

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

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**GARY E. ROTUNA, Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE,  
YOUNGSTOWN AIR RESERVE STATION,  
Vienna, OH, Employer**

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**Docket No. 05-1565  
Issued: February 9, 2006**

*Appearances:*  
*John P. Lutseck, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 21, 2005 appellant filed a timely appeal of an Office of Workers' Compensation Programs' decision dated June 23, 2005 by an Office hearing representative which affirmed the denial of an additional 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 issue.

**ISSUE**

The issue is whether appellant has more than a 26 percent permanent impairment of the right upper extremity for which he received a schedule award.

**FACTUAL HISTORY**

On October 5, 1998 appellant, then a 45-year-old fuel distribution system worker, filed a claim for a September 29, 1998 incident in which he hurt his right shoulder while pulling out a hose from a refueling truck. The Office accepted the claim for subacromial bursitis with impingement and right cubital tunnel syndrome. The Office authorized appellant's right

shoulder and elbow surgeries, which he underwent in April 1999 and July 2000. Appellant eventually returned to regular duties after each surgical procedure.

On July 13, 2001 appellant claimed a schedule award. By decision dated July 19, 2001, the Office granted appellant a schedule award for a 21 percent permanent impairment to his right upper extremity for his shoulder and elbow conditions.

On June 18, 2002 appellant filed a claim for a recurrence of disability indicating ongoing problems with his right arm. On August 9, 2002 the Office accepted the recurrence claim for ongoing medical care.

In a November 4, 2002 report, Dr. John J. Vargo, a family practitioner, noted the history of the injury and appellant's medical history and provided an impairment rating. Utilizing the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Vargo opined that appellant had 25 percent impairment of the right upper extremity. Dr. Vargo found 15 percent impairment of the right upper extremity due to deficit in range of motion of the right shoulder. Under Figure 16-43 on page 477, abduction of 95 degrees equaled 4 percent impairment and adduction of 20 degrees equaled 1 percent impairment. Under Figure 16-30, page 476, 105 degrees of flexion equaled a 5 percent impairment and 30 degrees extension equaled 1 percent impairment. Under Figure 16-46, page 479, 30 degrees internal rotation equaled 4 percent impairment and 60 degrees external rotation equaled a 0 percent impairment. Dr. Vargo found no impairment of the right upper extremity due to deficit in range of motion of the right elbow. Under Figure 16-34, page 472, 60 degrees flexion equaled 0 percent impairment and 5 degrees extension equaled 0 percent impairment. Under Figure 16-37, page 474, 80 degrees pronation equaled 0 percent impairment and 90 degrees supination equaled 0 percent impairment. Dr. Vargo found 1 percent impairment of the right upper extremity due to deficit in range of motion of the right wrist. Under Figure 16-28, page 467, a 60 degree flexion equaled 0 percent impairment and 80 degrees extension equaled 0 percent impairment. Under Figure 16-31, page 469, a 60 degree ulnar deviation equaled 0 percent impairment and a 15 degree radial deviation equaled a 1 percent impairment. Under Table 16-34, page 509, Dr. Vargo found that appellant had a 20 percent loss of strength which corresponded to 10 percent right upper extremity impairment. He then utilized the Combined Values Chart on page 604 and found appellant had 25 percent impairment of the right upper extremity.

Dr. Vargo also found that appellant had a 4 percent impairment of the right hand due to deficit in range of motion of the right middle, ring and fifth fingers which corresponded to a 4 percent impairment of the right upper extremity. Dr. Vargo utilized Figures 16-21, page 461, Figure 16-23, page 463 and Figure 16-25, page 464 to obtain the respective motion impairments of the distal interphalangeal, proximal interphalangeal and metacarpal phalangeal joints. For the third digit, eight percent impairment was found. A distal interphalangeal joint extension of 0 degrees and flexion of 85 degrees equaled 0 percent impairment; a proximal interphalangeal joint extension of 0 degrees equaled 0 percent impairment and flexion of 90 degrees equaled 6 percent impairment; a metacarpal phalangeal joint extension of 15 degrees equaled 2 percent impairment and 95 degrees flexion equaled 0 percent impairment, to total 8 percent impairment, which corresponded to 2 percent hand impairment under Table 16-1 page 438. Twelve percent impairment was found for the fourth or ring finger. A distal interphalangeal joint of 0 degrees

