

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY DURANTE and DEPARTMENT OF TRANSPORTATION,
U.S. COAST GUARD YARD, Curtis Bay, MD

*Docket No. 01-1410; Submitted on the Record;
Issued April 11, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a 10 percent permanent impairment of the left upper extremity.

On June 5, 1998 appellant, then a 44-year-old pipefitter, filed a claim alleging he injured his left elbow when tightening a bolt. The Office of Workers' Compensation Programs accepted appellant's claim for mononeuritis of the left upper arm and authorized an ulnar nerve release and transposition. Appellant stopped work on June 19, 1998.¹

Accompanying appellant's claim were employment establishment records from June 19 to October 8, 1998. The records noted a history of appellant's injury indicating he struck his left elbow and experienced pain and ulnar radiculopathy. Appellant was diagnosed with left ulnar traumatic neuritis.

Thereafter, appellant submitted electromyogram (EMG) studies dated July 2 and August 31, 1998 and treatment notes from Dr. Robert Huxster, a Board-certified orthopedist, dated July 10 to September 18, 1998. The July 2, 1998 EMG revealed no evidence of left upper extremity ulnar neuropathy. The August 31, 1998 EMG demonstrated tarder ulnar nerve palsy with slowing of the ulnar nerve. The treatment notes from Dr. Huxster dated July 10 to September 18, 1998 diagnosed appellant with ulnar neuropathy secondary to trauma. He noted that appellant's continued symptoms of discomfort and numbness in his left elbow.

The Office referred appellant for a second opinion to Dr. J. Russell Moore, a Board-certified orthopedic surgeon. In a report dated December 16, 1998, Dr. Moore determined that appellant had ulnar neuropathy at the elbow. He indicated that appellant was a candidate for

¹ The record indicates that appellant has a pending request for an oral hearing on the January 5, 2001 termination of his wage-loss benefits before the Office. As appellant's request for an appeal is on the separate issue of a schedule award than the request for a hearing before the Office there is no concurrent jurisdiction. 20 C.F.R. § 10.626; *see also Douglas E. Billings*, 41 ECAB 880 (1990).

ulnar nerve release and transposition. On January 21, 1999 the Office authorized surgery and appellant underwent ulnar nerve release and transposition on February 9, 1999.

Thereafter, appellant submitted several reports from Dr. A. Lee Osterman, a Board-certified orthopedic surgeon, dated January 7 to September 23, 1999. Dr. Osterman initially began treating appellant on January 7, 1999 and diagnosed him with left ulnar neuropathy. He performed a left ulnar nerve neurolysis and submuscular transposition and release of the flexor pronator mass. Dr. Osterman noted that appellant was progressing well but experienced stiffness and would require physical therapy.

In a letter dated July 28, 2000, the Office referred appellant to Dr. Osterman for an evaluation of the extent of any permanent impairment arising from his accepted employment injury in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² In a report dated May 25, 2000, he determined that appellant sustained a 23 percent impairment of the upper extremity. Dr. Osterman noted that appellant reached maximum medical improvement on May 25, 2000. He noted findings upon physical examination for left elbow flexion of 125 degrees;³ extension of 60 degrees;⁴ pronation of 80 degrees;⁵ supination of 75 degrees;⁶ and noted an additional impairment function due to sensory deficit, pain or loss of strength of 10 percent⁷ for a total impairment of 23 percent.

On July 15 2000 appellant filed a claim for a schedule award.

Dr. Osterman's report and the case record were referred to the Office's medical adviser who, in a December 14, 2000 report, determined that appellant sustained a 10 percent impairment of the left upper extremity. In accordance with the A.M.A., *Guides* the medical adviser determined that the date of maximum medical improvement was February 2, 2000. He noted that appellant sustained a 10 percent permanent impairment of left upper extremity for residuals of the ulnar nerve entrapment at the elbow.⁸

Based on the Office medical adviser's review of Dr. Osterman's report in a decision dated February 16, 2001, the Office granted appellant a schedule award for 10 percent impairment of the left upper extremity.

² A.M.A., *Guides* (4th ed. 1993).

³ See Figure 32, page 40 (4th ed. 1993) (A.M.A., *Guides*); see also page 472, Figure 16 to 34 (5th ed. 2001) (A.M.A., *Guides*).

⁴ *Id.*

⁵ See Figure 35, page 41 (4th ed. 1993) (A.M.A., *Guides*); see also page 474, Figure 16 to 37 (5th ed. 2001) (A.M.A., *Guides*).

⁶ *Id.*

⁷ See Table 16, page 57 of the A.M.A., *Guides*.

⁸ *Id.*

The Board finds that this case is not in posture for decision regarding appellant's entitlement to a schedule award.

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.⁹ 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.¹⁰

The Board has carefully reviewed the Office medical advisers report dated December 4, 2000 and notes that, while the physician found a 10 percent ratable impairment due to residuals of ulnar nerve entrapment of the elbow it is not clear to what extent he considered the medical evidence of record in reaching his opinion. The Office medical adviser did not refer to Dr. Osterman's specific range of motion findings with regard to flexion, losses noted regarding extension. Dr. Osterman's report of May 25, 2000 provided range of motion findings for left elbow flexion of 125 degrees¹¹ and extension of 60 degrees.¹² Pronation of 80 degrees¹³ and supination of 75 degrees¹⁴ do not represent impairment of range of elbow motion. Dr. Osterman noted an additional impairment of function due to sensory deficit, pain or loss of strength of 10 percent. His findings would allow for an additional impairment rating greater than the 10 percent granted by the Office medical adviser based on loss of range of elbow motion.

The Board finds that the case must be remanded to the Office to determine whether appellant sustained any additional permanent impairment of left upper extremity in accordance with the A.M.A., *Guides*. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's schedule award claim.

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

¹⁰ *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961); *Francis John Kilcoyne*, 38 ECAB 168 (1987).

¹¹ See Figure 32, page 40 (4th ed. 1993) (A.M.A., *Guides*); see also page 472, Figure 16 to 34 (5th ed. 2001) (A.M.A., *Guides*). This amounts to a two percent impairment loss flexion.

¹² *Id.* This amounts to a six percent impairment for loss of extension.

¹³ See Figure 35, page 41 (4th ed. 1993) (A.M.A., *Guides*); see also page 474, Figure 16 to 37 (5th ed. 2001) (A.M.A., *Guides*).

¹⁴ *Id.*

The February 16, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further development in accordance with this decision of the Board.

Dated, Washington, DC
April 11, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member