United States Department of Labor
Employees' Compensation Appeals Board

PATRICK MORAN, Appellant	)	
and	)	**Docket No. 04-731**
	)	**Issued: August 6, 2004**
DEPARTMENT OF THE NAVY, NAVAL SHIPYARD, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 13, 2002 appellant filed an application for review of an August 12, 2002 merit decision of the Office of Workers' Compensation Programs' hearing representative. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this claim.

ISSUE

The issue is whether appellant has greater than a 27 percent permanent loss of use of his left arm and a 19 percent permanent loss of use of his right arm.

FACTUAL HISTORY

This case has previously been on appeal before the Board. By decision dated July 26, 2001,[1] the Board found that the case was not in posture for a decision due to an unresolved conflict of medical opinion on the extent of appellant's permanent impairments of the arms. This

[1] Docket No. 00-288.

conflict was between an Office medical adviser, who concluded that appellant had a 27 percent permanent impairment of the left arm and a 19 percent permanent impairment of the right arm and his examining osteopath, Dr. Weiss, who concluded that appellant had a 65 percent permanent impairment of the left arm and a 30 percent permanent impairment of the right arm. The Board found these reports were of roughly equivalent probative value and remanded the case for referral of appellant, the case record and a statement of accepted facts to an appropriate medical specialist to resolve the conflict of medical opinion on the degree of permanent impairment of appellant's arms.

On September 5, 2001 the Office referred appellant, the case record and a statement of accepted facts to Dr. Karl Rosenfeld, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion on the degree of permanent impairment of appellant's arms. In a report dated September 11, 2001, he set forth appellant's history, complaints and findings on examination. Dr. Rosenfeld then stated:

> "Regarding percentage of impairment [o]f both arms, I first addressed the left little finger. Using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, [f]ifth [e]dition, [p]age 442, Figure 16-3, MP (metacarpophalangeal) amputation is 100 percent finger impairment. On [p]age 442, Figure 16-3, the relative little finger value to the hand is 10 percent; 100 percent x 10 percent equals 10 percent hand impairment. Using Figure 16-2 on [p]age 441, the relative hand value to the upper extremity is 90 percent; 10 percent x 90 percent equals 9 percent upper extremity impairment."
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> "Regarding the carpal tunnel, on [p]age 495 it is stated: "If, after an optimal recovery time following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present." The one that applies to this patient is number two, "Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal electromyogram (EMG) testing of the thenar muscles: a residual carpal tunnel syndrome is still present and an impairment rating not to exceed five percent of the upper extremity may be justified."
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> "Regarding impairment rating of the upper extremity regarding Guyon's canal, I referenced Table 16-15 on [p]age 492, [m]aximum [u]pper [e]xtremity [i]mpairment [d]ue to [u]nilateral [s]ensory or [m]otor [d]eficits or to [c]ombined 100 percent [d]eficits of the [m]ajor [p]eripheral [n]erves. The ulnar nerve below mid-forearm is 7 percent upper extremity impairment.
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> "Evaluating the right cubital tunnel syndrome, I again used Table 16-15 on [p]age 492. The ulnar nerve above mid-forearm is 7 percent upper extremity impairment.
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> "I then went on to use the Combined Values Chart on [p]age 604. By combining the 9 percent upper extremity impairment due to the left little finger amputation

with the left carpal tunnel syndrome and left Guyon's canal, you arrive at a 20 combined left upper extremity impairment. If you then combine the 20 percent combined upper extremity impairment on the left with the 7 percent upper extremity impairment on the right, you get a 26 percent combined upper extremity impairment."

By decision dated October 25, 2001, the Office found that appellant had no greater than the 27 percent permanent impairment of the left arm and 19 percent permanent impairment of the right arm that had already been paid. He requested a hearing, which was held on March 12, 2002. By decision dated August 12, 2002, an Office hearing representative found that Dr. Rosenfeld's report, which indicated that appellant's permanent impairments of the arms were less than the schedule awards given, constituted the weight of the medical evidence.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulations[3] 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.

