

January 16, 2001. The Office accepted that appellant sustained bilateral ulnar nerve entrapment, de Quervain's disease of the right upper extremity and tenosynovitis of the left hand and wrist. In May and July 2001, appellant underwent surgical procedures, which included shortening of both ulna bones, debridement of his right wrist joint and debridement of partial scapholunate tears and triangular fibrocartilagenous cartilage complex tears in both wrists.¹

In August 2002, appellant filed a claim alleging entitlement to schedule award compensation for both arms. By decision dated October 25, 2002, the Office denied his claim on the grounds that the medical evidence did not show permanent impairment of his upper extremities; on November 22, 2002 the Office reissued its October 25, 2002 decision. The Office based its determination on the district medical adviser's evaluation of an examination performed by Dr. Vermon S. Esplin, an attending Board-certified orthopedic surgeon. In his June 25, 2002 report, Dr. Esplin stated that appellant had a 3 percent impairment rating due to limited motion, which was derived from a 1 percent rating for 60 degrees of supination on the right, a 1 percent rating for 60 degrees of pronation on the right and a 1 percent rating for 70 degrees of pronation on the left.² He indicated that grip strength testing showed a "28 percent strength loss index" and a 10 percent impairment of the right upper extremity.³ Dr. Esplin stated:

"Using the [C]ombined [V]alues [C]harts, combining the 3 percent from the motion and the 10 percent from the loss of strength, this corresponds to 30 percent upper extremity impairment and using Table 16-3, 30 percent upper extremity corresponds to 8 percent whole person impairment."

In his October 13, 2002 report, Dr. Hugh Macaulay, a Board-certified orthopedic surgeon, who served as a district medical adviser, stated that appellant had zero percent impairment of range of motion of each wrist; that limitation upon elbow pronation and supination should not be included in the impairment rating because an employment-related elbow condition had not been accepted; and that the loss of strength was due to surgery and should not be included unless it was caused by an employment injury. The record reveals that, in late November 2002, the Office requested that Dr. Macaulay clarify his impairment rating opinion.⁴ The record does not contain any response by Dr. Macaulay to this request.

By decision dated and finalized March 31, 2003, an Office hearing representative set aside the Office's November 22, 2002 decision and remanded the case to the Office for further development. The hearing representative determined that the Office did not provide the district

¹ In April 2002, appellant had surgical hardware removed from both wrists. These surgical procedures were authorized by the Office.

² See A.M.A., *Guides* 467, 469, 474, Figures 16-28, 16-31 and 16-37. Dr. Esplin reported the following findings for wrist motion -- right extension of 60 degrees, right flexion of 65, right ulnar deviation of 40, right radial deviation of 20, left extension of 60, left flexion of 65, left ulnar deviation of 45 and left radial deviation of 20. He reported the following findings for elbow motion -- right pronation of 60 degrees, right supination of 60, left pronation of 70 and left supination of 70.

³ See A.M.A., *Guides* 509, Tables 16-31 to 16-34.

⁴ The record does not contain any response by Dr. Macaulay to this request.

medical adviser with an appropriate and accurate factual background on which to base his opinion.⁵ She also noted that the district medical adviser was asked to provide adequate rationale in support of his conclusions and did not respond to the Office's request to provide clarification of his opinion. The hearing representative directed the Office to provide a district medical adviser with an appropriate and accurate factual background and direct him to provide an opinion supported by specific references to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, regarding appellant's upper extremity impairment.

On remand the Office sent Dr. Macaulay a new statement of accepted facts and asked him to provide another opinion on the extent of appellant's upper extremity impairment. In a report dated April 28, 2003, Dr. Macaulay again concluded that appellant did not have any permanent impairment of his upper extremities. He indicated that the record did not show appellant had an employment-related elbow condition and, therefore, any impairment related to the elbows could not be included in an impairment rating. Dr. Macaulay stated that it was not appropriate in the present case to include limitations on grip strength testing in an impairment rating.

The Office determined that there was a conflict in the medical evidence regarding appellant's upper extremity impairment between Dr. Esplin and Dr. Macaulay and referred appellant and the case record to Dr. Robert P. Hanson, Jr., a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter. In a report dated July 8, 2003, he detailed the findings of his examination of appellant's upper extremities. Dr. Hanson reported the following findings for wrist motion -- right extension of 50 degrees, right flexion of 52, right ulnar deviation of 30, right radial deviation of 20, left extension of 48, left flexion of 55, left ulnar deviation of 30 and left radial deviation of 20. Dr. Hanson stated: "I believe that [appellant's] elbow problems are not related to the work injury, therefore, there would be a [zero percent] impairment." He concluded that a four percent permanent impairment of his right arm and a three percent permanent impairment of his left arm. Dr. Macaulay reviewed the findings of Dr. Hanson and, in a report dated July 21, 2003, determined that appellant had a four percent permanent impairment of his right arm and a three percent permanent impairment of his left arm due to limited wrist motion.

By decision dated July 25, 2003, the Office granted appellant a schedule award for a four percent permanent impairment of his right arm and a three percent permanent impairment of his left arm. The award ran for 21.84 weeks from October 17, 2002 to March 18, 2003.

