

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

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**ALFONSO L. ROBINSON, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Evergreen Park, IL, Employer**

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**Docket No. 06-852  
Issued: June 21, 2006**

*Appearances:*  
*Alfonso L. Robinson, pro se*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On February 27, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 24, 2005 and January 11, 2006 merit schedule award decisions. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has more than a three percent impairment to his left upper extremity.

**FACTUAL HISTORY**

Appellant, a 36-year-old letter carrier, injured his left wrist on September 3, 2004 when he fell down a flight of stairs. He filed a claim for benefits on September 10, 2004, which the Office accepted for permanent aggravation of a preexisting left wrist ganglion cyst. On November 29, 2004 appellant underwent an excision of the ganglion cyst on his left wrist. The procedure was performed by Dr. James D. Schlenker, a Board-certified surgeon and a specialist in hand surgery.

In a report dated March 22, 2005, Dr. Jacob Salomon, a specialist in general surgery, found that appellant had a 10 percent left upper extremity impairment pursuant to the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (fifth edition) (the A.M.A., *Guides*). He calculated this impairment based on a loss of grip strength. Dr. Salomon stated:

“[Appellant’s] strength was lost due to the huge ganglion cyst being removed from the tendon, weakening the tendon, but not affecting the ranges of motion as much as the weakness of the muscle, due to the tendon being incised resulting in grip strength on the left averaging approximately 35 kilograms. Normal strength taken from Table 16-31 [is] 45 kilograms for the minor hand in the male. There is a formula on page 509 that is utilized. We take normal strength. Since this right hand was not affected, we will take the normal strength from Table 16-31 of 45 kilograms minus the limited strength of 35 pounds, to obtain 10 and that is divided by the normal strength of 45, to obtain a 28 percent impairment strength loss index. On Table 16-34 this corresponds to a 10 percent upper extremity impairment. So, to summarize, [appellant] has a total left upper extremity permanent ... impairment of 10 percent.”

On March 25, 2004 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his left upper extremity.

In a report dated March 16, 2005, the Office medical adviser rated appellant at a three percent left upper extremity impairment under the A.M.A., *Guides*. He awarded a 1 percent left upper extremity impairment for Grade 4 pain/sensory deficit of 10 percent in the lateral antebrachial cutaneous branch of musculocutaneous nerve distribution at Table 16-15, page 492 of the A.M.A., *Guides* and a 2 percent left upper extremity impairment for decreased grip strength.<sup>1</sup> The Office medical adviser stated that there was no award applicable for decreased wrist flexion/extension strength, which cannot be rated in the presence of decreased motion of painful conditions, pursuant to page 508 at paragraph 1. He noted further that, although Dr. Salomon found appellant’s decreased wrist strength stemmed from the excision of the cyst from his tendon, this was not indicated in the operative note. The Office medical adviser indicated that the origin of the cyst was the scapholunate joint and stated that there was no indication that any tendon was “incised” or disrupted.

On August 24, 2005 the Office granted appellant a schedule award for a three percent impairment of the left upper extremity for the period March 16 to May 20, 2005 for a total of 9.36 weeks of compensation.

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<sup>1</sup> The Office medical adviser stated that the maximum grip strength was 42 kilograms on the right, which is normal, and 40 kilograms on the left. This calculated to only a five percent strength loss index, which was below the threshold for an impairment rating under Table 16-34 at page 509. However, the Office medical adviser, based on “clinical judgment,” awarded two percent for a mild impairment which was probably due to the wrist surgical dissection.

On July 27, 2005 appellant requested reconsideration. In a report dated September 18, 2005, Dr. Salomon took issue with the opinion of the Office medical adviser and reiterated his opinion that appellant's impairment of the left upper extremity was 10 percent.

In a report dated March 16, 2005, the Office medical adviser restated his finding that appellant had a three percent impairment of the left upper extremity. Responding to Dr. Salomon's most recent report, he stated:

"In his letter, Dr. Salomon states the A.M.A., *Guides* were applied incorrectly in my determination of grip strength. Contrary to his methods, the A.M.A., *Guides* periodically state that, 'Grip strength measurements may be taken with a Jamar dynamometer. The second (4 centimeter) or third (6 centimeter) position ... usually allows the individual to apply maximal force comfortably,' (page 508, right column paragraph 2). Furthermore, '[m]easurements are repeated three times [at each position]. The three readings for each grip strength are involved, the strength measurements are compared to the average normal strengths listed in Table 16-31 through 16-33' (page 508, last paragraph).

"According to the A.M.A., *Guides*, the Jamar dynamometer readings must show a bell shaped curve to be valid (which is inherent to the multiple positions on the device.) The multiple positions are used mainly to assess different positions will ALWAYS result in a grip strength measurement that is lower than the maximum and will incorrectly reflect the true maximum grip strength (which is what the A.M.A., *Guides* rate). (Emphasis in the original.)

