

On October 18, 2004 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use, of his right upper extremity.

In a report dated January 20, 2005, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon, found that appellant had a 15 percent permanent impairment of the right upper extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) [the A.M.A., *Guides*]. He noted that appellant had been examined by Dr. Lydia Grypma, a specialist in occupational medicine, on April 21, 2004, she calculated losses in range of motion and grip strength. Using Dr. Grypma's findings, Dr. Harris arrived at a 15 percent right upper extremity impairment. He stated:

“Examination at this time of the right wrist demonstrated limited range of motion with dorsiflexion 45 degrees, palmar flexion 40 degrees, ulnar deviation 40 degrees and radial deviation 20 degrees. [Appellant] was noted to have an average right grip strength of 51 pounds and average left grip strength of 82 pounds, resulting in a 38 percent loss of grip strength.

“For the purposes of schedule award, [appellant] has three percent impairment for loss of wrist extension (Figure 16-28 at page 467). [He] has a three percent impairment for loss of wrist flexion (Figure 16-28 at page 467). This resulted in six percent impairment for loss of motion.

“[Appellant] does have 38 percent grip strength loss, in part secondary to pain and, as such, is entitled to an additional 10 percent impairment of the right upper extremity (Table 16-34 at page 509).

“Utilizing combined values for six percent impairment for loss of motion and 10 percent impairment of the right upper extremity.”

On April 5, 2005 the Office granted appellant a schedule award for a 15 percent impairment of the right upper extremity for the period April 21, 2004 to March 14, 2005, a total of 46.8 weeks of compensation.

On April 19, 2005 appellant requested a hearing which was held on October 25 2005.

By decision dated November 18, 2005, the Office hearing representative set aside the April 25, 2005 decision, finding that Dr. Harris' impairment evaluation was not conducted in conformance with the applicable standards of the A.M.A., *Guides*. He stated that the estimate finding of a six percent impairment derived from a three percent impairment due to loss of right wrist extension and a three percent impairment for loss of right wrist flexion was correct. However, the finding of 38 percent grip strength loss appeared to equal a 20 percent impairment pursuant to Table 16-34, not a 10 percent impairment, as Dr. Harris found. In addition, the hearing representative noted that Dr. Harris did not state how he calculated a 38 percent grip strength. He further found that Dr. Harris did not consider whether appellant rated an additional impairment based on pain, despite the fact that Dr. Grypma noted subjective complaints of pain. The hearing representative remanded the case back to Dr. Harris for a supplemental report.

In a report dated December 3, 2005, Dr. Harris explained his rating of a 15 percent right upper extremity impairment. He noted that appellant's 38 percent grip strength was calculated from measurements taken by Dr. Grypma in her April 21, 2004 report. Although Dr. Grypma did note a subjective complaint of pain and felt that the A.M.A., *Guides* did allow for permanent partial impairment percentage of pain, the A.M.A., *Guides* only permit impairment for pain where the conventional impairment calculated on the patient's orthopedic condition did not adequately encompass this pain as noted in Figure 18, page 574. Dr. Harris felt that appellant's impairment was adequately addressed by his impairment for loss of motion and grip strength, so that he was not entitled to an additional impairment for pain. He indicated that his 38 percent loss of grip strength translated into no more than a 10 percent impairment of the upper extremity, as he found in his January 20, 2005 report. Dr. Harris noted that the A.M.A., *Guides* provided that "decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformity or absence of parts that prevent effective application of maximum force in the region being evaluated, pursuant to page 508, at paragraph 16.88." He further noted that the A.M.A., *Guides* note that, if there was more than 20 percent variation in the reading, one may assume that the individual is not exerting full effort. Dr. Harris stated:

"As noted in the report of Dr. Grypma of April 21, 2004, Jamar grip strengths on the injured right side were 54 pounds/42 pounds/58 pounds. Obviously, there is greater than a 20 percent difference [in] the 42 pound and the 58 pounds. Taking into account that [appellant] did have residual pain which interfered with function, limited motion of his right wrist and that there was a 20 percent variation in his grip strength, I did not feel that [he] was entitled to the full impairment for loss of grip strength, based on his 38 percent loss of grip strength. As such this was adjusted down to 10 percent impairment which, according to the A.M.A., *Guides*, would be impairment rating for a grip strength loss of 10 to 130 percent, at Table 16-34, page 509. It is felt that this 10 percent loss of grip strength would be a fair and equitable rating for his loss of grip strength which, in my opinion, is somewhat less than the 38 percent due to the fact that he does have both pain as well as limited motion which interferes with grip strength testing."