extension equaled 0 percent impairment and 65 degrees flexion equaled 5 percent impairment; a proximal interphalangeal joint extension of 0 degrees and 100 degrees flexion equaled 0 percent impairment; a metacarpal phalangeal extension of 5 degrees equaled 4 percent impairment and 5 degrees extension equaled 3 percent impairment, to total 12 percent impairment of the right ring finger, which corresponded to 1 percent hand impairment under Table 16-1 page 438. Eight percent impairment was found for the right fifth finger. A distal interphalangeal joint extension of 5 degrees and flexion of 80 degrees equaled 0 percent impairment; a proximal interphalangeal joint extension of 0 degrees equaled 0 percent impairment and a 90 degrees flexion equaled a 6 percent impairment; a metacarpal phalangeal joint extension of 15 degrees equaled 2 percent impairment and a 90 degrees flexion equaled 0 percent impairment, to total 8 percent impairment, which corresponded to 1 percent hand impairment under Table 16-1 page 438. The total hand impairment values of 4 percent corresponded to a 4 percent impairment of the right upper extremity under Table 16-2 page 439.

In a January 5, 2003 report, an Office medical adviser noted that appellant's date of maximum medical improvement was September 2002. The Office medical adviser applied the A.M.A., *Guides* to the findings of Dr. Vargo and determined that appellant had 26 percent right upper extremity impairment. The Office medical adviser utilized the same tables and figures as Dr. Vargo, but opined that appellant had 1 percent impairment due to elbow range of motion. The Office medical adviser found that appellant had 0 percent impairment with regard to pronation and supination findings. Under Figure 16-34, page 472, 5 degrees of extension equaled 1 percent impairment and 60 degrees of flexion equaled 0 percent impairment. The Office medical adviser used the Combined Values Chart on page 604 of the A.M.A., *Guides* and combined the 10 percent loss of strength, the 15 percent shoulder range of motion loss, the 1 percent elbow range of motion loss, and 1 percent wrist range of motion loss to total 26 percent permanent impairment of the right upper extremity.

By decision dated January 21, 2003, the Office granted appellant an additional schedule award for a 5 percent permanent impairment, for a total schedule award of 26 percent permanent impairment to the right upper extremity.

In a February 7, 2003 letter, appellant requested an oral hearing, which was held on August 20, 2003. In a November 20, 2003 decision, an Office hearing representative found that Dr. Vargo had provided range of motion measurements for the right middle, ring and fifth finger in his November 4, 2002 report but the Office medical adviser failed to address these findings. The hearing representative remanded the case for a review of whether the range of motion findings for appellant's finger should be included or excluded from appellant's schedule award claim.

In a December 10, 2003 report, the Office medical adviser advised that, under the principles of section 16.8a of the A.M.A., *Guides*, decreased strength cannot be rated in the presence of decreased motion. The Office medical adviser applied the A.M.A., *Guides* to the physical findings of Dr. Vargo as set forth in his November 4, 2002 report to determine that appellant had a 16 percent right upper extremity impairment based on range of motion impairment of the shoulder (15 percent), elbow (0 percent) and wrist (1 percent). In a March 10, 2004 report, the Office medical adviser evaluated Dr. Vargo's November 4, 2002 range of motion findings of the distal interphalangeal joint, proximal interphalangeal joint and

metacarpophalangeal joint under Figures 16-21, 16-23 and 16-15 found at pages 461, 463 and 464 of the A.M.A., *Guides* for the right third, fourth and fifth fingers and determined that appellant had a four percent upper extremity impairment. For the third digit, eight percent impairment was found, which corresponded to a two percent hand impairment under Table 16-1 page 438. Twelve percent impairment was found for the fourth or ring finger, which corresponded to one percent hand impairment under Table 16-1 page 438. Ten percent impairment was found for the right fifth finger which corresponded to a one percent hand impairment under Table 16-1 page 438. The Office medical adviser found that each of appellant's hand impairments, two percent for the third finger, one percent for the fourth finger, and one percent for the fifth finger corresponded to the equivalent upper extremity impairment under Table 16-2 page 439 and yielded a four percent total upper extremity impairment. The Office medical adviser utilized the Combined Values Chart and combined the 4 percent upper extremity impairment for the fingers with the 16 percent upper extremity impairment for the shoulder, elbow and wrist to find a total impairment of 20 percent.

By decision dated March 18, 2004, the Office denied appellant's claim for an additional award. The Office found that the medical evidence did not establish impairment exceeding the 26 percent previously received.

