

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CURTIS ELAM and U.S. POSTAL SERVICE,  
POST OFFICE, St. Louis, MO

*Docket No. 01-1663; Submitted on the Record;  
Issued May 20, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has more than a 12 percent permanent impairment of the right upper extremity and a 2 percent permanent impairment of the left upper extremity for which he received schedule awards.

On May 13, 1997 appellant, then a 44-year-old automotive mechanic, filed an occupational disease claim for his bilateral wrist conditions. The claim was approved for the condition of bilateral carpal tunnel syndrome and appellant subsequently underwent bilateral carpal tunnel releases. Appellant received appropriate compensation for all requisite periods.

In a decision dated May 24, 2000, the Office of Workers' Compensation Programs granted appellant a schedule award for a 12 percent permanent impairment of the right upper extremity and a 2 percent permanent impairment of the left upper extremity. Appellant disagreed with the calculated impairment for the left upper extremity and requested reconsideration. By decisions dated September 18, 2000 and January 31 and June 6, 2001, the Office denied modification of its prior decisions.

The Board finds that the case is not in posture for decision.

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.304 of the implementing regulation,<sup>2</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

Association, *Guides to the Evaluation of Permanent Impairment*<sup>3</sup> as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>4</sup>

In this case, the Office medical adviser noted on March 6, 2000 that review of the record reflected that appellant was eligible for schedule awards secondary to carpal tunnel syndromes, surgically treated, affecting both upper extremities. Relevant sections and conditions for determining such a schedule award were specified.

The Office subsequently referred appellant to Dr. Martin B. Wice, Board-certified in physical medicine and rehabilitation. In an April 18, 2000 report, Dr. Wice diagnosed bilateral carpal tunnel syndrome, surgically treated. He applied his findings upon physical examination to the A.M.A., *Guides* (4<sup>th</sup> ed.). For the right wrist impairment rating, Dr. Wice stated that Figure 26 was used to determine upper extremity impairments due to lack of flexion and extension of the wrist joint. The right wrist active extension to 66 degrees constituted a 0 percent impairment and flexion to 50 degrees translated to a 2 percent impairment rating. Using Figure 29 to determine upper extremity impairment due to abnormal radial and ulnar deviation of the wrist joint, Dr. Wice found that the right wrist active radial deviation to 22 degrees and ulnar deviation to 40 degrees both translated to a 0 percent impairment of the right upper extremity. With regard to the sensory loss rating, Dr. Wice advised that Tables 11 and 15 were used. Table 15 provides a maximum of 38 percent for pain. This maximum is then graded according to Table 11. Dr. Wice noted that appellant described chronic right wrist discomfort which has not prevented activities. This is classified as a Grade 3, or a 26 percent sensory deficit. The 26 percent was multiplied by the 38 percent to obtain a 9.88 percent impairment, which rounded to a 10 percent impairment of the right upper extremity.<sup>5</sup> As appellant had 5/5 strength in both upper extremities, under Table 12, appellant had a 0 percent impairment due to loss of power. Dr. Wice noted that section 3.1(m) "Impairment due to other disorders of the upper extremity"

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<sup>3</sup> A.M.A., *Guides*, (5<sup>th</sup> ed. 2000).

<sup>4</sup> *James R. Bradford*, 48 ECAB 320, 324 (1997); *Henry G. Flores, Jr.*, 43 ECAB 901 (1992). The Board notes that in this case, the Office based its June 6, 2001 decision on the fourth edition of the A.M.A., *Guides*. However, under FECA Bulletin 01-5 (issued January 29, 2001), any new schedule award decision issued after February 1, 2001 must be based on the fifth edition of the A.M.A., *Guides*. A comparison of the fourth and fifth edition of the A.M.A., *Guides* shows that the section for calculating schedule awards for the relevant upper extremity impairments of this case remains virtually unchanged with a few exceptions which will be specifically addressed when applicable. A.M.A., *Guides*, page 36, Figure 26 (4<sup>th</sup> ed. 1993); page 467, Figure 16-28 (5<sup>th</sup> ed. 2000); A.M.A., *Guides*, page 38, Figure 29 (4<sup>th</sup> ed. 1993); page 469, Figure 16-31 (5<sup>th</sup> ed. 2000); A.M.A., *Guides*, page 48, Table 11 (4<sup>th</sup> ed. 1993); page 482, Table 16-10 (5<sup>th</sup> ed. 2000); A.M.A., *Guides*, page 54, Table 15 (4<sup>th</sup> ed. 1993), page 492, Table 16-15, and A.M.A., *Guides*, page 49, Table 12 (4<sup>th</sup> ed. 1993); page 484, Table 16-11 (5<sup>th</sup> ed. 2000). Therefore, with minor exceptions, it was harmless error for the Office to use the fourth edition, rather than the fifth edition of the A.M.A., *Guides* to calculate a schedule award in this case.

