

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES A. EURICE and NATIONAL SECURITY AGENCY,
FORT GEORGE G. MEADE, MD

*Docket No. 03-215; Submitted on the Record;
Issued August 11, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a 23 percent impairment of the left upper extremity and a 19 percent impairment of the right upper extremity, for which he received a schedule award.

On May 7, 1999 appellant, then a 43-year-old environmental system control specialist, sustained multiple employment-related injuries, including bilateral wrist fractures, a skull fracture and facial fractures, when he sustained an 11 foot fall from a loading dock while at work. He stopped work that day, received appropriate compensation and returned to regular duty on October 25, 1999. On May 24, 2000 appellant filed a schedule award claim and submitted an April 20, 2000 report from his treating Board-certified orthopedic surgeon, Dr. Walter Andrew Eglseder. In a report dated December 11, 2000, an Office of Workers' Compensation Programs medical adviser reviewed Dr. Eglseder's findings.

In a decision dated January 17, 2001, appellant was granted a schedule award for a 19 percent permanent loss of use of the right upper extremity and a 23 percent permanent loss of use of the left upper extremity, for a total of 131.04 weeks of compensation, to run from April 20 to December 30, 2000. On February 9, 2001 appellant, through counsel, requested a hearing that was held on July 26, 2001. At the hearing, he testified regarding his condition and requested an increased award. He further submitted a July 30, 2001 medical report from Dr. Allan H. Macht, a Board-certified surgeon. In a report dated September 28, 2001, an Office medical adviser reviewed Dr. Macht's findings. By decision dated November 9, 2001, an Office hearing representative affirmed the January 2, 2001 decision. In letters dated January 14 and May 5, 2002 appellant, through counsel, requested reconsideration and submitted reports from Dr. Macht dated December 19, 2001 and May 2, 2002. By decision dated August 5, 2002, the Office denied modification of the prior decision. The instant appeal follows.

The Board finds that appellant is not entitled to more than a 23 percent impairment for the left upper extremity.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² 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. The Act, however, 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (hereinafter A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

The medical evidence relevant to appellant's left upper extremity includes an April 20, 2000 report, in which his treating Board-certified orthopedic surgeon, Dr. Eglseder, provided range of motion measurements demonstrating extension of 40, flexion of 40, pronation of 80, and supination of 80. Grip strength was 28 and key grip 11. In a report dated December 11, 2000, an Office medical adviser reviewed Dr. Eglseder's left upper extremity findings and utilized the fourth edition of the A.M.A., *Guides*, to find that, for lack of extension, appellant was entitled to a 4 percent impairment;⁵ for lack of flexion a 3 percent impairment;⁶ 0 impairment for lack of pronation and supination;⁷ 10 percent for lack of grip strength;⁸ 2 percent for radial deviation;⁹ and 4 percent for ulnar deviation.¹⁰ He added these values to find a total impairment of 23 percent on the left.

In a June 30, 2001 report, Dr. Macht noted that on examination appellant's left forearm was three centimeters smaller than the right. He evaluated appellant's wrist range of motion under the fifth edition of the A.M.A., *Guides*, finding that, under Figure 16-28, appellant had a five percent impairment for loss of extension and an eight percent impairment for loss of flexion. He further found that, under Figure 16-31, appellant had a 2 percent impairment for ulnar deviation of the left wrist and that, under Table 16-34, appellant was entitled to a 20 percent impairment on the left for loss of grip strength.

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.404 (1999).

³ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002). At the time of the January 17, 2001 schedule award, the Office utilized the fourth edition of the A.M.A., *Guides*. Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is to be used to calculate schedule awards. FECA Bulletin No. 01-05 (issued January 29, 2001).

⁴ *Ronald R. Kraynak*, 53 ECAB ____ (Docket No. 00-1541, issued October 2, 2001).

⁵ A.M.A., *Guides* (4th ed. 1995), Figure 26 at 3/36.

⁶ *Id.*

⁷ *Id.* at Figure 35 at 3/41.

⁸ *Id.* at Table 34 at 3/65.

⁹ *Id.* at Figure 29 at 3/38.

¹⁰ *Id.*

In a September 28, 2001 report, an Office medical adviser reviewed Dr. Macht's June 30, 2001 report and advised that he had not provided actual goniometer readings, as required by the fifth edition of the A.M.A., *Guides* and concluded that Dr. Macht did not provide objective medical evidence that would support an increase in the schedule award for appellant's left upper extremity.

By report dated December 19, 2001, Dr. Macht reiterated appellant's range of motion findings and the measurable atrophy of the left forearm. He further advised that, under section 16.c and Tables 16-11 and 16-34 of the fifth edition of the A.M.A., *Guides*, appellant had a Grade 3 impairment of the left hand and wrist due to weakness, which demonstrated a 20 percent impairment on the left. Dr. Macht again advised that appellant continued to have pain and discomfort in his hands and wrists and stated that "taking all of these factors into consideration," he utilized the fifth edition of the A.M.A., *Guides* and concluded that appellant had a 40 percent permanent impairment of the left.

