

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

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**RAYMOND C. GIBSON, Appellant**

**and**

**DEPARTMENT OF DEFENSE,  
Fort Bliss, TX, Employer**

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**Docket No. 04-1169  
Issued: August 19, 2004**

*Appearances:*  
*Raymond C. Gibson, 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 March 30, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated January 5, 2004 denying his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award decision.

**ISSUE**

The issue is whether appellant sustained any permanent impairment of his right upper extremity that entitled him to receive a schedule award.

**FACTUAL HISTORY**

On December 20, 2001 appellant, then a 49-year-old plumber, filed a traumatic injury claim alleging that on that date he sustained an injury when a cable became wrapped around his right wrist and arm. The Office accepted his claim for a right wrist sprain and later accepted the condition of right carpal tunnel syndrome. Appellant underwent surgery for his carpal tunnel syndrome on June 27, 2002 and returned to full duty on July 25, 2002.

On January 9, 2003 appellant filed a claim for a schedule award.

By letter dated January 21, 2003, the Office asked Dr. Alvaro A. Hernandez, appellant's attending Board-certified orthopedic surgeon, to provide an assessment of his right upper extremity permanent impairment according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>1</sup>

On February 5, 2003 Dr. Hernandez advised the Office that he had not seen appellant since October 28, 2002 and, at that time, he had not yet reached maximum medical improvement. He indicated that he would reevaluate appellant on March 3, 2003.<sup>2</sup>

In a report dated June 9, 2003, addressed to Dr. Hernandez, a physical therapist stated that appellant had a five percent impairment of the right upper extremity due to muscle weakness caused by his work-related carpal tunnel syndrome.

By letter dated December 5, 2003, the Office advised appellant that a physical therapist is not qualified to evaluate permanent impairment for purposes of a schedule award. The Office asked appellant to provide an impairment rating from Dr. Hernandez.

The record shows that no report was received from Dr. Hernandez.

By decision dated January 5, 2004, the Office denied appellant's schedule award claim on the grounds that he had failed to submit medical evidence from a physician establishing that he had any right upper extremity impairment causally related to his December 20, 2001 employment injury.<sup>3</sup>

### **LEGAL PRECEDENT**

A claimant seeking compensation under the Federal Employees' Compensation Act<sup>4</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.<sup>5</sup>

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<sup>1</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>2</sup> There is no March 3, 2003 report of record.

<sup>3</sup> The record contains additional evidence submitted subsequent to the Office decision of January 5, 2004. However, the Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c); *Sherry L. McFall*, 51 ECAB 436 (2000). This does not preclude appellant from submitting this evidence to the Office with a written request for reconsideration of his claim.

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Edward W. Spohr*, 54 ECAB \_\_\_\_ (Docket No. 03-1173, issued September 10, 2003); *Nathaniel Milton*, 37 ECAB 712 (1986).

The schedule award provision of the Act<sup>6</sup> and its implementing regulation<sup>7</sup> 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*<sup>8</sup> has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>9</sup>

### ANALYSIS

In this case, appellant submitted an impairment rating of his right upper extremity from a physical therapist. However, the Board notes that a physical therapist is not a physician as defined under the Act. A “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law and chiropractors only to the extent that their reimbursable services are limited to treatment of a subluxation as demonstrated by x-ray to exist.<sup>10</sup> Lay individuals, such as physician’s assistants, nurse practitioners, social workers and physical therapists, are not competent to render a medical opinion.<sup>11</sup> Therefore, the impairment rating from appellant’s physical therapist does not constitute probative medical evidence.

The report from the physical therapist suggests that it was prepared for the attending physician, Dr. Hernandez.<sup>12</sup> However, Dr. Hernandez did not provide an impairment rating for appellant nor did he find that he attained maximum medical improvement. As appellant did not provide a reasoned medical opinion from a physician establishing that he had a compensable permanent impairment of his right upper extremity causally related to his December 20, 2001 employment injury, he failed to meet his burden of proof.

### CONCLUSION

The Board finds that appellant failed to establish that he had any permanent impairment of his right upper extremity causally related to his December 20, 2001 employment injury. Therefore, the Office properly denied his claim for a schedule award.

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<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Joseph Lawrence, Jr.*, 53 ECAB \_\_\_\_ (Docket No. 01-1361, issued February 4, 2002).

<sup>9</sup> *See* 20 C.F.R. § 10.404; *James Kennedy, Jr.*, 40 ECAB 620 (1989).

<sup>10</sup> 5 U.S.C. § 8101(2).

<sup>11</sup> *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Robert J. Krstyen*, 44 ECAB 227 (1992).

<sup>12</sup> The report was addressed to Dr. Hernandez and indicated that he referred appellant to the physical therapist.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 5, 2004 is affirmed.

Issued: August 19, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member