<sup>5</sup> The Board notes that the same findings as applied to the fifth edition of the A.M.A., *Guides* results in a 10.14 percent impairment which is rounded to 10 percent. Section 2.5d, page 20. Under Table 16-10, page 482, chronic right wrist discomfort results in 26 percent impairment. Under Table 16-15, page 492, the median nerve below midforearm results in a 39 percent impairment. Twenty-six percent multiplied by 39 percent equates to 10.14 percent which is rounded to 10 percent. Accordingly, as both the fourth and the fifth edition of the A.M.A., *Guides* yields a 10 percent pain impairment for the right upper extremity, it was harmless error for the Office to utilize the fourth edition of the A.M.A., *Guides* in this case.

was not applicable in this case. Dr. Wice totaled the range of motion findings of 2 percent for a lack of flexion with the 10 percent sensory loss and, by utilizing the Combined Values Chart, found that appellant had a 12 percent impairment for the right upper extremity.<sup>6</sup>

The same process was used to determine an impairment rating for the left upper extremity. For range of motion ratings, pages 36, Figure 26 and page 38, Figure 29 were used. A left wrist active extension to 60 degrees constituted a 0 percent impairment and flexion to 52 degrees translated to a 2 percent impairment of the left upper extremity. The left wrist active radial deviation to 23 degrees and ulnar deviation to 34 degrees both translated to a 0 percent impairment. As appellant did not describe residual left distal arm discomfort, Dr. Wice found a 0 percent impairment for chronic pain in the left upper extremity under Tables 11 and 15. As stated above, appellant had a 5/5 strength in both upper extremities, so a 0 percent impairment due to loss of power under Table 12 was provided. Accordingly, Dr. Wice found that appellant had a total of two percent impairment of the left upper extremity based on the loss of flexion.

In a May 17, 2000 letter, the Office medical adviser noted that Dr. Wice considered range of motion; chronic pain; sensory deficits and discomfort; and chronic weakness and cited to the appropriate Figures and Tables in the A.M.A., *Guides*. He agreed with Dr. Wice's impairment ratings of 12 percent impairment for the right upper extremity and 2 percent impairment for the left upper extremity.

Following the issuance of the schedule award for a 12 percent impairment for the right upper extremity and a 2 percent impairment for the left upper extremity, on May 24, 2000, appellant requested reconsideration and submitted a July 21, 2000 report from Dr. Shawn L. Berkin, an osteopath, who noted a history of injury, reviewed the medical records appellant furnished and presented his examination findings. A final impression of bilateral carpal tunnel syndrome and status-post bilateral carpal tunnel release was provided. He noted that appellant presented with complaints of numbness and tingling to his hands and reported difficulty gripping. Appellant also stated that he drops things from his hands and reported limited motion. Findings on range of motion of both wrists and grip strength of both hands from the handgrip dynamometer were provided. Dr. Berkin stated that in accordance with the A.M.A., *Guides*, appellant had a permanent disability of 12 percent of each upper extremity.

In an August 23, 2000 letter, the Office medical adviser stated that the Office could not use disability ratings for schedule award purposes nor could the A.M.A., *Guides* (the edition not specified by Dr. Berkin) be used to offer disability ratings. The Office medical adviser further noted that the reported findings by Dr. Berkin suggest minimal range of motion restrictions, normal upper extremity strength and no basis to "quantitate" pain or sensory deficits. Accordingly, the Office found appellant's evidence insufficient to warrant modification of the decision dated May 24, 2000.

