

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

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**MARC T. DEJAMES, Appellant**

**and**

**U.S. CAPITOL POLICE, Washington, DC,  
Employer**

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**Docket No. 04-318  
Issued: June 2, 2004**

*Appearances:*

*Marc T. Dejames, pro se  
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  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On November 17, 2003 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs dated June 3, 2003, finding that he had a six percent permanent impairment of the right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

**ISSUE**

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

**FACTUAL HISTORY**

On June 29, 2000 appellant, then a 43-year-old police officer, filed a claim for an injury occurring on that date when he fell and hit his elbow on a marble banister. Appellant stopped work on June 3, 2000. The Office accepted his claim for a contusion of the right elbow. Appellant returned to light-duty employment on September 6, 2000 and to regular employment on November 13, 2000.

In a report dated December 6, 2000, Dr. H. Edward Lane, III, a Board-certified orthopedic surgeon, noted that appellant continued to have right triceps weakness due to a tear of the muscle.<sup>1</sup> He opined that appellant was “reaching maximum medical improvement” but would not fully regain strength or extension in his elbow. Dr. Lane found that appellant would “have a minimum of a 10 [percent] permanent partial disability of the right upper extremity.”

On February 26, 2001 the Office requested that appellant submit a medical report from his attending physician describing the extent of his permanent impairment due to his employment injury according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001).

Appellant filed a claim for a schedule award on July 17, 2001. In a letter to appellant dated August 9, 2001, the Office enclosed an impairment calculation worksheet for completion by his physician in accordance with the fourth edition of the A.M.A., *Guides*.

On May 22, 2001 Dr. Lane found that appellant had residual right upper extremity weakness and pain. He stated that appellant had a loss of 15 to 20 degrees of extension on the right side and opined that appellant had a 15 percent impairment of his right upper extremity due to pain and loss of range of motion.

Appellant submitted a report and impairment evaluation worksheet from Dr. Lane dated January 11, 2002. Dr. Lane diagnosed a partial triceps tendon tear due to appellant’s June 29, 2000 employment injury. He found that appellant had 135 degrees of flexion, a lack of 15 to 20 degrees of extension and full pronation and supination. Dr. Lane found that appellant had no evidence of a nerve injury or ankylosis but had weakness due to his partial triceps rupture. He opined that appellant had reached maximum medical improvement on May 10, 2001. He noted that appellant had “occasional pain” in his elbow. Dr. Lane concluded that appellant had a 10 percent impairment of the right upper extremity due to pain and a 2 percent impairment due to loss of extension according to the fourth edition of the A.M.A., *Guides*.

An Office medical adviser reviewed Dr. Lane’s report and found that appellant had a 2 percent impairment of the elbow due to loss of range of motion pursuant to Table 16-34 on page 472 of the fifth edition of the A.M.A., *Guides*.

The Office determined that a conflict in opinion existed between Dr. Lane and the Office medical adviser on the issue of the extent of appellant’s permanent impairment of the right upper extremity. By letter dated October 25, 2002, the Office referred appellant to Dr. Stephen C. Saddler, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated November 18, 2002, Dr. Saddler diagnosed a partial triceps tear on the right side. He listed range of motion findings as follows: 180 degrees shoulder abduction and forward flexion, 90 degrees external and internal shoulder rotation, minus 20 degrees right elbow extension, 135 degrees flexion, 90 degrees pronation and 90 degrees of supination. Dr. Saddler found that appellant “had mild motor weakness for extension. Five minus/5. He was

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<sup>1</sup> A magnetic resonance imaging scan of appellant’s right elbow, obtained on July 17, 2000 revealed a partial tear of the triceps tendon and muscle.

neurologically intact.” He found that, according to the fourth edition of the A.M.A., *Guides*, appellant had a 2 percent impairment of the upper extremity in accordance with Figure 32 on page 40 and a 1 percent impairment of the whole body in accordance with Table 2 on page 20.

An Office medical adviser reviewed Dr. Saddler’s report on May 20, 2003. He found that, according to the A.M.A., *Guides*, a loss of 20 degrees of right elbow extension constituted a 2 percent impairment and 135 degrees of elbow flexion constituted a 1 percent impairment according to Figure 16-34 on page 472. He added the impairment percentages due to loss of range of motion to find a total impairment of 3 percent. He further found that a Grade 4 to 5 motor deficit constituted a 3 percent impairment according to Table 16-13 on page 489.<sup>2</sup> The Office medical adviser stated that he had converted the measurements supplied by Dr. Saddler to the fifth edition of the A.M.A., *Guides* and had given consideration to appellant’s Grade 4 to 5 weakness on elbow extension. He combined the three percent impairment due to loss of range of motion with the three percent impairment due to weakness using the Combined Values Chart and concluded that appellant had a six percent impairment of the right upper extremity.

