

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

GEORGE OBERSKI, Appellant)
and) Docket No. 04-1089
DEPARTMENT OF THE ARMY, Fort Dix, NJ,) Issued: September 30, 2004
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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On March 17, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated November 26, 2003, in which a hearing representative found that appellant had no more than a 14 percent 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.

ISSUE

The issue is whether appellant has more than a 14 percent impairment of the right upper extremity for which he received a schedule award.

FACTUAL HISTORY

This is the second appeal in this case. The Office accepted that appellant sustained a right wrist and radius fracture on March 11, 1995. On April 29, 1997 appellant, through counsel, filed a claim for a schedule award. On April 6, 1998 the Office denied appellant's claim and on April 21, 1999 denied his request for reconsideration. In a November 7, 2000 decision, the Board found that the Office abused its discretion by denying appellant's request for

reconsideration. The Board found that appellant raised a relevant legal argument not previously considered by the Office which was that a conflict in medical opinion existed between the October 25, 1996 report of Dr. Ronald J. Potash, appellant's treating physician, who found that appellant had a 35 percent impairment of the right upper extremity and the August 22, 1997 report of Dr. Irving P. Ratner, an Office referral physician, who found an 8 percent impairment of the right upper extremity. Accordingly, the Board set aside the Office's April 21, 1999 decision and remanded the case to the Office for a review of the merits of appellant's claim.¹ The facts and the circumstances of the case are set forth in the Board's prior decision and are incorporated herein by reference.

On March 14, 2001 the Office issued a new decision denying appellant's claim for a schedule award of the right upper extremity finding that, upon review of Dr. Potash's report, a conflict in medical opinion did not exist. On July 17, 2001 an Office hearing representative set aside the March 14, 2001 decision and remanded the claim for referral to an impartial medical examiner.

On August 29, 2001 the Office referred appellant, the case record and a statement of accepted facts to Dr. Michael Grenis, a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve the conflict in medical opinion as to extent of permanent impairment.

In a report dated September 17, 2001, Dr. Grenis stated that appellant had right wrist extension and flexion of 50 degrees compared to 60 degrees for extension and flexion on the left which, based on Figure 16-18, page 467 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001) represented a 4 percent impairment of the upper extremity. Appellant's average grip strength of the right wrist compared to the left wrist based on Table 16-34 on page 509 of the A.M.A., *Guides* represented a 10 percent impairment which, when combined with the impairment for loss of motion, totaled a 14 percent impairment of the right upper extremity. Dr. Grenis noted that appellant had reached maximum medical improvement in August 1997.

On September 24, 2001 the Office granted appellant a 14 percent schedule award for impairment of the right upper extremity. Appellant subsequently requested an oral hearing which was held on March 6, 2002.

On May 20, 2002, an Office hearing representative set aside the September 24, 2001 schedule award and remanded the case clarification for Dr. Grenis' opinion with respect to the loss of range of motion of the right upper extremity. The hearing representative noted that Dr. Grenis should provide specific degrees of motion on pronation, supination, radial deviation and ulnar deviation of the right wrist and state whether the clicking which he noted through the range of motion findings represented an impairment based on ankylosis or crepitus.

On November 15, 2002 the Office referred appellant to Dr. Grenis for a supplemental examination and evaluation. In a report dated November 26, 2002, Dr. Grenis stated that

¹ Docket No. 99-2297 (issued November 7, 2000).

appellant's ulnar deviation of the right and left wrists was 30 degrees, radial deviation of right and left was 20 degrees, pronation on the right and left was 80 degrees and supination of the right and left was 80 degrees and noted that these findings constituted full joint range of motion. He noted that the occasional painful popping sounds in the wrist had no pathological significance and were not due to ankylosis or crepitus and did not contribute to appellant's impairment.

On January 7, 2003 the Office medical adviser reviewed Dr. Grenis' reports and determined that appellant had a 14 percent impairment of the right upper extremity. By decision dated January 9, 2003, the Office determined that appellant had no more than a 14 percent impairment of the right upper extremity, for which he received a schedule award.

On January 24, 2003 appellant, through counsel, requested an oral hearing which was held on August 6, 2003. On November 26, 2003 the Office hearing representative affirmed the Office's decision finding that appellant had no more than a 14 percent impairment of appellant's right upper extremity.

