

extremity impairment pursuant to the A.M.A., *Guides*. On March 16, 2004 the Office granted a schedule award for a two percent permanent impairment of the right upper extremity. In an August 23, 2004 decision,¹ the Board affirmed the Office's schedule award determination. The complete facts of this case are set forth in the Board's August 23, 2004 decision and are incorporated herein by reference.

By letter dated May 16, 2005, appellant's attorney requested reconsideration. In support of her request, appellant submitted an April 22, 2005 report from Dr. George L. Rodriguez, Board-certified in physical medicine and rehabilitation, who found that appellant had a 12 percent permanent impairment of the right upper extremity pursuant to the A.M.A., *Guides*. Dr. Rodriguez arrived at this rating by calculating a 10 percent impairment based on loss of grip strength, which he calculated by utilizing a Jamar dynamometer. He computed grip strength of 65 pounds on the right side, as opposed to a normal grip strength of 74 pounds for a female of appellant's age, based on Jamar testing. Dr. Rodriguez found based on strength loss index that this strength deficit translated to a 10 percent right upper extremity impairment. In addition, Dr. Rodriguez accorded appellant a two percent right upper extremity impairment based on ratable pain pursuant to section 18.3d(c), at pages 573 and 574 of the A.M.A., *Guides*. Combining these two ratings, Dr. Rodriguez arrived at a total 12 percent right upper extremity impairment.

On August 15, 2005 an Office medical adviser adopted Dr. Rodriguez's rating for an additional two percent impairment of her right upper extremity due to pain based on the A.M.A., *Guides*. The Office medical adviser, however, rejected Dr. Rodriguez's finding of an additional 10 percent impairment based on loss of grip strength. He noted that, pursuant to section 16.8 at page 508 of the A.M.A., *Guides*, decreased strength cannot be rated in the presence of decreased motion or pain that prevents effective application of maximal force.

On August 16, 2005 the Office granted appellant a schedule award for an additional two percent permanent impairment of the right upper extremity for the period August 29 to October 11, 2002, for a total of four percent impairment.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² sets 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 loss of use.³ However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the

¹ Docket No. 04-1204 (issued August 23, 2004).

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

³ 5 U.S.C. § 8107(c)(19).

Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.⁴

ANALYSIS

In this case, the Office medical adviser determined that appellant had an additional two percent impairment of her right upper extremity based on Dr. Rodriguez's finding of a two percent impairment for ratable pain pursuant to section 18.3d(c), at pages 573 and 574 of the A.M.A., *Guides*. The A.M.A., *Guides* state under the above subsection, titled "How to Rate Pain-related Impairment," at page 573:

"If the individual appears to have pain-related impairment that has increased the burden of his or her condition *slightly*, the examiner may increase the percentage ... by up to three percent." (Emphasis in the original.)

Employing the above formula, which is also depicted in charts at Figure 18-1, Dr. Rodriguez found that appellant had a two percent upper extremity impairment based on pain. The Office medical adviser adopted Dr. Rodriguez's finding in an August 15, 2005 impairment evaluation. The Board finds that appellant has a two percent impairment based on pain based on the A.M.A., *Guides*.

The Office medical adviser, however, rejected Dr. Rodriguez's finding of an additional 10 percent impairment based on grip strength, finding that, pursuant to section 16.8 at page 508 of the A.M.A., *Guides*, an impairment for weakness should not be combined with an impairment based on pain. This subsection states, at 16.8(a):

"In a rare case, if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the A.M.A., *Guides*, the loss of strength may be rated separately.... If the examiner judges that loss of strength should be rated separately in an extremity that presents other impairments, the impairment due to loss of strength *could be combined* with other impairments, *only if* based on unrelated etiologic or pathomechanical causes. 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." (Emphasis in the original.)

In the instant case, the Office medical adviser properly relied on subsection 16.8(a), as Dr. Rodriguez's proposed impairment rating based on weakness was based on the same affected area as that from which he derived an impairment based on pain. Furthermore, there was no medical explanation by Dr. Rodriguez explaining why this is a rare case in which appellant's impairment is not considered adequately by evaluation of loss of range of motion, motor deficit or sensory deficit as otherwise provided. The Office medical adviser properly disallowed Dr. Rodriguez's 10 percent impairment for loss of grip strength. The Board will affirm the Office's finding of an additional two percent impairment for appellant's right upper extremity.

⁴ 20 C.F.R. § 10.404.

The Office properly found that appellant was not entitled to more than an additional two percent permanent impairment to her right upper extremity.

CONCLUSION

The Board finds that appellant has no more than a four percent permanent impairment to her right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 5, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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