Dated, Washington, DC  
July 25, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>8</sup> See Table 11(a), page 48 of the A.M.A., *Guides*.

<sup>9</sup> See Table 15, page 54 of the A.M.A., *Guides*.