

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

<hr/>)	
JOHN DIETRICH, Appellant)	
)	
and)	Docket No. 04-448
)	Issued: August 4, 2004
DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE, YSLETA PORT OF ENTRY, El Paso, TX, Employer)	
<hr/>)	

Appearances:
John Dietrich, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On December 9, 2003 appellant timely appealed from an October 23, 2003 decision by the Office of Workers' Compensation Programs who found that appellant had an eight percent permanent impairment of the left arm. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant had more than an eight percent permanent impairment of the left arm for which he received a schedule award.

FACTUAL HISTORY

On August 21, 2002 appellant, then a 55-year-old immigration inspector, was engaged in baton training when he fell backwards and broke his fall with his left arm. In an August 23, 2002 report, Dr. Joseph Neustein, a Board-certified orthopedic surgeon, stated that appellant had sustained a fracture of the left distal radius. Appellant underwent surgery on August 27, 2002 for

a closed reduction of the fracture with application of an external fixator. In a September 11, 2002 letter, the Office accepted appellant's claim for left radial styloid tenosynovitis of the wrist. The external fixator was subsequently removed in an October 10, 2002 operation.

In a November 26, 2002 report, Dr. Neustein indicated that appellant had 60 degrees of dorsiflexion and 45 degrees of volar flexion in the left wrist. He reported that appellant had 80 degrees of pronation and 15 degrees of ulnar deviation. He gave two measurements for supination, 45 degrees and 30 degrees. In a December 2, 2002 report, Dr. Neustein stated that appellant had a 20 percent permanent impairment of the radiocarpal joint secondary to post-traumatic arthrosis due to chondrolysis. He indicated that appellant had an additional two percent permanent impairment due to loss of supination, a three percent permanent impairment due to loss of volar flexion and a four percent loss due to loss of ulnar deviation. He concluded that appellant had a total permanent impairment of 29 percent. Dr. Neustein noted that the calculations were based on the fifth edition of the American Medical Association's, *Guides to the Evaluation Permanent Impairment*.¹ Appellant filed a claim for a schedule award on December 6, 2002.

In a July 10, 2003 memorandum, an Office medical adviser stated that appellant had a 3 percent permanent impairment of the left arm due to 45 degrees of flexion, a 3 percent permanent impairment due to 15 degrees of ulnar deviation and a 2 percent permanent impairment due to 30 degrees of supination. He noted that Dr. Neustein had recommended further impairment for post-traumatic arthrosis in the radiocarpal joint which was 50 percent of the recommended value of the joint. He pointed out that the fifth edition of the A.M.A., *Guides* did not address post-traumatic arthritis for the joints of the arms. The Office medical adviser also pointed out that the A.M.A., *Guides* did not allow the use of loss of motion and arthritis in the same calculation because of duplication. He commented that, since post-traumatic arthritis was not addressed, he would only use the measurements of loss of motion. The Office medical adviser concluded that appellant had an eight percent permanent impairment of the left arm.

In an October 23, 2003 decision, the Office found that appellant was entitled to a schedule award for an eight percent permanent impairment of the left arm.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ 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

¹ A.M.A., *Guides* (5th ed. 2000).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

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.⁴

ANALYSIS

The Office medical adviser properly stated that an evaluation of permanent impairment based on range of motion measurement cannot be combined with an evaluation of permanent impairment based on arthritis.⁵ Since Dr. Neustein reported that appellant had arthrosis, a disease of the joint, but did not mention arthritis, the Office medical adviser properly decided that the measurement appellant's permanent impairment should be based on loss of motion. The A.M.A., *Guides* does not provide any tables specifying the permanent impairment caused by arthritis in the upper extremities. The medical adviser correctly reported that 15 degrees of ulnar deviation equaled a 3 percent permanent impairment,⁶ 45 degrees of flexion equaled a 3 percent permanent impairment⁷ and 30 degrees of supination equaled a 2 percent permanent impairment.⁸ Adding the impairments due to the losses of motion found on examination, the Office medical adviser concluded that appellant had an eight percent permanent impairment of the left arm. The Office multiplied the eight percent by the weeks given under the Act⁹ to find that appellant was entitled to 24.96 weeks of a schedule award for the permanent impairment to his left arm.

CONCLUSION

The Board finds that appellant has no more than an eight percent permanent impairment of the left arm.

⁴ A.M.A., *Guides* (5th ed. 2001).

⁵ A.M.A., *Guides*, page 526, Table 17-2.

⁶ *Id.* at 469, Table 16-31.

⁷ *Id.* at 467, Table 16-28.

⁸ *Id.* at 268, Table 16-29.

⁹ 5 U.S.C. § 8107(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 4, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member