

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL KURZENDOERFER and U.S. POSTAL SERVICE,
POST OFFICE, Evansville, IN

*Docket No. 03-1818; Submitted on the Record;
Issued October 21, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 10 percent permanent impairment of the left upper extremity, for which he has received a schedule award.

On December 29, 2000 appellant, then a 49-year-old letter carrier, was struck by an automobile while delivering mail and sustained multiple injuries to his body. The Office of Workers' Compensation Programs accepted the claim for liver hematoma/contusion, spleen hematoma/contusion, right pneumothorax trauma, skull fracture, concussion and left wrist fracture. Appellant stopped work on December 29, 2000 and returned to light duty on June 12, 2001 and regular duty on July 3, 2001. Appropriate benefits were paid.

Appellant submitted a report from Dr. Paul Perry, a Board-certified orthopedist, dated June 12, 2001, which advised that appellant achieved maximum medical improvement and noted that appellant had functional deficits of the left upper extremity of 16 percent in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (A.M.A., *Guides*) and specifically noted that appellant had loss of motion in the shoulder, forearm, hand and loss of grip strength.

On June 7, 2001 appellant filed a claim for a schedule award.

On February 5, 2002 the Office referred appellant to Dr. James E. Goris, a Board-certified orthopedic surgeon for an impairment rating in accordance with the A.M.A., *Guides*. In a report dated March 19, 2002, Dr. Goris noted findings upon physical examination of dorsiflexion of 35 degrees, palmar flexion of 50 degrees, radial deviation of 20 degrees, ulnar deviation of 15 degrees and pronation and supination were near normal. He noted that appellant was unable to perform a strong fist grip, which was consistent with his inability to fully extend his wrists. The physician concluded that appellant's impairment rating for loss of motion from his wrist extension was 5 percent, flexion was 2 percent, radial deviation was 0 percent, ulnar deviation was 3 percent and grip weakness was 10 percent. Dr. Goris noted that by using the

Combined Values Chart appellant sustained a 20 percent permanent impairment of the left upper extremity.

The Office referred appellant's case record and Dr. Goris' report to the Office's medical adviser who determined in accordance with the A.M.A., *Guides* that appellant sustained a 10 percent impairment of the left upper extremity. He noted that decreased strength could not be rated in the presence of decreased motion, painful conditions, deformities or absence of parts and, therefore, permanent impairment should be calculated based solely on the decreased range of motion.

In a decision dated May 14, 2002, the Office granted appellant a schedule award for a 10 percent permanent impairment of the left upper extremity for the period of March 1 to October 5, 2002.

Appellant requested a hearing which was held on March 27, 2003. Appellant submitted a April 24, 2003 report from Dr. Perry, who noted findings on physical examination of flexion of the left wrist of 30 degrees; dorsiflexion of 20 degrees; ulnar deviation of 10 degrees; radial deviation of 10 degrees; and decreased grip strength of 25 percent. He indicated in accordance with the A.M.A., *Guides*, appellant had a 15 percent upper extremity impairment for loss of wrist motion and a 5 percent left upper extremity impairment for loss of grip strength for a total of 20 percent permanent impairment of the left upper extremity.

In a decision dated June 20, 2003, the hearing representative affirmed the May 14, 2002 decision.

The Board finds that this case is not in posture for decision regarding appellant's entitlement to a schedule award.

The schedule award provision 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.

The Board has carefully reviewed Dr. Goris' report dated March 19, 2002, which determined appellant's left upper extremity impairment and notes that Dr. Goris did not adequately explain how his determination was reached in accordance with the relevant A.M.A., *Guides*.³ Specifically, Dr. Goris did not reveal his calculations for the rating including the percentage of impairment of the upper left extremity using the A.M.A., *Guides*. The Board has

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

determined that a medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value.⁴ The Board finds that Dr. Goris did not properly follow the procedures as set forth in the A.M.A., *Guides*.⁵

However, the Board notes that Dr. Perry's report of April 24, 2003, which determined a permanent impairment of 15 percent of the left upper extremity was never considered by the Office medical adviser. The record reveals that the medical adviser based his impairment rating on Dr. Goris' report of March 19, 2002, without having an opportunity to review the most recent report from Dr. Perry, which evaluated appellant's left upper extremity impairment and, which set forth an impairment rating of 15 percent, which was greater than the rating granted by the Office. The Board finds that the medical adviser should have had an opportunity to evaluate this report to determine whether appellant was entitled to an impairment rating of 15 percent permanent impairment.

In view of the disparity in the evaluations and the fact that Dr. Perry's report was never evaluated by the medical adviser, the Office should refer Dr. Perry's report of April 24, 2003 to an Office medical adviser to determine whether appellant had greater than a 10 percent ratable impairment of the left upper extremity.⁶

Proceedings under the Act are not adversary in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁷ Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.

Therefore, the Board finds that the case must be remanded to the Office for referral of the matter to an Office medical adviser, consistent with Office procedures, to determine whether appellant sustained any permanent impairment greater than 10 percent of the left upper extremity in accordance with the A.M.A., *Guides*. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's schedule award claim.

⁴ See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (an attending physician's report is of little probative value where the A.M.A., *Guides* were not properly followed); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

⁵ *Id.*

⁶ See Federal (FECA) Procedure Manual, 2.808.6(d) (March 1995) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

⁷ *John W. Butler*, 39 ECAB 852 (1988).

The decisions of the Office of Workers' Compensation Programs dated June 20, 2003 and May 14, 2002 are hereby set aside and the case is remanded for further development in accordance with this decision of the Board.

Dated, Washington, DC
October 21, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member