United States Department of Labor
Employees' Compensation Appeals Board

DANIEL J. RASKE, Appellant	)	
and	)	**Docket No. 06-37**
	)	**Issued: February 15, 2006**
U.S. POSTAL SERVICE, POST OFFICE, North Reading, MA, Employer	)	

Appearances:
Ron Watson, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 6, 2005 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated June 30, 2005, which found that appellant did not sustain more than a 10 percent right upper extremity impairment and a 2 percent left thumb impairment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit schedule award decision in this case.

ISSUE

The issue is whether appellant has more than 10 percent right upper extremity impairment and 2 percent left thumb impairment, for which he received a schedule award. Appellant's representative argues that the record supports an additional impairment to appellant's right and left upper extremity and that the 2 percent left thumb impairment should be compensated as an upper extremity impairment.

FACTUAL HISTORY

This case has been before the Board previously. In a decision dated February 11, 2005, the Board set aside the Office's April 15, 2004 schedule award for a two percent impairment of

the left thumb. The Board found that the schedule award was based on an incomplete statement of accepted facts. The Board remanded the case to the Office to combine the files from appellant's accepted bilateral carpal tunnel condition and his accepted bilateral medical epicondylitis condition claims, prepare a new statement of accepted facts noting the accepted conditions and to refer appellant for an examination on whether he was entitled to an increased schedule award based on his bilateral medial epicondylitis. The decision of the Board is incorporated herein by reference.[1] As noted in the Board's decision, appellant received a schedule award for a 10 percent permanent impairment for his right upper extremity on July 17, 1995.

The Office combined appellant's case files relating to his bilateral carpal tunnel syndrome with bilateral surgical release (claim number 010368598) and bilateral medial epicondylitis (claim number 012011766). The Office referred appellant, together with an updated statement of accepted facts) and list of questions, to Dr. Alan Ertel, a Board-certified orthopedic surgeon, for a second opinion evaluation to address whether he was entitled to an increased schedule award.

In an April 8, 2005 report, Dr. Ertel noted the history of appellant's work injuries and medical treatment. He recorded appellant's complaints, noting no symptoms relative to the medial epicondylitis, some discomfort relative to the lateral epicondylitis and some numbness and tingling in the hands bilaterally, with greater symptoms experienced on the right side. Dr. Ertel reported results of motor testing, elbow and upper extremity range of motion, grip strength, tip pinch, key pinch, point tenderness and two-point discrimination testing. He reported a full range of motion of the wrists and normal motor testing for the biceps, triceps, pronation, supination, wrist extension-flexion and digital flexion-extension. Measured range of motion of the elbows equaled 130 degrees of flexion bilaterally with full extension to 0 degrees. Pronation and supination were to 90 degrees bilaterally with no joint ankylosis. No point tenderness to palpation in the region of the medial epicondyle was found and minimal point tenderness to palpation in the region of the right greater than left epicondyle was noted. Dr. Ertel found no ulnar motor weakness, negative Forment's sign, negative Wartenberg's sign, no significant thenar atrophy and no gross motor atrophy. Dr. Ertel further reported a negative Tinel's bilaterally and a positive Phalen's test bilaterally at 30 seconds with numbness produced in the median nerve distribution. Based on his examination, Dr. Ertel diagnosed bilateral residual carpal tunnel syndrome; bilateral medial epicondylitis; resolved; and right greater than left lateral epicondylitis. Dr. Ertel applied the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[2] (A.M.A., *Guides*) and opined that there was no impairment for the condition of medial epicondylitis. He found a 10 percent impairment of the upper extremity based on residual carpal tunnel syndrome, noting that there was no appreciable difference between the values obtained by Dr. Albert Fullerton in 2002.

In an April 25, 2005 report, an Office medical adviser reviewed the medical record and advised the date of maximum medical improvement was April 8, 2005, the date of Dr. Ertel's examination. The Office medical adviser opined that although appellant had surgery for bilateral

[1] Docket No. 04-1543 (February 11, 2005).