⁵ For example, the hearing representative noted that the Office did not advise the district medical adviser of the accepted employment injuries or adequately identify the specific impairments to be rated.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act⁶ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,⁷ including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.⁸

The schedule award provision of the Act⁹ and its implementing regulation¹⁰ 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.¹¹

ANALYSIS

In the present case, appellant claimed that he was entitled to a schedule award for permanent impairment of his upper extremities.¹² The Office determined that there was a conflict in the medical evidence regarding appellant's upper extremity impairment between Dr. Esplin, an attending Board-certified orthopedic surgeon, and Dr. Macaulay, the Board-certified orthopedic surgeon, who served as a district medical adviser for the Office.¹³ In his October 13, 2002 and April 28, 2003 reports, Dr. Macaulay concluded that appellant had a zero percent impairment of each upper extremity.¹⁴ In his June 25, 2002 report, Dr. Esplin stated that

⁶ 5 U.S.C. § 8101-8193.

⁷ *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

⁸ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ 5 U.S.C. § 8107.

¹⁰ 20 C.F.R. § 10.404 (1999).

¹¹ *Id.*

¹² The Office accepted that appellant sustained bilateral ulnar nerve entrapment, de Quervain's disease of the right upper extremity and tenosynovitis of the left hand and wrist and approved surgeries including shortening of both ulna bones, debridement of his right wrist joint and debridement of partial scapholunate tears and triangular fibrocartilagenous cartilage complex tears in both wrists.

¹³ Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence. *William C. Bush*, 40 ECAB 1064, 1975 (1989); 5 U.S.C. § 8123(a).

¹⁴ Dr. Macaulay indicated that wrist pronation and supination should not be included in the impairment, rating because an employment-related elbow condition had not been accepted.

appellant had a 1 percent impairment rating for 60 degrees of supination on the right, a 1 percent rating for 60 degrees of pronation on the right and a 1 percent rating for 70 degrees of pronation on the left.¹⁵ To resolve the conflict, the Office properly referred appellant and the case record to Dr. Robert P. Hanson, Jr., a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter. In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁶

In his July 8, 2003 report, Dr. Hanson properly analyzed appellant's limited wrist motion to determine that he had a four percent permanent impairment of his right arm and a three percent permanent impairment of his left arm based on these particular limitations. Application of the relevant standards of the A.M.A., *Guides* to the examination findings shows that appellant had a 2 percent impairment due to right extension of 50 degrees, a 2 percent impairment due a right flexion of 52 (for a total of 4 percent on the right), a 2 percent impairment due to left extension of 48 and a 1 percent impairment due to left flexion of 55.¹⁷ Dr. Macaulay reviewed the findings of Dr. Hanson and, in a report dated July 21, 2003, determined that appellant had a four percent permanent impairment of his right arm and a three percent permanent impairment of his left arm due to limited wrist motion.

However, both Dr. Hanson and Dr. Macaulay applied an improper standard when they categorically stated that limitations of appellant's elbow motion could not be included in the calculations of his upper extremity impairment. It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.¹⁸ The Board has carefully reviewed the medical record and finds that there is nothing in the record to show that appellant's problems with his elbows did not constitute preexisting conditions. Moreover, the record contains some evidence which suggests that appellant exhibited limitation of elbow motion.¹⁹ Therefore, it appears that the assessment of the impairment of appellant's upper

¹⁵ Dr. Esplin ultimately concluded that appellant had a total 30 percent impairment rating after he added a rating for weakness upon grip strength testing to the ratings for limited elbow motion. The A.M.A., *Guides* specifically provides that strength deficits, as measured by grip testing, should only rarely be included in the calculation of an upper extremity impairment and the facts do not support the inclusion of a loss of strength impairment rating in the present case. A.M.A., *Guides* 508, section 16.8a. Therefore, appellant's assertion on appeal that Dr. Esplin's report supports a 30 percent impairment rating is not justified. It should be further noted that Dr. Esplin did not clearly indicate that the strength rating applied equally to both extremities and he made additional calculation errors when he added the rating figures for motion and strength limitations.

¹⁶ *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

¹⁷ See A.M.A., *Guides* 467, Figure 16-28. The other findings, including those for ulnar deviation and radial deviation, did not produce any impairment ratings. *Id.* at 467, Figure 16-37.

¹⁸ See *Dale B. Larson*, 41 ECAB 481,490 (1990); *Pedro M DeLeon, Jr.*, 35 ECAB 487, 492 (1983).

¹⁹ In his June 25, 2002 report, Dr. Esplin stated that appellant had a 1 percent impairment rating for 60 degrees of supination on the right, a 1 percent rating for 60 degrees of pronation on the right and a 1 percent rating for 70 degrees of pronation on the left. See A.M.A., *Guides* 474, Figures 16-37.

extremities is incomplete and the evaluation of Dr. Hanson, as affirmed by Dr. Macaulay, is not sufficiently well rationalized to constitute the weight of the medical evidence. The case shall be remanded to the Office for referral of appellant to another impartial medical specialist for a complete evaluation of his upper extremity impairment to be followed by an appropriate decision on this matter.

CONCLUSION

The Board finds that the case is not in posture for a decision regarding whether appellant met his burden of proof to establish that he has more than a four percent permanent impairment of his right arm and a three percent permanent impairment of his left arm, for which he received a schedule award. The case is remanded to the Office for further proceedings to be followed by an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for proceedings consistent with this decision of the Board.²⁰

Issued: December 15, 2003
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

²⁰ Appellant submitted additional evidence after the Office's July 25, 2003 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).