

**United States Department of Labor
Employees' Compensation Appeals Board**

DAVID G. GROVER, Appellant

and

**DEPARTMENT OF THE AIR FORCE, HILL
AIR FORCE BASE, Layton, UT, Employer**

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**Docket No. 04-328
Issued: April 16, 2004**

Appearances:
David G. Grover, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 19, 2003 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs dated November 5, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award.

ISSUE

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

FACTUAL HISTORY

On December 12, 2000 appellant, then a 63-year-old aircraft mechanic, filed an occupational disease claim for his left tennis elbow condition. He stated that he first realized that his left arm condition and loss of strength in his left hand was caused or aggravated by his employment on June 21, 2000. The Office accepted the claim for left lateral epicondylitis. Appellant was treated with medications and physical therapy. He retired from the employing establishment on January 24, 2003.

On January 14, 2003 appellant filed a Form CA-7 claim for a schedule award.

By letter dated April 7, 2003, the Office requested that appellant contact his treating physician for an appointment to determine the extent of impairment to the left upper extremity due to the employment injury. The Office further provided a series of questions for the physician to fill out to assist in impairment rating purposes.

In a June 6, 2003 report, Dr. Jeffrey G. Randle, Board-certified in physical medicine and rehabilitation, noted the history of injury, appellant's complaints and his examination findings on June 4, 2003 which included measurements of flexion, extension and supination. Dr. Randle stated that appellant appeared to have adequate ulnar and radial deviation at the wrist without significant pain. Appellant was also noted to have adequate and symmetric contralateral side wrist flexion and extension. Pinprick sensation was subjectively diminished over the distal forearm, approximately 10 centimeters (cm) proximal to the wrist, in an area about 3 cm by 5 cm in length. Appellant was noted to be able to distinguish sharp/dull over all digits, both dorsally and over the palmar surface, as well as over the extensor surface of the forearm. Strength was 5/5 in the bilateral finger flexors, interossei, wrist extensors, biceps, triceps and deltoids. Reflexes were 1+ in the biceps, triceps and brachioradialis muscles. No atrophy was noted about the muscles of the elbow or forearm, but mild tenderness was reported to palpation over the distal extensor forearm. Mild pain was reported with resisted wrist extension with no tenderness to palpations over the elbow joint itself or pain with flexion and extension. Complaints of pain around the olecranon were noted when appellant's elbow was in flexion. Dr. Randle advised that he had reached maximum medical improvement and no further physical therapy was required. He then determined appellant's impairment rating under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Utilizing Table 16-10, page 482 of the A.M.A., *Guides*, the physician assessed a 10 percent sensory deficit as appellant had a mild sensory deficit over the posterior antebrachial cutaneous nerve and only a subjective feeling of decreased strength in finger flexion. He stated that equaled a 0.5 sensory percent impairment of the upper extremity. Utilizing Figure 16-34 on page 472 of the A.M.A., *Guides*, 120 degrees of elbow flexion equaled a 2 percent motion impairment of the upper extremity. Dr. Randle added to the 0.5 percent sensory impairment with the 2 percent motion impairment to find that appellant had a 3 percent upper extremity impairment.

In a letter dated October 8, 2003, the Office requested that its Office medical adviser review appellant's record and provide an opinion as to the percent of impairment of the accepted condition. In an unsigned, undated "[Office] Schedule Award (SA) Worksheet," various calculations and references to the A.M.A., *Guides* were provided and a three percent left upper extremity impairment was assessed.

By decision dated November 5, 2003, the Office issued a schedule award for a three percent permanent impairment of the left arm. The period of the award was from June 4 through August 8, 2003.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing federal regulation,² 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³ Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁴

ANALYSIS

In this case, the only evidence of record is a June 6, 2003 report from Dr. Randle providing a three percent upper extremity impairment.

Dr. Randle reported that appellant had a 10 percent sensory deficit and a 2 percent motor deficit of the posterior antebrachial cutaneous nerve. Table 16-10, page 482, of the A.M.A., *Guides* sets forth the procedure for determining impairment of the upper extremity due to sensory deficits or pain resulting from peripheral nerve disorders.⁵ The identified nerve structure innervating the area of involvement is the radial nerve at the midforearm. Dr. Randle used his clinical judgment and applied a Grade 4 or distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity, to appellant's level of pain and, from a range of 1 to 25 percent, attributed a 10 percent value to appellant's sensory deficit.⁶ The maximum upper extremity impairment due to sensory deficit or pain for the radial nerve at the elbow sparing of triceps equates to a 5 percent sensory deficit.⁷ A 10 percent sensory deficit, as graded by Dr. Randle, would, therefore, impair the upper extremity by 0.5 percent ($.10 \times .05 = .005$, which is rounded to 0.5 percent).

Table 16-11, page 484, of the A.M.A., *Guides* sets forth the procedure for determining impairment of the upper extremity due to motor deficits or pain resulting from peripheral nerve disorders.⁸ However, Dr. Randle found that appellant only had a subjective feeling of decreased strength in finger flexion and did not attribute any impairment value to this category.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ 20 C.F.R. § 10.404(a).

⁴ See FECA Bulletin No. 01-5 (issued January 29, 2001).

⁵ A.M.A., *Guides* 482, Table 16-10 (5th ed. 2001).

⁶ *Id.* at 482, Table 16-10.

⁷ *Id.* at 492, Table 16-15.

⁸ *Id.* at 494, Table 16-11.

Figure 16-34, page 472 of the A.M.A., *Guides* sets forth a pie chart of upper extremity motion impairments due to lack of flexion and extension of the elbow joint.⁹ Dr. Randle properly applied the values to find that 120 degrees of elbow flexion equated to a 2 percent impairment due to loss of flexion.

The 0.5 percent impairment of the left upper extremity due to the sensory deficit of the radial nerve combines with the 2 percent impairment due to loss of flexion for a total left upper extremity impairment value of 3 percent (0.5 plus 2.0 = 2.5, which is rounded up to 3 percent). The Board notes that the record does not contain any evidence that appellant has more than a three percent upper extremity impairment.

CONCLUSION

The Board finds that there is no evidence of record that appellant has more than a three percent upper extremity impairment.

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ *Id.* at 472, Figure 16-34.