

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GUADALUPE ONTIVEROS and DEPARTMENT OF THE ARMY, WHITE SANDS MISSLE RANGE, White Sands, NM

*Docket No. 00-1163; Submitted on the Record;
Issued June 13, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained a ratable impairment of the right upper extremity related to accepted right lateral epicondylitis and fracture of the right radial head requiring surgical debridement.

The Office of Workers' Compensation Programs accepted that on October 29, 1997, appellant, then a 48-year-old sign painter, sustained right epicondylitis requiring surgery on April 17, 1998 when her right elbow "popped" as she opened a can of solvent. Appellant returned to full duty on June 24, 1998.¹ She claimed a schedule award on March 23, 1999. The record indicates that appellant sustained a second right elbow injury in the performance of duty on March 25, 1999 when a closing door struck her right elbow, causing a nondisplaced fracture of the right radial head.² Appellant retired from federal employment as of March 26, 1999.

In a March 26, 1998 report, Dr. Robert R. Bell, an attending orthopedic surgeon, opined that surgery was indicated as prolonged conservative treatment had failed to relieve appellant's right elbow pain. Dr. Bell performed surgical debridement and drilling of the right lateral epicondyle on April 17, 1998. He submitted periodic progress reports from April 1998 to April

¹ Appellant received wage-loss compensation benefits on the daily and periodic rolls from April 17 to September 6, 1998. An August 1998 vocational rehabilitation closure report notes that appellant had been "working regular duty since June 24, 1998," using prescribed special equipment "so that [appellant] may be able to continue with her position as a sign maker."

² In a May 31, 1999 report, Dr. Bell noted treating appellant for a nondisplaced fracture of the right radial head sustained on March 25, 1999 at the employing establishment when a door closed on her right elbow as she was leaving an administrative office. The record indicates that appellant's claim for the right radial head fracture was assigned No. 16-0331507 and was not doubled with the present claim, assigned Claim No. 16-0307447, for right lateral epicondylitis. Therefore, appellant's claim for the March 25, 1999 fracture of the right radial head is not before the Board on the present appeal.

1999 noting appellant's improvements in right arm strength and mobility, with continuing symptoms of right elbow discomfort.³

In a January 8, 1999 report, Dr. Michael Mrochek, an attending physiatrist, noted diffuse pain in the upper extremities, "most intensely in the right medial epicondylar area," and diagnosed axial arthropathy and Reiter's syndrome.⁴ He prescribed medication.

In a September 13, 1999 report, Ms. Ariel Reyes, a physical therapist to whom Dr. Bell referred appellant "for range of motion evaluation," evaluated appellant according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, 4th ed., (hereinafter, "the A.M.A., *Guides*, 4th ed."). Regarding the right elbow, Ms. Reyes noted 139 degrees of flexion out of a possible 140 degrees, full extension to 0 degrees, 87 degrees pronation and 90 degrees supination. She concluded that appellant had a zero percent impairment of the right upper extremity according to the A.M.A., *Guides*.

In a September 26, 1999 report, Dr. Bell found that appellant had reached maximum medical improvement from the right radial head fracture as of September 22, 1999 and "still ha[d] occasional discomfort." On examination of the right elbow, he found 139 degrees flexion with full range of motion through to 0 degrees extension, "87 [degrees] of pronation and 90 [degrees] of supination" upon maximal effort, with no swelling or crepitus. Dr. Bell opined that appellant had a one percent "whole person impairment" according to the A.M.A., *Guides*, 4th ed.

In a December 16, 1999 report, Dr. Bell found "a little bit of tenderness over the elbow," "slightly decreased flexion of the elbow following the radial head fracture," and a normal neurologic examination of the right upper extremity. He opined that appellant had a one percent impairment of the right upper extremity according to the A.M.A., *Guides*.⁵

In a January 12, 2000 report, Dr. Ronald H. Blum, an Office medical adviser, reviewed Dr. Bell's reports and found that appellant had reached maximum medical improvement as of September 22, 1999. Referring to Figure 32, page 40 of the A.M.A., *Guides* (4th ed.) entitled "Upper Extremity Impairments Due to Lack of Flexion and Extension of the Elbow Joint," and Figure 35, page 41 entitled "Upper Extremity Impairments Due to Lack of Pronation and Supination," Dr. Blum noted that 139 degrees of right elbow flexion, full extension to 0 degrees, 87 degrees pronation and 90 degrees supination⁶ all equaled a 0 percent impairment of the right upper extremity. He, therefore, concluded that appellant did not have a ratable impairment of her right upper extremity due to the accepted right lateral epicondylitis.

