



The record contains a November 26, 2001 report from Dr. David Weiss, an osteopath. He provided results on examination and opined that appellant had a 74 percent impairment to his left arm, 47 percent to the right arm and 29 percent to each leg.

The Office referred appellant, together with medical records and a statement of accepted facts, to Dr. Lawrence Barr, an osteopath. In a report dated September 30, 2003, he provided a history and results on examination. The examination results included grip strength in pounds on a Jamar dynamometer. Dr. Barr diagnosed left and right hand contusions, low back degenerative disease, resolved bilateral ankle sprains, resolved multiple knee contusions and noted that appellant had bilateral carpal tunnel syndrome diagnosed in 1998. He indicated that appellant had residual weakness in the left hand and residual problems from his low back. With respect to impairment, Dr. Barr stated that appellant had a five percent permanent impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). In a supplemental report dated November 14, 2003, he opined that appellant had an eight percent whole person impairment, based on Tables 17-37 and 15-3 of the A.M.A., *Guides*. Dr. Barr did not explain how he utilized the tables.

In a report dated May 12, 2004, an Office medical adviser opined that the only impairment described by Dr. Barr was a residual weakness in the left hand. The Office medical adviser referred to Table 16-32 with respect to grip strength, although he noted that Dr. Barr reported grip strength in pounds, rather than kilograms. The Office medical adviser concluded, "I think five percent is a reasonable estimate based upon mild weakness of grasp on the left."

By decision dated June 28, 2004, the Office issued a schedule award for a five percent impairment to the left arm. The period of the award was 15.60 weeks from September 30, 2003.

Appellant requested a hearing, which was held on March 28, 2005. In a decision dated June 3, 2005, the hearing representative affirmed the June 28, 2004 schedule award decision.

### **LEGAL PRECEDENT**

Under section 8107 of the Federal Employees' Compensation Act<sup>2</sup> and section 10.404 of the implementing federal regulations,<sup>3</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 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.<sup>4</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

## ANALYSIS

The Office issued a schedule award for a five percent impairment to the left arm based on the reports of Dr. Barr, the second opinion physician, and the interpretation of his findings by an Office medical adviser. The medical evidence, however, was not of sufficient probative value to establish the degree of impairment.

In a September 30, 2003 report, Dr. Barr opined that appellant had a five percent left arm impairment, without providing explanation. He had noted residual weakness in the left hand, without discussing how the degree of impairment was calculated. In the November 14, 2003 report, Dr. Barr referred to Tables 15-3 and 17-37 of the A.M.A., *Guides*. Table 15-3 provides criteria for lumbar spine impairments, which are not applicable under the Act.<sup>5</sup> Table 17-37 provides lower extremity impairments due to nerve deficits and would not be applicable to an upper extremity impairment.<sup>6</sup>

The Office medical adviser attempted to calculate the impairment based on loss of grip strength. He cited Table 16-32, a table providing average grip strength by age and gender, in kilograms. The Board notes that the A.M.A., *Guides* limit the use of impairments based on loss of grip strength to the “rare case” where “loss of strength represents an impairment factor that has not been considered adequately by other methods” in the A.M.A., *Guides*.<sup>7</sup> The Office medical adviser did not explain why an impairment based on loss of grip strength was appropriate in this case. Moreover, the proper application of the tables for loss of grip strength requires measurement in kilograms, application of the proper formula to determine the strength loss index and use of Table 16-34 to determine the arm impairment.<sup>8</sup> The medical adviser did not explain how the five percent impairment was calculated under the applicable tables and he noted that Dr. Barr did not provide results in kilograms as required by the A.M.A., *Guides*.

The Board accordingly finds that the medical evidence on which the Office based its schedule award was not sufficient to establish the degree of permanent impairment. There is no other probative medical evidence of record. The report of Dr. Weiss dated November 26, 2001 was not current and failed to provide a reasoned opinion.<sup>9</sup> The case will be remanded to the Office to secure probative medical evidence on the issue of an employment-related permanent

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<sup>5</sup> A.M.A., *Guides* 384, Table 15-3.

<sup>6</sup> *Id.* at 552, Table 17-37.

<sup>7</sup> *Id.* at 508.

<sup>8</sup> *Id.* at 509.

<sup>9</sup> Dr. Weiss, for example, cited a left arm impairment based in part on Table 16-15, without explaining how the impairment was calculated. Table 16-15 requires that the affected nerve be identified and the percentage of the maximum impairment determined based on the appropriate findings. A.M.A., *Guides* 492, Table 16-15. Dr. Weiss also uses a grip strength impairment with no explanation of why this was appropriate under the principles cited at page 508 of the A.M.A., *Guides*.

impairment to a scheduled member under the Act.<sup>10</sup> After such further development as the Office deems necessary, it should issue an appropriate decision.

**CONCLUSION**

The medical evidence of record does not contain a reasoned medical opinion regarding the degree of impairment and the case will be remanded for further development.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 3, 2005 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: June 14, 2006  
Washington, DC

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

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

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<sup>10</sup> Since the accepted injuries included the legs, the physician should consider whether there is any impairment to other scheduled members of the body.