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[4]

ANALYSIS

On the prior appeal decided on July 26, 2001 the Board found that there was a conflict of medical opinion on the degree of permanent impairment of appellant's arms. Pursuant to section 8123(a) of the Act,[5] the Office referred appellant to Dr. Rosenfeld, a Board-certified orthopedic surgeon, to resolve this conflict.

In a September 11, 2001 report, Dr. Rosenfeld properly applied the tables of the fifth edition of the A.M.A., *Guides* to the impairments related to each of the conditions accepted by

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] *James P. Roberts*, 31 ECAB 1010 (1980).

[5] 5 U.S.C. § 8123(a) states in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

the Office. The nine percent impairment of the arm assigned by Dr. Rosenfeld for amputation of the little finger at the metacarpophalangeal joint is the percentage provided by Table 16-4 of the fifth edition of the A.M.A., *Guides*. For the entrapments of the ulnar nerves accepted by the Office, Dr. Rosenfeld assigned, for both the right and the left arms, the maximum percentage, seven percent, allowed by Table 16-15 for sensory deficit or pain related to this nerve. For the accepted left carpal tunnel syndrome, Dr. Rosenfeld assigned appellant to scenario 2 of section 16.5d,[6] normal sensibility and opposition strength with abnormal EMG findings. This is consistent with his findings on examination, which indicated that the grip in the left hand, the one affected by the carpal tunnel syndrome, was greater than his right hand grip. Dr. Rosenfeld also correctly used the Combined Values Chart[7] to combine the 9, 7 and 5 percent impairments of the left arm for a combined total of 20 percent.

With regard to grip, the A.M.A., *Guides*, in section 16.8a, states that loss of strength may be rated separately if it represents an impairing factor not considered adequately by other methods and only if it is based on unrelated etiologic or pathomechanical causes where there are other impairments. The A.M.A., *Guides* then states, "Otherwise, the impairment ratings based on objective anatomic findings take precedence."[8] The A.M.A., *Guides* also states in section 16.5d, "In compression neuropathies, additional impairment values are not given for decreased grip strength."[9] In light of these provisions and the rating of appellant's entrapment neuropathies using Table 16-15, Dr. Rosenfeld properly did not assign a percentage for impairment of grip.

Although appellant's schedule awards for 19 percent permanent impairment of the right arm and 27 percent permanent impairment of the left arm issued on August 31, 1998 were calculated using the fourth edition of the A.M.A., *Guides*, it was proper for Dr. Rosenfeld to use the fifth edition of the A.M.A., *Guides* in calculating appellant's permanent impairments on September 11, 2001. Pursuant to FECA Bulletin 01-05, issued January 29, 2001, the fifth edition of the A.M.A., *Guides* began to be used effective February 1, 2001. This bulletin further provides: "Any recalculations of previous awards which result from hearings, reconsideration or appeals should … be based on the fifth edition of the A.M.A., *Guides* effective February 1, 2001." As Dr. Rosenfeld's calculation of appellant's permanent impairments arose from the Board's July 26, 2001 decision finding a conflict of medical opinion, the fifth edition of the A.M.A., *Guides* was properly used.

Dr. Rosenfeld's September 11, 2001 report was based on an accurate history, complete findings on examination and addressed the impairments related to each condition accepted by the Office. This report was well rationalized, as it explained the ratings given with specific reference to the appropriate tables of the A.M.A., *Guides*. Dr. Rosenfeld's report constitutes the weight of the medical evidence and establishes that appellant has no greater permanent impairments of the arms than those for which he has been compensated by the Office's August 31, 1998 schedule award.

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[6] A.M.A., *Guides* 495.

[7] *Id*. at 604.

[8] *Id*. at 508.

[9] *Id*. at 494.

CONCLUSION

The weight of the medical evidence establishes that appellant has no greater than a 27 percent permanent loss of use of his left arm and a 19 percent permanent loss of use of his right arm.

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member