In an April 6, 2004 letter, appellant requested an oral hearing, which was held November 18, 2004. Appellant also submitted a March 4, 2004 report from Dr. Vargo which advised that his previous report of November 4, 2002 remained valid.

By decision dated June 23, 2005, an Office hearing representative affirmed the March 18, 2004 decision. The Office hearing representative also found that no separate award could be granted for the fingers as the finger impairments were properly considered in the upper extremity impairment determination.

On appeal, appellant contends that he is entitled to a separate schedule award for his finger impairment.

### **LEGAL PRECEDENT -- ISSUE 1**

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.404 of the implementing federal regulation,<sup>2</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

A.M.A., *Guides*<sup>3</sup> has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>4</sup>

### ANALYSIS -- ISSUE 1

The Board finds that the medical evidence does not establish that appellant has more than a 26 percent impairment of the right upper extremity. In this case, the Office medical adviser applied the A.M.A., *Guides* to Dr. Vargo's findings noting a 20 percent impairment of the right upper extremity based on loss of motion of the fingers, wrist, elbow and shoulder. The Board notes that the A.M.A., *Guides* provide that decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts that prevent effective application of maximal force in the region being evaluated.<sup>5</sup> The Office medical adviser properly did not include Dr. Vargo's loss of strength determination for appellant's upper extremity impairment calculation to the loss of range of motion.

The Office medical adviser properly relied on the tables of the A.M.A., *Guides*, as noted, to find that appellant had abnormal motion impairment of 4 percent for the fingers, 1 percent for the wrist, 0 percent for the elbow and 15 percent for the shoulder, which mirrored Dr. Vargo's November 4, 2002 report. Section 16.1c page 438 of the A.M.A., *Guides* states that when a given unit has more than one type of impairment (e.g., abnormal motion, sensory loss, and partial amputation of a finger), the various impairments are combined to determine the total impairment before conversion to the next larger unit. Similarly, multiple regional impairments, such as those of the hand, wrist, elbow and shoulder, are first expressed individually and then combined to determine the total upper extremity impairment. In this case, the Office medical adviser properly calculated each impairment rating for each part (the hand, wrist, elbow and shoulder) as upper extremity impairments before combining each part to determine the total upper extremity impairment.<sup>6</sup> Appellant's argument that he should be entitled to a separate award based on his finger impairment has no validity as such impairment was considered within the total rating for his right upper extremity.

The Office medical adviser properly converted the impairment values for each affected finger into an impairment of the hand pursuant to Table 16-1 page 438 and then converted those hand impairment values to an impairment of the upper extremity pursuant to Table 16-2 page 439. Those upper extremity values were then properly added as instructed by section 16.1d, page 440 of the A.M.A., *Guides*. Similar methodology was employed under the appropriate figures and tables to obtain the upper extremity impairment value for the wrist, elbow and

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<sup>3</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

<sup>4</sup> See *Joseph Lawrence, Jr.*, *supra* note 3; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989).

<sup>5</sup> See page 508 of the A.M.A., *Guides*.

<sup>6</sup> See *George A. Boyd*, 56 ECAB \_\_\_\_ (Docket No. 05-725, issued August 25, 2005) (where the residuals of an injury to a member of the body specified in the schedule extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, of a hand into the arm or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member).

shoulder. The total upper extremity impairment of 4 percent for impairment of the right hand fingers was then combined with the 1 percent impairment for the wrist, 0 percent impairment for the elbow and the 16 percent impairment for the shoulder utilizing the Combined Values Chart at page 604. Pursuant to the Combined Values Chart, appellant has a total impairment of the right upper extremity of 20 percent.

The Office medical adviser's determination of appellant's impairment was based on the examining physician's findings and complies with the A.M.A., *Guides*. The Office properly based its schedule award decision on the medical adviser's evaluation. There is no medical evidence of record, correctly based on the A.M.A., *Guides*, which establishes that appellant has greater than a 26 percent impairment of the right upper extremity for which appellant received a schedule award.<sup>7</sup>

### **CONCLUSION**

The Board finds that appellant did not establish that he had greater than the 26 percent impairment to his right upper extremity which the Office had previously awarded.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs decision dated June 23, 2005 is affirmed.

Issued: February 9, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>7</sup> The Board notes that appellant retains the right to request an increased schedule award based on medical evidence indicating a progression in his employment-related condition. *Linda T. Brown*, 51 ECAB 115 (1999).