

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL T. SACKEL and DEPARTMENT OF THE TREASURY,
U.S. SECRET SERVICE, Washington, DC

*Docket No. 03-899; Submitted on the Record;
Issued July 15, 2003*

DECISION and ORDER

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

The issue is whether appellant is entitled to an additional schedule award.

The Office of Workers' Compensation Programs accepted appellant's claim for recurrence of left elbow fracture, traumatic arthritis and left elbow loose bodies and spurs. On March 1, 1988 the Office granted appellant a schedule award for six percent impairment of the left arm. On April 25, 2002 appellant underwent an arthrotomy on his left elbow with removal of a loose body and osteoarthritic spur. On October 22, 2002 appellant filed a claim for an additional schedule award.

In a report dated October 4, 2002, appellant's treating physician, Dr. Terry J. Wintory, an osteopath, noted that it was four months postoperative that appellant had let up on his exercise and the elbow had become sore again. On physical examination he found that appellant had a 38 degree loss of arc motion. In a progress note dated October 4, 2002, Dr. Wintory stated that appellant's motion was -31 extension to 125 degrees flexion and he had normal pronation but only 45 degrees supination. He indicated that the 125 degrees flexion equaled a 2 degree impairment and the -31 degree extension equaled a 3 percent impairment and, therefore, appellant had a total permanent impairment to his upper extremity of 5 percent pursuant to the (fifth edition 2001) of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Dr. Wintory stated that appellant reached maximum medical improvement. He stated that the only impairment factors were flexion, extension and supination.

In a report dated January 20, 2003, the Office medical adviser reviewed Dr. Wintory's October 4, 2002 report and applied the (5th ed. 2001) A.M.A., *Guides* to determine that appellant had a five percent permanent impairment to his elbow. He used Figure 16-34, page 472, to determine that appellant's flexion of 125 degrees equaled a 2 percent impairment and his extension of -31 degrees equaled a 3 percent impairment and that appellant's total permanent impairment was 5 percent. The Office medical adviser found that appellant had no impairment for supination and pronation.

By decision dated February 6, 2003, the Office found that appellant was not entitled to a schedule award. The Office noted that appellant had previously been issued a schedule award for five percent (actually, six percent) for his elbow and that the Office medical adviser's impairment rating of five percent did not show that appellant was entitled to an additional schedule award.

The Board finds that the case is not in posture for decision.

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

The Office medical adviser reviewed the measurements for flexion of 125 degrees and for extension of -31 degrees as found by appellant's treating physician, Dr. Wintory. The Office medical adviser applied the (5th ed. 2001) of the A.M.A., *Guides*, Figure 16-14, page 472 and determined that the 125 degrees flexion resulted in a 2 percent impairment and the -31 degrees extension resulted in a 3 percent impairment and that appellant's total permanent impairment was 5 percent. Dr. Wintory, however, found that appellant had 45 degrees supination. The Office medical adviser found that appellant had no impairment due to supination but did not adequately address how a 45 degree range of supination did not result in additional impairment pursuant to the (5th ed. 2001) A.M.A., *Guides*, Figure 16-36, page 474. The case should, therefore, be remanded for Dr. Wintory to assess the degree of impairment, if any, due to appellant's supination. If Dr. Wintory is unavailable, the case should be referred to another appropriate medical specialist for a complete assessment of the degree of appellant's impairment. Following further development that it deems necessary, the Office should issue a *de novo* decision.

¹ 5 U.S.C. § 8107 *et seq.*

² 20 C.F.R. § 10.404.

³ *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 306, 308 (1986).

The February 6, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision.

Dated, Washington, DC
July 15, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member