[2] A.M.A., *Guides* (5th ed. 2001).

carpal tunnel syndrome, residual symptoms remained. The Office medical adviser further noted that, while appellant had subsequently developed medial epicondylitis in both elbows, the elbow symptoms had presently resolved as there was no pain or tenderness in the region of the medial epicondyles. Based on the fact that Dr. Ertel found no residual symptoms related to medial epicondylitis in either upper extremity, the Office medical adviser opined that there was no additional upper extremity impairment for bilateral medial epicondylitis.

By decision dated June 30, 2005, the Office found that appellant failed to establish that he sustained more than a 10 percent right upper extremity impairment and more than a 2 percent permanent impairment to his thumb, for which he received schedule awards.

LEGAL PRECEDENT

Under section 8107 of the Act[3] and section 10.404 of the implementing federal regulation, 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 A.M.A., *Guides* has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[4]

When the Office refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, the Office should secure an appropriate report on the relevant issues.[5]

ANALYSIS

The Office referred appellant for examination by Dr. Ertel. As previously noted, it is the Office's obligation to secure a medical report that is sufficient to resolve the issues relating to the degree of permanent impairment in this case. While an Office medical adviser may review the findings of a second opinion physician and offer an opinion that differs from the second opinion physician, the second opinion's medical report should provide adequate findings on which to base a schedule award determination.[6]

In this case, Dr. Ertel sets forth specific findings as to various testing performed on appellant's upper extremities and opined that appellant had a 10 percent impairment of upper

[3] 5 U.S.C. § 8107.

[4] *See Joseph Lawrence, Jr.*, 53 ECAB 331 (2002); *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[5] *See Robert Kirby*, 51 ECAB 474, 476 (2000); *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

[6] *Cf. Mae Z. Hackett*, 34 ECAB 1421 (1983) (where the Office refers a claimant for a second opinion, it has the responsibility to obtain an evaluation which will resolve the issue involved in the case).

extremity function based on the residual bilateral carpal tunnel syndrome. As Dr. Ertel did not specifically reference his impairment rating with reference to any tables or figures of the A.M.A., *Guides*, the Office properly forwarded a copy of the medical record to an Office medical adviser for review and calculation of the degree of appellant's permanent impairment due to the accepted conditions.[7] While both Dr. Ertel and the Office medical adviser were in agreement that appellant was not entitled to an additional upper extremity impairment for bilateral medial epicondylitis based on the lack of objective findings, the Office medical adviser did not address Dr. Ertel's opinion that appellant had a 10 percent impairment of the upper extremity based on bilateral residual carpal tunnel syndrome. As Dr. Ertel attributed appellant's impairment to bilateral residual carpal tunnel syndrome, Dr. Ertel appears to imply that there is 10 percent impairment to both the left and right upper extremities. Furthermore, the Office medical adviser did not apply any of Dr. Ertel's objective findings to the applicable criteria in the A.M.A., *Guides*. For example, Dr. Ertel found that the measured range of motion of the elbows equaled 130 degrees of flexion bilaterally. Under Figure 16-34, page 472 of the A.M.A., *Guides*, an elbow range of motion of 130 degrees of flexion equates to a 1 percent upper extremity impairment. It is not clear whether the findings contained in Dr. Ertel's report relate to both of appellant's upper extremities. The Office must secure a supplemental report from Dr. Ertel to clarify his findings. Once Dr. Ertel supplies such a report, the medical record and Dr. Ertel's report should be referred to an Office medical adviser to base a schedule award determination on applicable A.M.A., *Guides* criteria.

CONCLUSION

The Board finds that the case is not in posture for decision as the second opinion physician failed to provide a clear report as to whether appellant's impairment was to both upper extremities.

[7] Office procedures provide that, after obtaining all necessary medical evidence, the file should be reviewed by an Office medical adviser for an opinion concerning the nature and percentage of any impairment. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 30, 2005 is set aside and the case remanded for proceedings consistent with this opinion.

Issued: February 15, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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