Dr. Macht also provided a May 2, 2002 report, in which he advised that all range of motion measurements were made with a goniometer as directed by the fifth edition of the A.M.A., *Guides*. Regarding appellant's fingers, he stated that, "with the fractures of both wrists necessitating operative intervention[,] this has affected the muscles and tendons that go through the wrist to move the fingers of both hands." He reiterated that appellant had atrophy of the left forearm and repeated his conclusion that, under section 16.c and Tables 16-11 and 16-34 of the fifth edition of the A.M.A., *Guides*, appellant had a Grade 3 impairment of the left hand and wrist due to weakness which provided a 20 percent impairment on the left. He concluded that appellant had a 40 percent permanent impairment of the left upper extremity.

In a July 24, 2002 report, an Office medical adviser reviewed Dr. Macht's May 2, 2002 report and advised that appellant was not entitled to an increased schedule award under the fifth edition of the A.M.A., *Guides*. He stated that, in order to evaluate weakness, a specific nerve injury must be identified.

In the January 17, 2001 schedule award, which was based on Dr. Eglseder's measurements, appellant was given a four percent permanent impairment of the left wrist for loss of extension. The Board, however, notes that in his reports dated June 30 and December 19, 2001 and May 2, 2002, Dr. Macht provided range of motion measurements using a goniometer, which is compulsory under the fifth edition of the A.M.A., *Guides*. He advised that appellant lacked 30 degrees of extension on the left, which, under Figure 16-28, demonstrated a 5 percent permanent impairment.¹¹ The Board notes that while this could entitle appellant to an additional one percent, in his report dated December 11, 2000, the Office medical adviser erred in determining that appellant was entitled to a 23 percent impairment on the left. The Office medical adviser utilized the measurements reported by Dr. Eglseder on April 20, 2000; however, he added the range of motion values, which totaled 13 percent, with the lack of grip strength value of 10 percent. Section 16.8a of the A.M.A., *Guides* provides that strength values should be

¹¹ The Board notes that Figure 26 in the fourth edition, found at 3/36 and Figure 16-28 in the fifth edition of the A.M.A., *Guides*, found at 506, are essentially the same.

combined with other impairments.¹² By utilizing the Combined Values Chart,¹³ combining appellant's total of 13 percent for his range of motion deficits with the 10 percent lack of grip strength found by Dr. Eglseder would equal a 22 percent impairment, not the 23 percent that appellant received. He, therefore, has received the additional one percent he would be entitled to for one percent additional impairment due to loss of extension on the left.

Regarding the remainder of Dr. Macht's range of motion findings on the left, the Board finds that in the January 17, 2001 schedule award, the percentages of impairment for flexion, pronation, supination and radial deviation were equal to or greater than Dr. Macht's findings. Appellant would, therefore, not be entitled to a further left upper extremity award for these impairments.

Regarding loss of grip strength on the left, in the January 17, 2001 award, appellant was granted a 10 percent impairment. Dr. Macht has advised that, under section 16.8b of the fifth edition of the A.M.A., *Guides*, appellant's loss of grip strength on the left has increased to 20 percent. The fifth edition of the A.M.A., *Guides* provides, however, that loss of strength should be rated separately only if it is based on an unrelated cause or mechanism, "otherwise the impairment ratings based on objective anatomic findings take precedence."¹⁴ Moreover, Dr. Macht failed to provide the exact measurements or indicate that he had used the Jamar dynamometer, which is compulsory under section 16.8b of the A.M.A., *Guides*. Appellant would, therefore, not be entitled to an increased award for loss of grip strength on the left.

The Board finds this case is not in posture for a decision regarding appellant's right upper extremity.

The relevant medical evidence regarding appellant's right upper extremity includes an April 20, 2000 report, in which Dr. Eglseder advised that appellant had extension of 35, flexion of 55, pronation of 80 and supination of 70 with grip strength of 30 and key grip of 11. As stated previously, in a report dated December 11, 2000, an Office medical adviser reviewed Dr. Eglseder's findings under the fourth edition of the A.M.A., *Guides* and found that appellant was entitled to a 5 percent impairment for lack of extension on the right,¹⁵ a 2 percent impairment for lack of flexion¹⁶ and 0 percent impairment for lack of pronation and supination¹⁷ with 10 percent for lack of grip strength¹⁸ and 2 percent for radial deviation,¹⁹ to total a 19 percent permanent impairment on the right. As stated earlier, section 16.8a of the A.M.A.,

¹² A.M.A., *Guides* (5th ed. 2001), section 16.8a at 508.

¹³ *Id.* at 604-06.

¹⁴ *Id.*

¹⁵ A.M.A., *Guides* (4th ed.), *supra* note 5, Figure 26 at 3/36.

¹⁶ *Id.*

¹⁷ *Id.* Figure 35 at 3/41.

¹⁸ *Id.* Table 34 at 3/65.

¹⁹ *Id.* Figure 29 at 3/38.