By decision dated December 12, 2005, the Office reinstated the April 5, 2005 schedule award for a 15 percent impairment of the right upper extremity. The Office found that Dr. Harris, in his December 3, 2005 supplemental report, had adequately addressed and explained the concerns raised by the Office hearing representative in his November 18, 2005 decision.

By letter dated January 5, 2006, appellant's attorney requested reconsideration. Appellant submitted a January 21, 2006 report from Dr. Gabriel Torres, a chiropractor, who opined that he had a 20 percent right upper extremity impairment.

By decision dated February 24, 2006, the Office denied appellant's application for review on the ground that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act¹ set 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.² 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 Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.³

ANALYSIS -- ISSUE 1

In this case, the Office found that appellant had a 15 percent right upper extremity impairment based on the January 20 and December 3, 2005 reports of Dr. Harris. He derived a 10 percent impairment for grip strength based on appellant's 38 percent loss of grip strength, as calculated by Dr. Grypma in her April 21, 2004 report; and an additional six percent impairment derived from three percent impairment for loss of wrist extension pursuant to Figure 16-28 at page 467 of the A.M.A., *Guides* and a three percent impairment for loss of wrist flexion pursuant to Figure 16-28 at page 467. Dr. Harris properly utilized Figure 16-28 to determine 3 percent impairments for 45 degrees of retained dorsiflexion and retained palmar flexion of 40 degrees. He also properly applied Figure 16-31 to determine a 0 percent impairment for retained radial deviation of 20 degrees. The six percent impairment for loss of motion was accepted by the Office hearing representative in his November 18, 2005 decision and is not specifically contested in this appeal.

The Office hearing representative vacated the prior decision based upon several concerns with Dr. Harris' 10 percent impairment based on loss of grip strength, originally calculated in his January 20, 2005 report. The Office hearing representative set aside the April 5, 2005 schedule award and instructed the Office to refer the case file back to Dr. Harris to address these concerns. In his December 3, 2005 report, Dr. Harris issued a thorough, well-reasoned report explaining his findings and conclusions. He explained that, because the deviation between appellant's grip strength measurements was more than 20 percent, the A.M.A., *Guides* instruct that it may be assumed that the claimant was not exerting full effort. Dr. Harris, therefore, rated his loss of strength to be from 10 to 30 percent, pursuant to Table 16-34, which resulted in an upper extremity impairment of 10 percent. Finally utilizing the Combined Values Chart at page 604, he properly concluded that the 6 percent impairment due to motion, combined with the 10 percent impairment for loss of grip strength combined to an impairment of 15 percent. This report was rendered in conformance with the standards and applicable tables of the A.M.A., *Guides* provided sufficient support for the December 12, 2005 Office decision which reinstated

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

² 5 U.S.C. § 8107(c)(19).

³ 20 C.F.R. § 10.404.

the April 5, 2005 award for a 15 percent right upper extremity impairment. The Board, therefore, affirms the December 12, 2005 Office decision.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and appellant has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence he submitted is not pertinent to the issue on appeal. The report appellant submitted was from a chiropractor, Dr. Torres, which did not contain a diagnosis of subluxation based on manual manipulation of the spine. Therefore, it does not constitute medical evidence under 5 U.S.C. § 8101(2). The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁶ Dr. Torres' report did not present any additional evidence pertaining to the relevant issue of whether appellant was entitled to an additional schedule award under section 8107. Therefore, as his report carries no probative weight with regard to the issue at bar, it is not relevant to the issue in this case. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law, nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that appellant has no more than a 15 percent impairment of the right upper extremity. The Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

⁵ *Howard A. Williams*, 45 ECAB 853 (1994).

⁶ *See David J. McDonald*, 50 ECAB 185 (1998).

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2006 and December 12, 2005 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: July 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