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 uniform standards applicable to all claimants. The A.M.A., *Guides* (5th ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

ANALYSIS

On September 17, 2001 Dr. Grenis, the impartial medical examiner and a Board-certified orthopedic surgeon, found weakness of grip due to post-traumatic arthritis of 24.4 percent which represented a 10 percent impairment based on the A.M.A., *Guides*. He also noted a restriction on extension and a 10 degree loss of flexion of the right wrist both representing a 2 percent impairment or a 4 percent total impairment for loss of range of motion. The combined total was a 14 percent impairment for the right upper extremity. In an addendum report dated November 26, 2002, Dr. Grenis noted the following findings: ulnar deviation of the right and left wrists was 30 degrees, radial deviation of both wrists was 20 degrees, pronation of the right and left was 80 degrees and supination of the right and left was 80 degrees. He stated that appellant had full right wrist range of motion with respect to the joint motions and that, based on the A.M.A., *Guides*, there was no impairment for these measurements. Dr. Grenis further noted

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ See 20 C.F.R. § 10.404; Jacqueline S. Harris, 54 ECAB ____ (Docket No. 02-303, issued October 4, 2002).

that the cracking sounds which occurred as appellant moved his wrist had no pathological significance and were not due to ankylosis or crepitus of the wrist. Dr. Grenis noted that the cracking sounds did not contribute to any impairment of the wrist.

In a report dated January 7, 2003, the Office medical adviser stated that he had reviewed Dr. Grenis' reports and noted that the following range of motion findings and impairment ratings for the right wrist: radial and ulnar deviation of 20 degrees for a 0 percent impairment⁵ supination and pronation to 80 degrees for a 0 percent impairment,⁶ flexion of 50 degrees for a 2 percent impairment and extension of 50 degrees for a 2 percent impairment, for a total of 4 percent impairment for loss of, range of motion.⁷ Right wrist grip strength averaged 90 minus 60 divided by 90 which yields 24.4 percent rounded to 25 equivalent to a 10 percent impairment.⁸ The Office medical adviser combined the range of motion and grip strength ratings using the Combined Values Chart to find a total 14 percent impairment of the right upper extremity.⁹

On appeal, appellant, through counsel, argues that Dr. Grenis appellant's grip strength for a second time. However, the remand noted that Dr. Grenis was requested to provide range of motion findings. Dr. Grenis noted in his addendum report that appellant's grip strength had increased since the August 22, 1997 report of Dr. Ratner. Appellant also argued that Dr. Grenis did not use the A.M.A., *Guides* in his addendum report. The Board notes that the additional range of motion findings did not represent impairment of the right upper extremity based on the A.M.A., *Guides*. In addition, the Office medical adviser specifically applied the appropriate tables and figures of the A.M.A., *Guides* to find that appellant had no more than a 14 percent right upper extremity impairment. Appellant argued that the Office medical adviser cannot substitute his opinion for the impartial medical examiner's opinion regarding the A.M.A., *Guides* rating. The Board notes, however, that the Office medical adviser merely applied the A.M.A., *Guides* to the findings made by Dr. Grenis to ascertain appellant's impairment.¹⁰ The Board has held that in determining impairment ratings, the Office medical adviser is to assure the proper application of the A.M.A., *Guides* in schedule award claims.¹¹

⁵ A.M.A., *Guides* 469, Figure 16-31. These findings were the same as the left wrist.

⁶ *Id.* at 474, Figures 16-37. These findings were also the same as the left wrist.

⁷ *Id.* at 467, Table 16-28.

⁸ *Id.* at 509, Table 16-34.

⁹ *Id.* at 604.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.810.11(d) (April 1993). This section states that cases returned from a medical referee should not routinely be sent to the Office medical adviser unless a schedule award is at issue: Part 3 -- Medical, *Medical Examination*, Chapter 3.500.5(c) (March 1994) states that schedule award reports should be routinely referred to the Office medical adviser for review and that the Office medical adviser should not attempt to clarify or expand the opinion of the impartial medical examiner; see *Bobby L. Jackson*, 40 ECAB 593 (1989); *David E. Fishback*, 39 ECAB 783 (1988).

¹¹ See *James R. Bradford*, 48 ECAB 320 (1997).

There is no medical evidence of record establishing that appellant has more than a 14 percent impairment to the right upper extremity.

CONCLUSION

The Board finds that appellant has no more than a 14 percent impairment of the right upper extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 26, 2003 is affirmed.

Issued: September 30, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member