

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT E. BILLINGSLEY and DEPARTMENT OF THE ARMY,  
OKLAHOMA MILITARY DEPARTMENT, Oklahoma City, OK

*Docket No. 00-1944; Submitted on the Record;  
Issued May 16, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has a permanent impairment of the right upper extremity entitling him to a schedule award.

The Office of Workers' Compensation Programs accepted that appellant, then a 50-year-old formerly employed electronic measurement equipment mechanic, sustained right carpal tunnel syndrome as a result of his federal employment duties. The Office subsequently authorized surgical correction of the condition, which was performed on February 19, 1997. On June 13, 1997 appellant filed a claim for a schedule award. By decision dated November 3, 1997, the Office determined that appellant was not entitled to a schedule award of compensation. The weight of the medical opinion regarding entitlement to schedule award was given to Dr. Joseph D. McGovern, a Board-certified orthopedic specialist and Office referral physician, and the Office Medical Adviser, who utilized the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment*, fourth edition to determine that appellant's carpal tunnel syndrome was not severe enough to be considered ratable. In a decision dated February 18, 1999, an Office hearing representative affirmed the Office's prior decision. By letter dated February 16, 2000, appellant requested reconsideration of the prior Office decision and submitted additional evidence in support of his request. In a decision dated February 24, 2000, the Office denied modification of its prior decision.

In support of his June 13, 1997 claim for a schedule award, appellant submitted a medical report dated May 27, 1997 from Dr. George R. Jay, a treating orthopedic surgeon, who advised that appellant had some temporary restriction of flexion and extension in his wrist, but felt that this was strictly temporary and was not an issue with regard to his original diagnosis of carpal tunnel syndrome. He stated that appellant no longer had the paresthesias or numbness to his fingers and had the expected temporary loss of grip strength to the hand. Dr. Jay advised that appellant reached maximum medical improvement and that he expected that appellant would progressively improve with activity use of the hand. Normal sensation involving all segments of the fingers and hand were noted along with no pain or discomfort around the wrist. Using Table

16, page 57 of the A.M.A., *Guides*, he rated appellant with a 20 percent permanent impairment to his upper extremity as a result of his carpal tunnel syndrome.

In a June 26, 1997 memorandum, an Office medical adviser, having reviewed Dr. Jay's report and the statement of accepted facts at the Office's request, stated that his report did not meet the requirements of the regulations for a schedule award determination as it was not clear that appellant had reached maximum medical improvement (as Dr. Jay stated that appellant was expected to improve) and because the degree of impairment rating (moderate -- 20 percent) did not seem to match appellant's physical description.

The Office then scheduled a second opinion impairment rating with Dr. Joseph McGovern, a Board-certified orthopedic surgeon, to assess the date of maximum medical improvement and functional loss of use and percentage of impairment to the injured member in accordance with the A.M.A., *Guides*. In an October 6, 1997 report, he noted the history of injury and performed an examination. Examination of the right wrist revealed that dorsiflexion "strained" the muscles in the right forearm. Range of motion in all fingers and the wrist were normal. The thumb range of motion was 60 degrees at the metacarpophalangeal and interphalangeal joints bilaterally. The thenar muscle appeared slightly larger on the left hand. Sensation was decreased to the radial nerve checkpoint of the right hand to pinprick. Measurements above the elbows were 34 cms bilaterally and below the elbows 28 cm bilaterally. Median and ulnar nerves were normal to pinpricks. On the JAMAR grip strength test scores on the right hand in kilograms were 15, 20, 18, 16, 15. Scores on the left were 21, 38, 36, 35, 34. The JAMAR test, however, was not valid, as it did not reveal a good bell-shaped curve. Dr. McGovern stated that the objective findings on physical examination support an excellent result from surgery. He noted that the electromyogram was normal even before surgery. No objective evidence supporting the subjective complaints was identified. Utilizing the A.M.A., *Guides*, third edition (revised), Table 15, page 46, Dr. McGovern opined that as no objective evidence of entrapment was found on physical examination or in the file, no impairment should be awarded.

In a memorandum dated October 31, 1997, the Office medical adviser reviewed the reports of both Drs. Jay and McGovern and stated that the date of maximum medical improvement was October 6, 1997. The Office medical adviser further stated that there was no basis for rating impairment pursuant to the fourth edition of the A.M.A., *Guides*, as there was zero percent entrapment neuropathy of the right median wrist. The Office medical adviser opined that, although Dr. McGovern referred to the third edition of the A.M.A., *Guides*, in this instance, the impairment evaluation meets the criteria of the Office and the fourth edition of the A.M.A., *Guides* because the relevant tables are similar, the method of determination of the impairment by him is clear and the conclusion under both editions of the A.M.A., *Guides* are the same.

An August 2, 1998 medical report from Dr. James Love, a Board-certified internist, noted that appellant continued to have pain and numbness in his hand following his work-related carpal tunnel surgery and has difficulty gripping objects. He opined that appellant would not be able to do his usual work as an electronics technician. Dr. Love further opined that appellant would have chronic difficulty with this condition and may have some lifelong loss of functioning.

In an August 16, 1999 report, Dr. Jay stated in his previous letter of May 27, 1997 that he felt that the 20 percent permanent partial impairment to appellant's upper extremity as a result of his carpal tunnel surgery was appropriate and in accordance with the available A.M.A., *Guides*. Dr. Jay stated that based on appellant's findings at surgery and his continued improvement after that surgery, he was unable to explain appellant's ongoing symptoms.

Appellant underwent physical therapy from June 29 through August 4, 1999 for a distal fracture of the right radius and was discharged on August 5, 1999.

The Board finds that appellant has not established entitlement to a schedule award for his right upper extremity.

An employee seeking compensation under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,<sup>2</sup> including that they sustained an injury in the performance of duty as alleged and that their disability, if any, was causally related to the employment injury.<sup>3</sup> Section 8107 of the Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>4</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>5</sup>

The Office based its assessment of appellant's right upper extremity impairment on the evaluation of an Office medical adviser. The Board has held that, when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based on the application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser if he or she has properly used the A.M.A., *Guides*.<sup>6</sup> The Board concludes that, in the present case, the Office medical adviser properly applied the A.M.A., *Guides*, specifically Table 16, page 57, to the description of appellant's condition provided by Dr. McGovern and properly determined that the result of a zero percent impairment for an entrapment neuropathy of the right upper extremity was the same under both the third edition (revised) and the fourth edition of the A.M.A., *Guides*.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> 5 U.S.C. § 8107(a).

<sup>5</sup> *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

<sup>6</sup> *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

The Board further notes that appellant, in his reconsideration request, referred to weakness in his wrist and referenced the latest results of a JAMAR grip test in his physical therapy discharge summary of August 5, 1999, but failed to provide a medical opinion analyzing those results and determining whether a ratable impairment would exist under the A.M.A., *Guides*. In his August 16, 1999 report, Dr. Jay, appellant's treating orthopedic surgeon, advised that he was unable to explain appellant's ongoing symptoms. The A.M.A., *Guides* specifically state that impairment of the hand and upper extremity secondary to entrapment neuropathy may be derived by either measuring the sensory and motor deficits or according to the severity of involvement of each major nerve at each entrapment site as provided in Table 16, page 57, but an evaluator should not use both methods.<sup>7</sup> Inasmuch as there is no objective evidence of entrapment at the present time, appellant is not entitled to a schedule award.

The decision of the Office of Workers' Compensation Programs dated February 24, 2000 is affirmed.

Dated, Washington, DC  
May 16, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>7</sup> A.M.A., *Guides*, page 56 "Entrapment Neuropathy."