³ Appellant also submitted physical therapy progress notes from March to July and September 1998.

⁴ Dr. Mrochek noted that appellant's medical history was "remarkable for hypertension, hypothyroidism, borderline hypertension, gastritis, colitis, diverticulitis," and allergies to various substances including medications. On appeal, appellant also noted a history of claustrophobia and depression.

⁵ In a December 10, 1999 letter, the Office specifically requested that Dr. Bell provide his calculations as to how he arrived at a one percent impairment of the right upper extremity.

⁶ According to Figure 35, page 41, the ranges of motion for both supination and pronation are from 0 to 80 degrees.

By decision dated February 4, 2000, the Office denied appellant's claim for a schedule award on the grounds that she had not sustained a ratable impairment of the right upper extremity. The Office found that the clinical findings and objective measurements contained in Dr. Bell's reports, as interpreted by the Office medical adviser according to the A.M.A., *Guides*, demonstrated that appellant had a "zero percent impairment to [her] right upper extremity."

The Board finds that appellant has not established that she sustained a ratable impairment of the right upper extremity.

The schedule award provisions of the Federal Employees' Compensation Act and its implementing regulations⁷ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule.⁸ However, the Act does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.⁹ The Board has held, however, that for consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitate the use of a single set of tables so that there may be uniform standards applicable to all claimants. The Office has adopted the A.M.A., *Guides*, 4th ed., 1993 as an appropriate standard for evaluating schedule losses and to ensure equal justice for all claimants.¹⁰ The Board has concurred with the adoption of these A.M.A., *Guides*.

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.¹¹ All factors that prevent a limb from functioning normally should be considered, such as pain and weakness, together with loss of motion, in evaluating the degree of permanent impairment. This was correctly done by the Office medical adviser in appellant's case.

Dr. Bell, appellant's attending orthopedic surgeon, provided a September 26, 1999 report finding that appellant had reached maximum medical improvement, with right elbow flexion at 139 out of 140 degrees, full extension to 0 degrees, 87 degrees pronation and 90 degrees supination. Dr. Blum, the Office medical adviser, used these percentages in his January 12, 2000 report, to determine that appellant did not have a ratable impairment of the right upper extremity. He referred to the appropriate portions of the A.M.A., *Guides*, 4th ed., Figure 32, page 40, entitled "Upper Extremity Impairments Due to Lack of Flexion and Extension of the Elbow

⁷ 20 C.F.R. § 10.404.

⁸ 5 U.S.C. §§ 8107-8109.

⁹ *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

¹⁰ FECA Bulletin No. 89-30 (issued September 28, 1990).

¹¹ *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

Joint,” and Figure 35, page 41 entitled “Upper Extremity Impairments Due to Lack of Pronation and Supination.” Dr. Blum noted that according to these figures, 139 degrees of right elbow flexion out of a possible 140 degrees, full extension to 0 degrees, 87 degrees pronation and 90 degrees supination all equaled a 0 percent impairment of the right upper extremity. He, therefore, concluded that appellant did not have a ratable impairment of her right upper extremity due to the accepted right lateral epicondylitis.

The Board notes that in his December 16, 1999 report, Dr. Bell opined that appellant had a one percent impairment of the right upper extremity. However, he did not explain how he arrived at this percentage of impairment according to the A.M.A., *Guides*. Arguably, Dr. Bell did not provide any findings suggesting that appellant’s condition had changed or worsened from his September 26, 1999 examination such that she would have then had a ratable impairment due to loss of motion, weakness or pain.¹²

The Board also notes that in his September 26, 1999 report, Dr. Bell opined that appellant had a one percent “whole person impairment” according to the A.M.A., *Guides*, 4th ed. However, the Act contains no schedule award provision for impairment of the whole person.¹³

Thus, appellant has submitted insufficient medical evidence to demonstrate that she sustained a ratable impairment of the right upper extremity entitling her to a schedule award.

¹² Although Dr. Bell did not state specifically that appellant did not have any impairment due to pain, he characterized her symptoms in his September 26, 1999 report as “occasional discomfort” and in his December 16, 1999 report as “a little bit of tenderness over the elbow. The Board finds that Dr. Bell’s reports are sufficiently descriptive to demonstrate that appellant did not have a ratable impairment of the right upper extremity due to pain.

¹³ *Gordon G. McNeill*, 42 ECAB 140 (1990).

The February 4, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 13, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member