By decision dated June 3, 2003, the Office granted appellant a schedule award for a six percent permanent impairment of the right upper extremity. The period of the award ran for 18.72 weeks from November 18, 2002 to March 29, 2003.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act<sup>3</sup> and its implementing federal regulation,<sup>4</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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>5</sup> 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.<sup>6</sup>

### **ANALYSIS**

In this case, the Office properly determined that a conflict in medical opinion existed between appellant’s physician, Dr. Lane and the Office medical adviser regarding the degree of permanent impairment of the right upper extremity. The Office referred appellant to Dr. Saddler, a Board-certified orthopedic surgeon, for resolution of the conflict.

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<sup>2</sup> The Office medical adviser mistakenly cites to Table 16-31 on page 489 rather than Table 16-13.

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> 20 C.F.R. § 10.404(a).

<sup>6</sup> See FECA Bulletin No. 01-5 (issued January 29, 2001).

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>7</sup>

Dr. Saddler, the impartial medical specialist, found that, for appellant's right elbow, he had lost 20 degrees of extension and retained 135 degrees of flexion. Dr. Saddler found that appellant had 90 degrees of pronation and supination and "mild motor weakness for extension." He further indicated that appellant had 180 degrees of shoulder abduction and flexion and 90 degrees of internal and external shoulder rotation. He applied the fourth edition of the A.M.A., *Guides* and found that appellant had a 2 percent impairment of the right upper extremity due to loss of extension according to Figure 32 on page 40.<sup>8</sup>

An Office medical adviser applied the tables and pages of the fifth edition of the A.M.A., *Guides* to Dr. Saddler's findings. He found that a loss of 20 degrees of extension of the right elbow constituted a 2 percent impairment and 135 degrees of flexion of the right elbow constituted a 1 percent impairment pursuant to Figure 16-34 on page 472 of the A.M.A., *Guides*.<sup>9</sup> The Office medical adviser properly added the impairment percentages due to loss of range of motion for a total of a three percent impairment.<sup>10</sup> The Office medical adviser further graded appellant's loss due to weakness as a Grade 4-5 and found that it constituted a 3 percent impairment according to Table 16-13 on page 489. However, it is not clear from the Office medical adviser's report which spinal nerve he identified as causing appellant's impairment due to weakness. Further, Table 16-13 on page 489 is relevant to spinal nerve injuries.<sup>11</sup> Appellant did not sustain an injury to his spine but rather to his elbow. Therefore, the Office medical adviser should have evaluated appellant's upper extremity impairment due to weakness according to Table 16-15 on page 492, which identifies the maximum upper extremity impairment caused by sensory or motor deficits of major peripheral nerves.

The case will be remanded for the Office to reevaluate the percentage of impairment caused by weakness of appellant's right upper extremity in accordance with the applicable tables and sections of the A.M.A., *Guides*. After such further development as the Office deems necessary, it shall issue a *de novo* decision.

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<sup>7</sup> *Richard L. Rhodes*, 50 ECAB 259 (1999).

<sup>8</sup> Dr. Saddler converted the 2 percent upper extremity impairment to a 1 percent whole body impairment under Table 3 on page 20. However, a schedule award is not payable for an impairment of the whole person. *Phyllis F. Cundiff*, 52 ECAB 439 (2001).

<sup>9</sup> The Board notes that 90 degrees of pronation and supination constitutes no impairment according to Figure 16-37 on page 474 of the A.M.A., *Guides*. The Board further notes that 180 degrees of shoulder flexion and abduction constitutes no impairment according to Figures 16-40 and 16-43 on pages 476-77 and 90 degrees internal and external shoulder rotation constitutes no impairment according to Figure 16-46 on page 479 of the A.M.A., *Guides*.

<sup>10</sup> A.M.A., *Guides* at 470.

<sup>11</sup> Under Table 16-13 on page 489 of the A.M.A., *Guides*, the relevant spinal nerve causing the motor deficit is identified. The maximum impairment of the upper extremity caused by that spinal nerve is then multiplied by the percentage motor deficit for loss of power due to a peripheral nerve disorder according to Table 16-11 on page 484 to find the loss due to muscle weakness or motor deficit.

On appeal, appellant argues that he is entitled to a greater award due to the effect of his injury on his wage-earning capacity over the next 28 years. However, disability for work under section 8105 of the Act is not a factor included in a schedule award rating. Section 8107 provides a compensation schedule for payment of award for permanent impairment of listed body members.<sup>12</sup> The schedule establishes how many weeks of compensation an employee will receive in the event of total functional loss or dismemberment.<sup>13</sup> Partial loss of function of the bodily member is awarded for a proportionate number of weeks.<sup>14</sup> A schedule award is not intended to be compensation for wage loss or potential wage loss and is made without regard to whether or not there is a loss of wage-earning capacity resulting from the injury and regardless of its effects upon employment or social opportunities.<sup>15</sup>

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 3, 2003 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: June 2, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>12</sup> 5 U.S.C. § 8107(c).

<sup>13</sup> *Id.*

<sup>14</sup> 5 U.S.C. § 8107(c)(19).

<sup>15</sup> *Renee M. Staubinger*, 51 ECAB 667 (2000).