



On August 9, 2000 appellant filed an occupational disease claim for compensation for a right elbow olecranon bursitis and spur that he attributed to his employment duties. The Office accepted the claim for right olecranon spur and bursitis and authorized surgical excision of the bursa and spur, which was performed on April 13, 2000.

On March 28, 2001 appellant filed an occupational disease claim for compensation, contending that his overuse of his left elbow was related to his right elbow surgery. The Office accepted that appellant sustained an aggravation of left olecranon bursitis.

On April 26 and June 1, 2001 appellant filed claims for a schedule award. He submitted a May 16, 2001 report from Dr. Gregory D. Chaney, his attending internist, stating that appellant had right elbow pain and motion limited to 5 to 90 degrees, and left elbow pain and motion limited to 5 to 110 degrees.

On October 2, 2001 the Office referred appellant, his medical records and a statement of accepted facts to Dr. David Soulsby, a Board-certified orthopedic surgeon, for a second opinion on the duration and extent of his disability. In an October 19, 2001 report, Dr. Soulsby stated that appellant had reached maximum medical improvement, that his left elbow motion was 5 to 140 degrees and that his right elbow motion was 5 to 135 degrees, with full supination and pronation of both elbows. Dr. Soulsby stated:

“Based on the A.M.A., *Guide[s] to the Evaluation of Permanent Impairment* [5<sup>th</sup> ed.] the claimant, according to Figure 16-34, has a one percent impairment of the left upper extremity due to loss of extension, two percent impairment of the upper extremity due to right elbow motion. Based on strength, Table 16-35 based moderately strong [G]rade 4/5 strength in flexion and extension, supination and pronation of the left elbow, he has an eight percent upper extremity impairment due to strength deficit in the left upper extremity. The right upper extremity based on moderately strong [G]rade 4/5 strength in flexion extension, pronation and supination of the right elbow shows a total eight percent upper extremity impairment due to right upper extremity strength deficit. Using the Combined Values Chart, the left upper extremity one percent motion impairment, eight percent strength impairment gives a nine percent left upper extremity impairment. Eight percent strength impairment, two percent motion impairment of the right upper extremity combined for a right upper extremity impairment of ten percent.”

An Office medical adviser reviewed Dr. Soulsby's report on November 20 and December 12, 2001 and indicated his agreement with the calculations of appellant's permanent impairments.

On February 20, 2002 the Office issued appellant schedule awards for a 9 percent permanent impairment of the left arm and a 10 percent permanent impairment of the right arm.

By letter dated January 23, 2003, appellant requested reconsideration and submitted a July 10, 2002 report from Dr. Chaney stating that appellant's "bilateral elbow condition continues to be very disabling to him including pain, recurrent bursa infections, and limited

range of motion, swelling, loss of function and loss of strength.” Dr. Chaney stated that the ranges of motion, measured by goniometer, of appellant’s right and left elbows, respectively, were, in degrees: flexion, 100 and 110; extension, 20 and 10; supination 50 and 60; and pronation 60 and 70. Dr. Chaney stated that appellant had a 10 percent impairment of his right arm for loss of motion (6 percent for flexion, 2 percent for extension, and 1 percent each for pronation and supination), and a 7 percent impairment of his left arm for loss of motion (4 percent for flexion, and 1 percent each for extension, supination and pronation). Dr. Chaney considered appellant’s strength as 4/5 in all motions, and indicated this added 10 percent impairment for each arm, for a total of 20 percent on the right and 17 percent on the left.

The same Office medical adviser reviewed Dr. Chaney’s July 10, 2002 report on March 3, 2003 and stated:

“Dr. Soulsby’s exam[ination] represents the maximum medical improvement following the work injuries. Both Dr. Soulsby and Dr. Chaney agreed on muscle strength. Dr. Chaney did not give any rationale for the decrease in range of motion he recorded from that recorded by Dr. Soulsby.

“Since Dr. Soulsby’s measurements were objective, reflecting the maximum improvement, there is no conflict of opinion, or of equal weight.”

By decision dated March 5, 2003, the Office found that the report of Dr. Soulsby continued to represent the weight of the medical evidence, and that the report from Dr. Chaney lacked supportive rationale to support the difference in opinion from Dr. Soulsby’s findings.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> sets 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses. Section 8123(a) of the Act<sup>3</sup> 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.”

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> 5 U.S.C. § 8123(a).

### ANALYSIS

The record contains an unresolved conflict of medical opinion on the extent of permanent impairments to appellant's arms. Dr. Chaney, an attending physician, concluded in a July 10, 2002 report that appellant had a 20 percent permanent impairment of the right arm and a 17 percent permanent impairment of the left arm. The Office's referral physician, Dr. Soulsby, concluded in an October 19, 2001 report that appellant had a 10 percent permanent impairment of the right arm and a 9 percent permanent impairment of the left arm.

As noted by an Office medical adviser on March 3, 2003, Drs. Soulsby and Chaney agreed that appellant's muscle strength was 4/5.<sup>4</sup> The primary factor accounting for the difference in the percentage of impairment found by the physicians was a difference in the measurement of the ranges of motion of appellant's elbows. There is no reason to conclude that Dr. Chaney's measurements, which were made by goniometer, were less objective than Dr. Soulsby's. Dr. Chaney measured appellant's range of motion five months before Dr. Soulsby and nine months after, and on each occasion found appellant's motion more restricted than did Dr. Soulsby. The Board finds a conflict of medical opinion based on the differing measurements of range of motion.<sup>5</sup>

### CONCLUSION

There is an unresolved conflict of medical opinion on the extent of permanent impairment of appellant's arms, necessitating referral to an impartial medical specialist as provided by section 8123(a) of the Act.

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<sup>4</sup> No physician explained how the A.M.A., *Guides* was used to convert this estimate of muscle strength to a percentage of impairment due to loss of strength. Dr. Soulsby assigned 8 percent for loss of strength; Dr. Chaney assigned 10 percent.

<sup>5</sup> See *Robert J. Milliken*, 52 ECAB 384 (2001); *Robert W. Blaine*, 42 ECAB 474 (1991); *Michael L. Hamilton*, 31 ECAB 1070 (1980).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 5, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board, to be followed by an appropriate decision on appellant's claim for schedule awards.

Issued: January 26, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member