Guides provides that strength values should be combined with other impairments²⁰ and combining appellant's range of motion deficits with his lack of grip strength on the right would total an 18 percent impairment, rather than the 19 percent that he received.

In his June 30, 2001 report, in addition to the findings reported above, Dr. Macht reported that, on the right, under Figure 16-28, appellant had a five percent impairment for loss of extension and an eight percent impairment for loss of flexion of the wrist. He further advised that under Table 16-34 appellant was entitled to a 10 percent impairment on the right for loss of grip strength and that, under Figure 16-23, appellant had a 7 percent impairment of the right little finger and a 14 percent impairment of the right middle finger because he lacked 20 and 40 degrees of extension at the middle joint respectively. Dr. Macht also advised that appellant had pain and discomfort in his hands and wrists bilaterally and noted scarring along both wrists and forearms.

The Office medical adviser, in a September 28, 2001 report, reviewed Dr. Macht's June 30, 2001 report and noted that he had not provided actual goniometer readings. The Office medical adviser further advised that a digit injury had not been accepted as employment-related and concluded that Dr. Macht did not provide objective medical evidence that would support an increased award.

Dr. Macht reiterated his findings and conclusions in a December 19, 2001 report, advising that under section 16.c and Tables 16-11 and 16-34 of the fifth edition of the A.M.A., *Guides*, appellant had a Grade 4 impairment on the right due to weakness, which demonstrated a 10 percent impairment. He noted appellant's continued pain and discomfort in his hands and wrists and concluded that appellant had a 30 percent permanent impairment of his right upper extremity. However, as stated previously, in a May 2, 2002 report, Dr. Macht advised that all range of motion measurements were made with a goniometer. Regarding appellant's fingers, he stated that, "with the fractures of both wrists necessitating operative intervention[,] this has affected the muscles and tendons that go through the wrist to move the fingers of both hands" and again advised that appellant lacked 20 degrees of extension of the right little finger and 40 degrees of extension of the right middle finger, at the middle joint respectively. Dr. Macht reiterated that appellant had a Grade 4 impairment on the right due to weakness which provided a 10 percent impairment, concluding that his total right upper extremity impairment was 30 percent.

In a July 24, 2002 report, an Office medical adviser reviewed Dr. Macht's May 2, 2002 report and advised that appellant was not entitled to an award for loss of finger motion because a finger injury was not an accepted condition and that to evaluate weakness, a specific nerve injury must be identified. As stated above regarding the left upper extremity, Dr. Macht's range of motion findings on the right, the Board finds that in the January 17, 2001 schedule award, the percentages of impairment for flexion, pronation, supination, radial deviation and loss of grip strength on the right were equal to or greater than Dr. Macht's findings. Appellant would, therefore, not be entitled to a further right upper extremity award for these impairments.

²⁰ A.M.A., *Guides* (5th ed. 2001), section 16.8a at 508.

The Board, however, finds that a conflict in medical opinion exists regarding whether appellant's right little and middle finger conditions and subsequent impairment is related to his May 7, 1999 employment injury. While the Office medical advisers opined that appellant did not have an accepted injury to his digits, Dr. Macht explained that the operative intervention to repair appellant's bilateral wrist fractures, which are employment related, "affected the muscles and tendons that go through the wrist to move the fingers of both hands" and advised that appellant lacked 20 degrees of extension of the right little finger and 40 degrees of extension of the right middle finger, at the middle joint respectively.

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.²¹ The Board finds that the opinion of Dr. Macht and that of the Office medical advisers are of approximately equal value and are in conflict on the issue of whether appellant's right digit condition and impairment were caused by his May 7, 1999 employment injury, which could entitle him to an increased schedule award.²²

Appellant also generally contends that he should be granted an increased award due to continued pain. Analysis for pain of the upper extremities under the fifth edition of the A.M.A., *Guides* can be found at section 16.5e.²³ Appellant has provided no specific medical evidence in this regard and thus would not be entitled to an increased award due to pain.

The Board will remand the case to the Office for referral to an appropriate Board-certified specialist, accompanied by a statement of accepted facts and the complete case record, for an impartial medical evaluation addressing the issue of whether the impairment of appellant's right little and middle fingers is causally related to his May 7, 1999 employment injury and subsequent treatment which could entitle him to a schedule award. After such further development as deemed necessary, the Office shall issue a *de novo* decision.

²¹ 5 U.S.C. § 8123(a); see *Richard L. Rhodes*, 50 ECAB 259 (1999).

²² The Board notes that on appeal appellant contends that he is also entitled to a schedule award for disfiguring facial and neck scars. As the Office has not rendered a final decision on this aspect of his claim.

²³ A.M.A., *Guides* (5th ed.), *supra* note 3 at 495.

The decisions of the Office of Workers' Compensation Programs dated August 5, 2002 and November 9, 2001 are hereby affirmed as modified with regard to appellant's left upper extremity and set aside and remanded to the Office for proceedings consistent with this opinion regarding his right upper extremity.

Dated, Washington, DC
August 11, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member