U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SCOTT K. BOYER and U.S. POSTAL SERVICE,
POST OFFICE, Kansas City, MO

Docket No. 01-2042; Submitted on the Record;
Issued June 6, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has greater than seven percent permanent impairment of the left upper extremity for which he received a schedule award.

On January 6, 2000 appellant, then a 39-year-old letter carrier, tripped and fell on his left arm while in the performance of duty. The Office of Workers' Compensation Programs accepted the claim for a left distal humorous fracture. Appellant underwent open reduction and internal fixation on January 24, 2000. He received compensation for wage loss from January 6 through July 31, 2000, when he returned to regular duty with no restrictions.

On January 24, 2001 appellant filed a CA-7 claim for a schedule award.

Apellant's treating physician is Dr. William G. Stueve, a Board-certified family practitioner. In his most recent treatment note dated April 25, 2001, Dr. Stueve reported physical findings and stated that appellant could return to modified duty with a five-pound lifting restriction. He did not express an opinion as to the degree if any of appellant's permanent impairment to the left arm due to his work injury. Dr. Stueve's physical findings stated that appellant had flexion of the left elbow passively to 115 degrees and extension actively and passively to negative 30 degrees. Grip strength was 5 out of 5 and there was 15 percent loss of supination in the left wrist compared to the right wrist.

On March 22, 2001 the Office referred appellant for a second opinion evaluation with Dr. Jennifer Finley, a Board-certified physician in physical medicine and rehabilitation, and asked her to calculate appellant's permanent impairment in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In a report dated April 12, 2001, Dr. Finley noted that appellant fell on his left arm at work and suffered a left supracondylar humerous fracture with intra-articular extension. She related that appellant complains of left elbow pain when he picks up anything heavy, when he pushes things or tries to support his weight on his arm. Appellant also complained of incomplete

range of motion. Dr. Finley performed a physical examination: active range of motion of the left elbow was measured with a goniometer and was as follows: left elbow flexion to 115 degrees; extension to 30 degrees; pronation of 75 degrees and supination of 80 degrees. Grip strength was 5/5. Her diagnosis was "left supracondylar fracture of the humerus with intra-articular extension status post open reduction and internal fixation, olecranon osteotomy and ulnar nerve transposition." Dr. Finley opined that appellant had residual range of motion deficit and pain related to his work injury. She stated that appellant reached maximum medical improvement on July 31, 2000 when he was released for full unrestricted duty. Dr. Finley stated as follows:

> "Flexion and extension were compared to Figure 16-34 on page 272.[1] Flexion deficit is a three percent impairment, extension deficit is also a three percent impairment. These impairments were added for a six percent flexion and extension impairment.[2] Pronation and supination impairments were determined using Figure 16-37 on page 274.[3] Pronation impairment is one percent and supination impairment is zero percent. These impairments were added together for one percent impairment.[4] The flexion/extension and pronation/supination impairments were added [for] a total of seven percent impairment of the upper extremity."

In a report dated April 22, 2001, an Office medical adviser noted that Dr. Finley used the fifth edition of the A.M.A., *Guides* to consider an impairment rating for appellant due to residuals of a work-related humerus fracture and discussed range of motion, chronic pain, sensory deficit and discomfort and weakness. The Office medical adviser noted, "Considering range of motion restrictions, a seven percent rating was offered using Figures 16-34 and 16-37. He indicated that range of motion in most cases using the A.M.A., *Guides* permits reconsideration of appellant's pain complaint. The Office medical adviser stated that appellant had no significant weakness considering the dynamometer generated grip strengths reported and that the calculated schedule award was seven percent of the left upper extremity.

In a May 17, 2001 decision, the Office issued a schedule award for seven percent permanent impairment of the left upper extremity. The period of the award was July 31 to December 30, 2000.

The Board finds that appellant has no more than a seven percent permanent impairment of the left upper extremity for which he received a schedule award.

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[1] This page number appears to be incorrect and should be listed as page 472. Page 272 concerns impairment related to the ear, nose and throat. Page 472 of the fifth edition of the A.M.A., *Guides* contains Figure 16-34 relating to upper extremity motion impairments due to lack of flexion and extension of the elbow joint.

[2] The A.M.A., *Guides* at page 471 direct that flexion and extension impairment values are to be added together.

[3] This page number is also incorrect and should be page 474 pertaining to Figure 16-37, pie chart of upper extremity motion impairments due to lack of pronation and supination.

[4] The A.M.A., *Guides* at page 472 direct that pronation and supination impairment values are to be added together.

The schedule award provision of the Federal Employees' Compensation Act[5] and its implementing federal regulation,[6] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[7] 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[8]

The A.M.A., *Guides* were prepared to establish reference tables and evaluation protocols which, if followed, may allow the clinical findings of the physician to be compared directly with the impairment criteria and related to impairment percentages. While the medical opinion of the treating physician may be accorded some weight, his or her clinical data can be readily extrapolated and evaluated within the tables and guidelines presented.[9]

In this case, appellant's treating physician last noted physical findings on April 15, 2000 but did not offer an opinion as to appellant's permanent impairment. The Office therefore properly exercised its discretion and referred appellant for a second opinion evaluation with Dr. Finley, who undertook a thorough examination of appellant's left arm and reviewed the medical record. Dr. Finley noted physical findings, which she applied to the fifth edition of the A.M.A., *Guides*. She found that appellant had a 3 percent flexion and a 3 percent extension deficit according to Figures 16-34, page 472. These impairments were added for a six percent flexion and extension impairment. Pronation and supination impairments were determined using Figure 16-37 on page 474. There was a one percent impairment with regard to pronation and zero percent impairment for supination. When added together the impairments amounted to one percent impairment. The flexion/extension and pronation/supination impairments were also added for a total of seven percent impairment of the upper extremity. Dr. Finley's impairment rating of seven percent for the left upper extremity was also approved by the Office medical adviser.

The Board having duly reviewed the medical record finds that the schedule award issued by the Office for a seven percent permanent impairment was proper. The Board notes that, in determining impairment due to abnormal elbow motion using Figures 16-34 and 16-37, the A.M.A., *Guides* at page 473 direct that the impairment values contributed by each unit of motion should be "added directly to determine the impairment of motion." The following formula is provided: (impairment/flexion + impairment/extension) + (impairment/pronation +

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404 (1999).

[7] 5 U.S.C. § 8107(c)(19).

[8] *See* 20 C.F.R. § 10.404 (1999).

[9] *Michael D. Nielsen*, 49 ECAB 453 (1998).

impairment/supination) = total percentage of abnormal elbow motion impairment. Thus, the Board finds in this case that the impairment values for flexion, extension, pronation and supination were properly added together for a total of seven percent impairment. Appellant has submitted no evidence to contradict the seven percent rating, nor has he supplied any evidence to show that he has greater than the seven percent impairment for the left arm for which he received his schedule award.

The May 17, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 6, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member