

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT H. LEWIS and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 03-193; Submitted on the Record;
Issued October 1, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has an impairment of the upper extremities causally related to his accepted injuries.

On October 11, 1998 appellant, then a 55-year-old pipe fitter, filed a claim for an occupational disease, alleging that, on May 29, 1998, he first became aware that his tendinitis was causally related to his employment.

By letter dated October 28, 1998, the Office of Workers' Compensation Programs accepted appellant's claim for bilateral epicondylitis and subsequently paid appropriate benefits. On April 3, 2000 appellant filed a claim for a schedule award.

In a report dated May 15, 2000, Dr. William J. Stump, appellant's treating physician, Board-certified in psychiatry and neurology, noted a familiarization with appellant's history of injury and reported findings. He advised that appellant's neurological examination revealed no weakness to confrontation testing, but that he noted complaints of pain over the lateral elbow region with supination, pronation and wrist extension. No focal weakness was identified. Grip assessment on the right was 65 pounds, 80 pounds and 85 pounds. Left grip assessment was 81 pounds, 66 pounds and 84 pounds. He stated that appellant had pain and altered sensation over the lateral elbow region, but that he did not demonstrate atrophy, deformity, loss of strength or sensitivity to heat or cold. Dr. Stump found that appellant had no ratable impairment based on the A.M.A., *Guides*. In a report dated June 20, 2000, an Office medical adviser determined that appellant had no ratable impairment of his right or left arm, and that the date of maximum medical improvement was May 15, 2000.

By decision dated November 3, 2000, the Office denied appellant's claim for a schedule award of his arms. On November 15, 2000 appellant requested an oral hearing. A hearing was held on April 26, 2001. By decision issued and finalized on July 10, 2001, the hearing representative affirmed the Office's November 3, 2000 decision.

By letter dated December 6, 2001, appellant, through his representative, requested reconsideration. In a report dated November 21, 2001, Dr. Guy H. Earl, appellant's treating physician, Board-certified in family practice, advised that appellant had a ratable impairment based on loss of grip strength of the upper extremity. He noted that "using Table 16-32 the expected right hand strength for his age group is 45.9 kg [kilogram]. This produces a strength loss index of 34 percent, using 30.2 kg average determined by testing. On the left side the expected grip strength is 43.5 kg, and this produces a 41 percent strength loss using the 25.5 kg grip strength determined by testing."¹ He added that Table 16-34 shows that appellant's strength loss is equivalent to a 20 percent upper extremity impairment bilaterally due to residuals of the accepted injury.²

In a decision dated April 5, 2002, the Office denied modification of its July 10, 2001 decision.

The Board finds that appellant has not established a ratable impairment of the upper extremities causally related to his accepted injuries.

The schedule award provisions of the Act³ and its implementing regulation⁴ 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.⁵

In the instant case, the Office determined that appellant had not established a ratable impairment by adopting the findings of the Office medical adviser, who determined the impairment rating by taking Dr. Stump's findings that appellant's neurological examination revealed no weakness to confrontation testing, no focal weakness was identified, and that appellant did not demonstrate atrophy, deformity, loss of strength or sensitivity to heat or cold.

Dr. Earl's findings of impairment were based on grip strength. However, the standards enunciated in the A.M.A., *Guides* discourage the use of strength measurements in determining

¹ A.M.A., *Guides* (5th ed. 2001) 509, Table 16-32.

² *Id.* at 509, Table 16-34.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ *Id.*

impairments. Section 16.8 of the A.M.A., *Guides* under the heading “Strength Evaluation” states:

“Because strength measurements are functional tests influenced by subjective factors that are difficult to control and the [A.M.A.,] *Guides* for the most part is based on anatomic impairment, the [A.M.A.,] *Guides* does not assign a large role to such measurements. Those who have contributed to the [A.M.A.,] *Guides* believe further research is needed before loss of grip and pinch strength is given a larger role in impairment evaluation.”⁶

In section 16.8a, the A.M.A., *Guides* note: “In a rare case, if the examiner believes the individual’s loss of strength represents an impairing factor that has not been considered adequately by other methods in the A.M.A., *Guides*, the loss of strength may be rated separately.”⁷ In this case, Dr. Stump, an attending physician, found no weakness and no loss of strength. While noting grip strength measurements, he found no permanent impairment related to the accepted injury. The medical adviser reviewed the report, concurred and the claim for schedule award was denied.

The Board finds that appellant has not established a ratable impairment of his upper extremities, as the weight of the medical evidence rests with the report provided by Dr. Stump, which supports that appellant had no impairment to the upper extremities and based that opinion on the applicable tables of the A.M.A., *Guides*. As appellant has not provided evidence to outweigh or to create a conflict with the report of Dr. Stump, the Board finds that appellant has not demonstrated entitlement to a schedule award for an impairment of his upper extremities.

⁶ A.M.A., *Guides* 507.

⁷ *Id.* at 508.

The decision of the Office of Workers' Compensation Programs dated April 5, 2002 is affirmed.

Dated, Washington, DC
October 1, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member