

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALLEN C. BLAIR and DEPARTMENT OF THE AIR FORCE,
TINKER AIR FORCE BASE, Oklahoma City, OK

*Docket No. 03-1927; Submitted on the Record;
Issued December 2, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On December 28, 2000 appellant, then a 44-year-old mechanic, filed a traumatic injury claim alleging that he injured his right arm while removing an engine mount. The Office of Workers' Compensation Programs accepted his claim for right medial epicondylitis. Appellant underwent right arm surgery on May 11, 2000 and May 8, 2001.

By decision dated December 19, 2000, the Office granted appellant a schedule award based on a five percent impairment of the right upper extremity.

In a report dated May 8, 2002, Dr. Robert S. Unsell, an orthopedic surgeon specializing in hand surgery, provided findings on examination. Measuring range of motion, for the right elbow he found 10 degrees of extension, 131 degrees of flexion, 90 degrees of pronation, and 85 degrees of supination. For the right wrist, Dr. Unsell found 59 degrees of flexion, 42 degrees of extension, 23 degrees of ulnar deviation, and 18 degrees of radial deviation. He reported grip strength measurements of 6, 8, 12, 11, and 9 with a coefficient of variance of 15 and noted that "a coefficient of variance greater than 10 is suggestive that a submaximal effort is being exerted." Dr. Unsell stated:

"[Appellant] has a well healed carpal tunnel scar, negative Tinel's over his carpal tunnel scar, negative Phalen's, negative carpal tunnel compression. He has marked hyperhidrosis [perspiration], especially in his ulnar nerve distribution, somewhat in all of his hand... He has no tropic changes, no intrinsic atrophy. He has negative Wartenberg, Gene and Froment signs. He has absolutely no tenderness over his tennis elbow scar. Resistive wrist extension is negative. He has no tenderness over his radial tunnel or pronator teres. He had negative Tinel's over his cubital tunnel. His ulnar nerve is completely asymptomatic."

* * *

“As prepared by the A.M.A., *Guides...*, Fifth Edition, wrist extension of 42 degrees impairs the wrist 4 [percent], wrist ulnar deviation of 23 degrees impairs the wrist 1 [percent], adding flexion and extension is 4 [percent], radial ulnar deviation 1 [percent] yields a 5 [percent] impairment to the hand. Elbow flexion of 131 degrees impairs the elbow 1 [percent], elbow extension of 10 degrees impairs the elbow 1 [percent]. Grip strength of 8.7 and a normal grip strength of 49.9 contribute 30 [percent] impairment to the upper extremity. With a coefficient of variance of 15 [percent] this 30 [percent] impairment will be cut in half to 15 [percent] upper extremity impairment. Combining the wrist of 5 [percent] and the elbow of 2 [percent] yields a 7 [percent] upper extremity impairment. Combining the 7 [percent] impairment to the upper extremity for loss of motion with the 15 [percent] from the upper extremity for loss of strength yields 21 [percent] upper extremity impairment.”

In a report dated November 6, 2002, Dr. Ronald H. Blum, the Office’s district medical adviser, determined that appellant had a five percent permanent impairment of the right upper extremity based on the findings in Dr. Unsell’s report. He found that appellant had a 1 percent impairment of the right elbow for decreased range of motion that included a 1 percent impairment for 131 degrees of flexion and a 1 percent impairment for 10 degrees of extension according to Figure 16-34 at page 472 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Dr. Blum found that appellant had a 5 percent impairment of the right wrist for decreased range of motion that included a 4 percent impairment for 42 degrees of extension and a 1 percent impairment for 23 degrees of ulnar deviation according to Figures 16-28 and 16-31, respectively, at pages 467-69. He stated:

“Dr. Unsell notes decreased grip strength on the right averaging 11 [kilograms]. He notes a coefficient of variation of 15 and states that a coefficient of variation greater than 10 is suggestive that submaximal effort is being exerted. The [A.M.A.] *Guides* states that, ‘if there is evidence that the individual is exerting less than maximal effort, the grip strength measurements are invalid for estimating impairment’ (page 509, column 1). It is for this reason I am unable to include grip strength in determining impairment.

Combining 5 [percent] and 2 [percent] yields 7 [percent].

Permanent impairment of the [right upper extremity] is 7 [percent].”

By decision dated November 27, 2002, the Office granted appellant an additional schedule award based on a two percent impairment of the right upper extremity.

In an undated letter received by the Office on March 5, 2003, appellant requested a review of the written record.

By decision dated June 20, 2003, the Office hearing representative affirmed the Office’s November 27, 2002 decision on the grounds that the evidence did not establish that appellant had more than a seven percent impairment of the right upper extremity.

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

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. 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.³

In this case, Dr. Unsell provided findings on examination and found that appellant had a seven percent impairment of the right upper extremity for decreased range of motion of the right elbow and hand according to the fifth edition of the A.M.A., *Guides*. Dr. Blum correctly applied Dr. Unsell's findings to the appropriate sections of the A.M.A., *Guides* and concurred with Dr. Unsell's determination of a seven percent impairment based on range of motion. Dr. Unsell also indicated that appellant had a 15 percent impairment due to reduced grip strength. However, Dr. Blum correctly noted that the A.M.A., *Guides* states that grip strength measurements are invalid for estimating impairment if there is evidence that the individual is exerting less than maximal effort. Dr. Unsell indicated that appellant's grip strength measurements indicated less than maximal effort. Therefore, Dr. Blum properly excluded the grip strength component of Dr. Unsell's impairment rating. Moreover, the A.M.A., *Guides* at 16.8a, page 508, provide that in rare cases if the medical examiner believes loss of strength represents an impairment not considered adequate by the other methods of the A.M.A., *Guides*, loss of strength may be rated separately. However, decreased strength cannot be rated in the presence of decreased motion. Dr. Unsell did not explain why he made a loss of strength rating using grip strength in light of the A.M.A., *Guides* principle that such rating cannot be made because of the decreased range of motion findings. As appellant had previously been granted a schedule award for a five percent impairment of the right upper extremity, the Office properly granted him an additional schedule award of two percent.

There is no medical evidence of record, based on correct application of the A.M.A., *Guides*, establishing that appellant has more than a seven percent permanent impairment of the right upper extremity for which he received a schedule award.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ *Id.*

The decisions of the Office of Workers' Compensation Programs dated June 20, 2003 and November 27, 2002 are affirmed.

Dated, Washington, DC
December 2, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member