

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL SLAYTER and DEPARTMENT OF JUSTICE,
FEDERAL CORRECTIONAL INSTITUTION, Big Spring, TX

*Docket No. 02-949; Submitted on the Record;
Issued August 19, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant is entitled to more than a five percent permanent impairment of his right elbow, for which he received a schedule award.

On September 17, 1998 appellant, then a 30-year-old cook supervisor, filed a notice of traumatic injury claiming that on September 16, 1998 he slipped and fell on a wet floor and injured his right elbow. The Office of Workers' Compensation Programs accepted appellant's claim for right radial head fracture. He underwent right elbow surgery on April 2, 1999 and returned to work on September 6, 1999. Appellant underwent a second surgery on March 13, 2000 and returned to work on June 12, 2000. Appellant's treating physician, Dr. David P. Green, a Board-certified orthopedic surgeon, found that appellant reached maximum medical improvement on June 12, 2000. Appellant filed a claim for a schedule award on August 14, 2000.

Dr. Green stated in a June 28, 2000 report, that appellant had a five percent permanent impairment of the right upper extremity and a three percent impairment rating of the whole person, using the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.¹ The district medical adviser concurred with Dr. Green and also found a five percent impairment rating of appellant's right upper extremity. The Office awarded appellant a five percent schedule award for permanent impairment of the right upper extremity on September 6, 2000.

Appellant disagreed with the Office's award and requested an oral hearing. At the oral hearing held on July 17, 2001, appellant noted that Dr. Green did not take into account the pain and numbness he had in his elbow when he computed the impairment rating.

¹ A.M.A., *Guides* (4th ed. 1993).

Appellant submitted a report from Dr. Charles M. Younger, a Board-certified orthopedic surgeon, dated August 8, 2001. Dr. Younger stated:

“[Appellant] is still having difficulties with his right elbow. He is at work. [Appellant] states his condition is stable. He has not improved in range of motion. [Appellant] states, with repetitive use, he does get some occasional tingling in the median nerve distribution, but having no pain at night. His pain is on extremes of motion in flexion and extension. [Appellant] states that, when on extremes of flexion and extension, the pain is at about a [G]rade VI over X in severity.

“His impairment, due to the limited movement in flexion and extension of the elbow, is 5 percent to the upper extremity. Due to the pain on extremes of flexion and extension, I would add an additional 10 percent impairment. This brings his impairment to 15 percent to his right upper extremity.”

On September 28, 2001 the district medical adviser found that the 10 percent impairment rating added by Dr. Younger to account for pain was not in accordance with the A.M.A., *Guides*,² since the percents for the musculoskeletal system make allowance for pain that may accompany musculoskeletal impairments.

By decision dated November 23, 2001, the hearing representative affirmed the five percent award.

The Board finds that appellant is not entitled to greater than a five percent permanent impairment of the right elbow for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of Tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*⁵ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, appellant's treating physician, Dr. Younger, performed tests of flexion, extension, supination and pronation of the right elbow and found that appellant had a five percent permanent impairment rating of the right upper extremity. Dr. Younger added an additional

² *Id.*

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ *Supra* note 1.

10 percent impairment for pain of the right elbow, totaling a 15 percent permanent impairment of the right upper extremity.

The district medical adviser found that Dr. Younger incorrectly applied the A.M.A., *Guides*, since the impairment tables for the musculoskeletal system make allowance for pain that is associated with the impairment. The Board finds that the Office correctly determined that pain is already taken into account in the musculoskeletal impairment tables and properly affirmed the 5 percent impairment. In Chapter 3 of the A.M.A., *Guides* (fourth edition) for the musculoskeletal system, it states: “In general, the impairment percents shown in this chapter make allowance for the pain that may accompany the musculoskeletal system impairments.”⁶ For the elbow specifically, the A.M.A., *Guides* measures loss of motion, which includes flexion and extension and pronation and supination. The A.M.A., *Guides* also measures impairments due to other disorders of the upper extremity, however, there is no separate measurement for pain. The Board finds that the Office medical adviser correctly applied the A.M.A., *Guides* in determining a five percent permanent impairment of the right upper extremity. The medical adviser measured range of motion of the elbow and found two percent for flexion, three percent for extension and zero percent for both pronation and supination. The impairments were combined to equal a five percent permanent impairment of the right upper extremity.

The Board finds that the Office medical adviser properly followed standard procedures for determining the extent of appellant’s impairment by using the A.M.A., *Guides* to determine ratings for range of motion. Because the medical evidence establishes a 5 percent permanent impairment of the right upper extremity and there is no evidence to the contrary, the Board finds that the Office properly denied appellant’s claim for a greater schedule award.

⁶ *Supra* note 1.

The November 23, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 19, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member