By letter dated October 12, 2000, appellant again requested reconsideration of the Office decision. In support of the request, an additional medical report was submitted. In the October 4, 2000 letter, Dr. Berkin stated that his rating of disability involving appellant's hands

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<sup>6</sup> A.M.A., *Guides*, p. 322-24 (4<sup>th</sup> ed.); A.M.A., *Guides*, page 604-06 (5<sup>th</sup> ed.).

was derived from and in accordance with the A.M.A., *Guides*. The Office again denied modification of its earlier awards and another request for reconsideration was filed. In a subsequent letter of April 30, 2001, Dr. Berkin advised that his impairment rating was derived from and in accordance with the A.M.A., *Guides*, fourth edition. He opined that appellant sustained a permanent impairment of 12 percent of each upper extremity at the level of the wrist. He stated that two percent of the impairment to each wrist was due to the limited motion of each wrist. He further opined that appellant has an additional permanent impairment of 10 percent of each upper extremity at the level of the wrist due to the sensory deficit of each wrist based on the chronic pain to each wrist.

By letter dated May 8, 2001, the Office medical adviser stated that there was no basis to modify his earlier conclusions from Dr. Berkin's report dated July 21, 2000. The Office medical adviser noted that Dr. Berkin now claimed that 10 percent of the upper extremity ratings for each upper extremity was offered for pain, yet stated that his original report was totally deficient regarding "sensory deficit" as Dr. Berkin did not do a sensory evaluation. Accordingly, the Office medical adviser stated that Dr. Berkin's April 30, 2001 note allowed no revisions of the upper extremity impairment ratings by the Office.

In this case, the Office found that the weight of the medical evidence rested with Dr. Wice's impairment ratings. As previously discussed, the right upper extremity rating was comprised of a 2 percent loss of flexion and a 10 percent sensory loss. The left upper extremity rating was comprised of a two percent loss of flexion. Dr. Wice's impairment ratings were calculated in accordance with the A.M.A., *Guides*. Moreover, the Office medical adviser agreed with Dr. Wice's impairment ratings.

The additional evidence of record consists of the July 21, 2000 report from Dr. Berkin which was reported to be calculated under the fourth edition of the A.M.A., *Guides*. For the right wrist, Dr. Berkin reported range of motion findings of 50 degrees extension which translates to a 2 percent impairment and 60 degrees flexion which constitutes a 0 percent impairment.<sup>7</sup> The left wrist had 50 degrees extension translates to a 2 percent impairment and 60 degrees flexion which constitutes a 0 percent impairment.<sup>8</sup> This equates to a two percent impairment range of motion findings for both the right and left wrist for loss of extension under the fifth edition.<sup>9</sup> Dr. Berkin further reported a right radial deviation of 22 degrees, which constitutes a 0 percent impairment and a right ulnar deviation of 20 degrees which translates to a 2 percent impairment.<sup>10</sup> Left radial deviation of 20 degrees translates into a 0 percent impairment and left ulnar deviation of 30 degrees translates into a 0 percent impairment.<sup>11</sup> Adding the range of motion findings together, Dr. Berkin found that appellant had a two percent loss of extension and a two percent loss of ulnar deviation of the right wrist and a two percent

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<sup>7</sup> A.M.A., *Guides*, Figure 16-28, page 467.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> A.M.A., *Guides* Figure 16-31, page 469.

<sup>11</sup> *Id.*

loss of extension of the left wrist. The Board notes that these are different range in motion losses than that reported by Dr. Wice, who only found loss of range of motion based on the flexion measurement of both the right and left wrist.

Inasmuch as Dr. Berkin finds a greater impairment of appellant's right and left upper extremities based on different range of motion findings than reported by Dr. Wice, the case will be remanded to the Office for further development of the impairment to appellant's upper extremities.<sup>12</sup>

The decisions of the Office of Workers' Compensation Programs dated June 6 and January 31, 2001 and September 18, 2000 are hereby set aside and the case remanded for further development.

Dated, Washington, DC  
May 20, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>12</sup> The Board additionally notes that the remainder of Dr. Berkin's report is deficient. Although Dr. Berkin provided grip strength values, he failed to provide any discussion as to why the grip strength method was used over the preferred method utilized by Dr. Wice of grading entrapment/compression neuropathy. A.M.A., *Guides*, Chapter 3, page 64 (4<sup>th</sup> ed.); A.M.A., *Guides*, 16.8a Principles, page 508 (5<sup>th</sup> ed.). Additionally, although Dr. Berkin opined that appellant had an additional permanent impairment of 10 percent of each upper extremity due to a sensory deficit based on chronic pain, the Board notes that Dr. Berkin failed to perform a sensory evaluation and his report is devoid of any findings which could be used to consider a pain complaint.