

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICK J. KANE and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 02-1505; Submitted on the Record;
Issued April 9, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a 16 percent impairment of the left upper extremity and a 14 percent impairment of the right upper extremity for which he has received a schedule award.

This case has been before the Board previously. The Office of Workers' Compensation Programs accepted that appellant's bilateral carpal tunnel syndrome was causally related to his employment and paid appropriate benefits. Appellant's injury occurred on July 29, 1992. Appellant subsequently filed a claim for a schedule award.

In a report dated January 19, 1998, Dr. Samuel F. Broudo, a Board-certified orthopedic surgeon and the second impartial medical examiner in this case, determined that appellant had a 10 percent impairment of each upper extremity based on loss of strength. He also noted the following findings: "The range of motion of both wrists revealed that dorsiflexion is of the order of 50 degrees on both right and left wrists," and that "Thumb opposition from the flexor crease of the thumb interphalangeal joint to the distal palmar crease ... measured 5 centimeters on the right and 4.2 centimeters on the left." However, he provided no impairment ratings for these findings.

In a decision dated March 11, 1998, the Office awarded appellant a schedule award for 10 percent impairment of the right upper extremity and a 10 percent impairment of the left upper extremity.

Appellant requested an oral hearing. A hearing was held in Philadelphia on October 28, 1998, and the hearing representative, in a decision dated April 1, 1999, affirmed the Office's March 11, 1998 decision.

Appellant appealed that decision to the Board.

In a decision dated January 23, 2001, the Board stated that the Office medical adviser correctly applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) to the findings reported by Dr. Broudo, the second impartial medical examiner in this case, and concluded that appellant had a 10 percent impairment of each upper extremity based on loss of strength. However, the Board remanded the case to the Office for a supplemental report from Dr. Broudo to explain “why he did not provide an impairment rating for loss of range of motion and thumb opposition.” The Board stated:

“[T]he Office medical adviser did not attempt to rate a permanent impairment due to loss of range of motion or thumb opposition. Dr. Broudo also failed to rate impairments for loss of range of motion and thumb opposition, although he reported findings in his January 19, 1998 report, which seems to suggest that appellant has some impairment in both areas. As such, it appears that appellant may be entitled to a greater schedule award for permanent impairment of each upper extremity.”¹

On June 1, 2001 the Office referred the medical record and its calculations based on Dr. Broudo’s report to the Office medical adviser to determine whether appellant was entitled to an additional six percent impairment of the left upper extremity and a four percent impairment of the right upper extremity.

In a report dated that same day, the Office medical adviser stated that he concurred “with the calculation.”

In a decision dated June 4, 2001, the Office provided appellant an additional schedule award of 6 percent for a total of 16 percent of the left upper extremity and 4 percent for a total of 14 percent of the right upper extremity.

By letter dated June 8, 2001, appellant, through counsel, requested an oral hearing. A hearing was held on November 14, 2001.

In a decision dated January 31, 2002, the hearing representative affirmed the Office’s June 4, 2001 decision awarding appellant a total of 16 percent impairment of the left upper extremity and 14 percent of the right upper extremity. The hearing representative found that the Office relied on Dr. Broudo’s prior impairment measurements regarding appellant’s loss of range of motion and thumb opposition, and relied on the A.M.A., *Guides* (4th ed. 1993) to support a schedule award increase. The hearing representative stated that the issue in the Board’s January 23, 2001 decision was whether appellant had additional impairments based on range of motion and thumb opposition. Since the Office properly based its June 4, 2001 decision on the evaluation of the Office medical adviser who relied on Dr. Broudo’s January 1998 data, its decision complied with the Board’s January 23, 2001 remand decision.

The Board finds that appellant failed to establish that he had more than a 16 percent impairment of the left upper extremity and 14 percent of the right upper extremity.

¹ Docket No. 99-2200 (issued January 23, 2001).

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing regulation³ 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

In this case, the issue is whether appellant has more than a 10 percent impairment of either upper extremity. In its January 23, 2001 remand decision, the Board noted that Dr. Broudo, an impartial medical examiner, provided loss of range of motion findings and thumb opposition findings, but failed to provide impairment ratings based on his findings. On remand, the Office medical adviser relied on Dr. Broudo's loss of range of motion and thumb opposition findings and recommended an additional six percent impairment of appellant's left upper extremity and a four percent additional impairment of the right upper extremity. The Office medical adviser noted that appellant's loss of extension of 50 degrees of both wrists was a 2 percent impairment of the upper extremities based on Figure 26, page 36 of the A.M.A., *Guides*, fourth edition,⁵ and that thumb opposition measurement of 5 centimeters on the left was a 5 percent thumb impairment and 4.2 centimeters on the left was a 9 percent thumb impairment,⁶ and that Table 1, page 128, converts thumb impairments to hand impairments for a 2 percent right hand impairment and a 4 percent left hand impairment.⁷ He noted that Table 2, page 19, converts a 2 percent hand impairment to 2 percent upper extremity impairment, and a 4 percent hand impairment to a 4 percent upper extremity impairment.⁸ The Combined Values Chart provides that a two percent impairment of loss of extension of the right wrist is added to two percent impairment of the right wrist for a total four percent impairment of the upper extremity, and a two percent impairment of the loss of extension of the left wrist is added to the four percent impairment of the left hand for an additional impairment rating of six percent of the left upper extremity.⁹

The Board notes that the Office medical adviser calculated appellant's schedule award based on the fourth edition of the A.M.A., *Guides*. The fifth edition of the A.M.A., *Guides*¹⁰

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Id.*

⁵ This figure is the same as A.M.A., *Guides*, Figure 28 at 467 (5th ed. 2001).

⁶ *Id.* at 460, Table 16-9.

⁷ *Id.* at 438, Table 16-1.

⁸ *Id.* at 439, Table 16-2.

⁹ *Id.* at 604.

¹⁰ See FECA Bulletin 01-05 (issued January 31, 2001).

became effective February 1, 2001 and, thereafter, the Office issued its January 31, 2002 decision. Upon review of both the fourth and fifth editions of the A.M.A., *Guides*, the Board notes that there is no difference in the impairment rating in appellant's case.¹¹

Appellant presented no evidence that he had more than a 16 percent impairment of the left upper extremity and a 14 percent impairment of the right upper extremity for which he had received a schedule award.

The January 31, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 9, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *Supra* note 5.