"Per his measurements, Dr. Salomon states that he felt grip strength measurement was 40 kilograms at position 3 and the right measured 42 kilograms at position 2. These maximum measurements were valid and they were the measurements used in my calculations.

"Secondly, Dr. Salomon states that the normal strength in this case should be based on the Average Strength tables located on page 509. This is incorrect. As clearly stated above, the A.M.A., *Guides* specifically stipulate that when the opposite limb is normal (as in this claimant's case), it should be used as the normal strength reference in the strength loss index calculations (page 508, last paragraph). It was in my calculations."

By decision dated January 11, 2006, the Office found that appellant was not entitled to a schedule award greater than the three percent award for the left upper extremity awarded. The Office found that the medical evidence did not support an increase in the impairment already awarded.

## LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> 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.<sup>3</sup> 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 ensure 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.<sup>4</sup>

## ANALYSIS

In this case, the Office found that appellant had a three percent impairment of the left upper extremity based on the Office medical adviser's March 16, 2005 report. The Office medical adviser arrived at this amount by allowing one percent left upper extremity impairment for Grade 4 pain/sensory deficit. He reached this impairment percentage by applying Table 16-10, page 482 of the A.M.A., *Guides*, to find that appellant had a Grade 4 percentage sensory deficit of 10 percent. The Office medical adviser then determined that appellant's impairment of the lateral antebrachial cutaneous branch of musculocutaneous nerve distribution, at Table 16-15, page 492 of the A.M.A., *Guides*, was ratable as a maximum impairment of five percent. By multiplying the Grade 4 impairment deficit of 10 percent by the maximum value of 5 percent and rounding up, the 1 percent impairment value is obtained. This finding was proper under the A.M.A., *Guides*.

The Office medical adviser correctly explained that Dr. Salomon had improperly used Table 16-31 because appellant only had impairment of the left upper extremity and, therefore, comparison should have been made to the opposite extremity, not the average normal strength as presented in Table 16-31. He derived at a two percent left upper extremity impairment for decreased grip strength based on normal grip strength of 42 kilograms on the right and 40 kilograms on the left. Although this only amounted to a five percent strength loss index, which was below the threshold for an impairment rating under Table 16-34 at page 509 and application of the index of loss of strength formula would only yield a one percent impairment, the Office medical adviser awarded a two percent impairment for surgical dissection. The Office medical adviser rejected Dr. Salomon's estimate of a 10 percent impairment for decreased wrist strength due to the excision of the cyst from appellant's tendon, as this was not reflected by the November 29, 2004 operative report. He stated that, because the ganglion cyst originated from the scapholunate joint and there was no indication that any tendon was "incised" or disrupted, an impairment could not be derived from such a finding. The Office medical adviser further found that there was no award applicable for decreased wrist flexion/extension strength, which may be rated in the presence of decreased motion of painful conditions, pursuant to page 508 at paragraph 1 of

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

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

<sup>4</sup> 20 C.F.R. § 10.404.

the A.M.A., *Guides*. The Office in its August 24, 2005 decision granted appellant an award for a three percent impairment of the left upper extremity. Appellant has not established that he is entitled to a schedule award for more than a three percent impairment of the left upper extremity.

Following the August 24, 2005 decision, appellant requested reconsideration and submitted Dr. Salomon's September 18, 2005 report. Although Dr. Salomon reiterated his impairment rating of 10 percent to the left upper extremity, the Office medical adviser found that this did not conform with the A.M.A., *Guides*. The Office medical adviser reviewed Dr. Salomon's report and properly found it was not sufficient to support an increase in appellant's schedule award. He stated that Dr. Salomon incorrectly measured grip strength in the left wrist at a level lower than the true maximum measurement, which was contrary to the method outlined in the A.M.A., *Guides*. Noting that Dr. Salomon had computed grip strength measurement of 40 kilograms at position 3 on the Jamar dynamometer on the left and 42 kilograms at position 2 on the Jamar dynamometer on the right, the Office medical adviser stated that these maximum measurements were valid and that he had relied on them in making his own calculations. Finally, the Office medical adviser rejected Dr. Salomon's assertion that the normal strength in this case should be based on the average strength tables on page 509 of the A.M.A., *Guides*. He reiterated that the A.M.A., *Guides* specifically stipulated that, when the opposite limb is normal, it should be used as the normal strength reference in the strength loss index calculations as stated on the last paragraph of page 508. These findings of the Office medical adviser were proper and in accordance with the applicable standards and tables of the A.M.A., *Guides*.

Therefore, as there is no other probative medical evidence establishing that appellant sustained any additional permanent impairment, the Board affirms the Office's January 11, 2006 decision finding that appellant was not entitled to more than a three percent permanent impairment to his left upper extremity.

### CONCLUSION

The Board finds that appellant has no more than a three percent impairment of the left upper extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 11, 2006 and August 24, 2005 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: June 21, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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