United States Department of Labor
Employees' Compensation Appeals Board

CARL A. BAUSCH, Appellant	)	
and	)	**Docket No. 04-1752**
	)	**Issued: November 26, 2004**
DEPARTMENT OF THE AIR FORCE, ELGIN AIR FORCE BASE, FL, Employer	)	

Appearances:
Carl A. Bausch, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 6, 2004 appellant filed a timely appeal from the June 24, 2004 merit decision of the Office of Workers' Compensation Programs granting him a schedule award for a four percent permanent impairment of the left upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

ISSUE

The issue is whether appellant established that he has more than a four percent permanent impairment of the left upper extremity for which he received a schedule award.

FACTUAL HISTORY

On September 10, 2003 appellant, then a 52-year-old automotive mechanic supervisor, filed a traumatic injury claim alleging that on that date he sustained a fracture of his left elbow. Appellant stated that, while lifting a workstation desktop into a scrap wood trailer, he felt a pop and tear in the cuff and inner fold of his left elbow. He further stated that he experienced extreme pain and loss of strength. In an October 14, 2003 letter, the Office accepted appellant's

claim for a ruptured bicep tendon of the left elbow. The Office authorized surgery on appellant's left elbow which was performed on October 16, 2003 by Dr. William J. Markowski, a treating Board-certified orthopedic surgeon.

On May 10, 2004 appellant filed a claim for a schedule award accompanied by Dr. Markowski's May 5, 2004 attending physician's report. He provided a history of the September 10, 2003 employment injury and diagnosed ruptured biceps tendon of the left elbow. Dr. Markowski indicated that appellant's condition was caused by the employment incident with an affirmative mark. He stated that the explanation for this opinion was self-explanatory. Dr. Markowski noted that appellant could work with no restrictions and experienced chronic pain in the left elbow from scar tissue as a result of his employment injury.

The Office received Dr. Markowski's May 5, 2004 note reiterating that appellant could return to full activities without restrictions. The Office also received a copy of Dr. Markowski's May 5, 2004 attending physician's report in which he added that appellant reached maximum medical improvement on that date and he had a two percent impairment rating.

By letter dated May 24, 2004, the Office advised appellant to submit a medical report from his treating physician indicating whether he had any permanent impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*).

On June 10, 2004 the Office received Dr. Markowski's May 5, 2004 range of motion findings for the left elbow. Dr. Markowski reported that appellant reached maximum medical improvement on May 5, 2004. He further reported 135 degrees of retained active flexion, 10 degrees of retained active extension, 80 degrees of retained pronation from neutral and 75 degrees of retained supination from neutral. Dr. Markowski stated that there was an estimated additional two percent impairment due to sensory deficit, pain or loss of strength. He concluded that appellant had a four percent impairment of the left upper extremity.

On June 12, 2004 an Office medical adviser reviewed the case record, including, Dr. Markowski's report. The Office medical adviser stated that appellant reached maximum medical improvement on May 5, 2004. He noted Dr. Markowski's range of motion findings and determined that appellant had a two percent impairment. The Office medical adviser also determined that appellant had an additional two percent impairment for weakness resulting in a four percent permanent impairment of the left upper extremity.

By decision dated June 24, 2004, the Office granted appellant a schedule award for a four percent permanent impairment of the left upper extremity for the period May 5 through July 31, 2004, a total of 12.48 weeks.[1]

[1] The Board notes that after, the Office's June 24, 2004 decision, the Office received additional medical evidence. The Board cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952); 20 C.F.R. § 501.2(c).

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[4] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[5]

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[6]

ANALYSIS

Dr. Markowski found that appellant reached maximum medical improvement on May 5, 2004. He reported 135 degrees of retained active flexion, 10 degrees of retained active extension, 80 degrees of retained pronation from neutral and 75 degrees of retained supination from neutral.

Applying the appropriate edition of the A.M.A., *Guides* to the range of motion figures determined by Dr. Markowski, 135 degrees of flexion constitutes a 1 percent impairment and 10 degrees of extension constitutes a 1 percent impairment[7] while 80 degrees of pronation and 75 degrees of supination each constitutes a 0 percent impairment,[8] totaling a 2 percent impairment.

With regard to the two percent impairment rating for sensory deficit, pain or weakness, neither Dr. Markowski nor the Office medical adviser provided any findings relating to these conditions in sufficient detail to allow the Board to clearly visualize the impairment with its

[2] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[3] 20 C.F.R. § 10.404.

[4] 5 U.S.C. § 8107(c)(19).

[5] 20 C.F.R. § 10.404.

[6] *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

[7] A.M.A., *Guides* 472, Figure 16-34.

[8] *Id*. at 474, Figure 16-37.

resulting restrictions or adequate explained appropriate application of the A.M.A., *Guides*. Therefore, the medical evidence is insufficient to establish the extent of appellant's permanent impairment due to his accepted employment injury.

As the medical evidence lacks the necessary detailed physical findings and an application of the appropriate edition of the A.M.A., *Guides* to determine appellant's permanent impairment, on remand the Office should refer appellant together with the case record to an appropriate physician to determine the extent of the permanent impairment of his left upper extremity. After such further development as necessary, the Office should issue an appropriate decision on appellant's entitlement to a schedule award.

CONCLUSION

The Board finds that the case is not in posture for decision as the medical evidence is not sufficient to establish appellant's permanent impairment of his left upper extremity due to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further medical development consistent with this decision.

Issued: November 26, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member