

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSE R. GUERRA and DEPARTMENT OF HOMELAND SECURITY,
BORDER & TRANSPORTATION SECURITY, Laredo, TX

*Docket No. 03-125; Submitted on the Record;
Issued August 7, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On June 8, 2001 appellant, then a 51-year-old senior patrol agent, sustained a traumatic injury to his right forearm and wrist when he fell while attempting to apprehend a suspected undocumented alien. On June 14, 2001 appellant was taken to repair a right distal shaft ulnar fracture with ulnar styloid fracture. The Office of Workers' Compensation Programs accepted appellant's claim for right fracture radius ulna. Appellant returned to his regular duties on January 21, 2002.

On May 15, 2002 appellant filed a claim for a schedule award. In a report dated April 12, 2002, appellant's treating physician, Dr. Arie Salzman, a Board-certified orthopedic surgeon, calculated a 7 percent whole body impairment and a 12 percent permanent impairment of the right upper extremity.¹ The Office medical adviser reviewed appellant's medical records, including Dr. Salzman's findings and determined that appellant had a 12 percent permanent impairment of the right upper extremity.

In a decision dated August 5, 2002, the Office issued a schedule award for a 12 percent impairment of the right upper extremity. The period of the award was 37.44 weeks from April 12 to December 30, 2002.

The Board finds that appellant failed to establish that he has more than a 12 percent permanent impairment of the right upper extremity.

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions

¹ Dr. Salzman submitted a similar report on July 3, 2002.

and organs of the body.² The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.³ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* fifth edition (2001).⁴

In an April 12, 2002 report, Dr. Salzman related appellant's history of injury and complaints of continuing tenderness and weakness to the ulnar area of the right hand. Range-of-motion findings were listed with the following impairment ratings: Right wrist flexion 30 degrees, extension 50 degrees for a total of 7 percent impairment; Ulnar deviation 20 degrees; Radial deviation 20 degrees for a total of 2 percent impairment; Forearm pronation 30 degrees, forearm supination 70 degrees for a total of 3 percent impairment. Dr. Salzman calculated the combined total upper extremity impairment to be 12 percent.⁵ A diagnosis of a right ulnar fracture was reported. The date of maximum improvement was also listed as April 12, 2002.

In his July 23, 2002 report, the Office medical adviser calculated a 9 percent right wrist impairment due to loss of range of motion. Thirty degrees of extension represented a 5 percent impairment and 50 degrees of flexion represented a 2 percent impairment.⁶ Additionally, 20 degrees of ulnar deviation represented a 2 percent impairment. The Office medical adviser referenced pages 467 and 469, Figures 16-18, 16-31 of the fifth edition of the A.M.A., *Guides*.⁷ The Office medical adviser also stated that appellant had 3 percent impairment of the elbow based on range-of-motion deficits of supination to 70 degrees and pronation to 30 degrees, citing pages 472 and 474, Figures 16-34 and 16-37. The two impairment findings were then combined for a total of 12 percent impairment of the upper right extremity. The date of maximum medical improvement was listed as April 12, 2002.

The Board finds that, under Figure 16-28, page 467 of the A.M.A., *Guides*, the 30 degrees of wrist flexion reported by Dr. Salzman corresponds to a 5 percent impairment. The reported 50 degrees of wrist extension represents a 2 percent impairment under Figure 16-28. Ulnar deviation of 20 degrees represents a 2 percent impairment under Figure 16-31. The total

² The Act provides that for a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks of compensation. 5 U.S.C. § 8107(c)(1).

³ 20 C.F.R. § 10.404 (1999).

⁴ FECA Bulletin No. 01-05 (issued January 29, 2001).

⁵ Dr. Salzman did not specifically identify the respective tables he relied upon to calculate appellant's 12 percent upper extremity impairment.

⁶ The Board notes that the medical adviser reversed Dr. Salzman's measurements for right wrist extension and flexion and their corresponding impairment ratings.

⁷ The Office medical adviser's report contains what appears to be a typographical error. On page 467 of the fifth edition of the A.M.A., *Guides*, there is no Figure 16-18 but there is a Figure 16-28, which applies to impairments due to lack of flexion and extension of the wrist joint.

combined impairment to the right wrist is nine percent. With respect to the elbow, at Figure 16-37, supination to 70 degrees represents and pronation to 30 degrees represents 3 percent impairment. Under the Combined Values Chart at page 604 of the A.M.A., *Guides*, a 9 percent impairment and a 3 percent impairment equals a total 12 percent impairment of the right upper extremity. There is no medical evidence of record from which to conclude that appellant has greater than a 12 percent impairment of the right upper extremity.

The August 5, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 7, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member