

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

RICHARD A. MATTSON, Appellant)
)
)
and)
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DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Iron Mountain, MI, Employer)
)
)

**Docket No. 06-264
Issued: March 17, 2006**

Appearances:
Richard A. Mattson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On November 14, 2005 appellant filed a timely appeal of an October 26, 2005 schedule award of the Office of Workers' Compensation Programs for a 10 percent permanent impairment of the right arm. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has greater than a 10 percent permanent impairment of the right arm.

FACTUAL HISTORY

On March 11, 2003 appellant, then a 43-year-old nursing assistant, filed a claim for compensation for an occupational disease of his right arm and shoulder. He stated that due to a left shoulder injury, he was on restricted duty with use of only his right arm. This resulted in pain to his right shoulder and elbow that became so bad by February 26, 2003, he could not

continue to work. Appellant stopped work on February 26, 2003 and did not return. The Office accepted that he sustained right lateral epicondylitis in the performance of duty. After a period of paid leave, the Office paid compensation for temporary total disability until August 1, 2003, when appellant retired and elected disability retirement benefits in lieu of those under the Federal Employees' Compensation Act.

On March 16, 2005 appellant filed a claim for a schedule award. He submitted a March 18, 2003 report from Dr. Edward A. Perez-Conde, who is Board-certified in emergency medicine. He diagnosed right elbow epicondylitis and stated that appellant could not perform any physical activity with his right arm for more than two minutes and that he had lost at least 50 percent of his work capability and use of his arm.

On May 5, 2005 the Office advised appellant that it needed a medical report that evaluated his impairment using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). In a May 27, 2005 report, Dr. Perez-Conde stated that appellant complained of daily elbow pain averaging 5/10 with nearly daily flares to 8/10 and of weakness and fatigue after 2 minutes of activity. Elbow motion on examination was minus 10 degrees of extension, 100 degrees of flexion, 48 degrees of supination and 70 degrees of pronation. Dr. Perez-Conde stated that appellant had gained maximal improvement on July 31, 2003 and that his functional impairment was 50 to 60 percent by patient report and history. On October 4, 2005 an Office medical adviser reviewed the medical evidence and, using Tables 16-43 and 16-37 of the A.M.A., *Guides*, assigned impairments of 1 percent for 10 degrees of extension, 6 percent for 100 degrees of flexion, 2 percent for 48 degrees of supination and 1 percent for 70 degrees of pronation, for a total of 10 percent impairment of the right arm.

On October 26, 2005 the Office issued a schedule award for a 10 percent loss of use of the right arm.

LEGAL PRECEDENT

The schedule award provision of the Act¹ and its implementing regulation² sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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 implementing regulation as the appropriate standard for evaluating schedule losses.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

ANALYSIS

The Board finds that the Office properly determined that appellant has a 10 percent permanent impairment of his right arm. The impairment ratings assigned by an Office medical adviser correlated to the findings reported by Dr. Perez-Conde on a May 27, 2005 examination for loss of motion of the elbow in flexion, extension, pronation and supination, as provided for in Figures 16-34 and 16-37 of the A.M.A., *Guides*. In his May 27, 2005 report, Dr. Perez-Conde also reported that appellant had complaints of pain and weakness. Such impairments are subject to the A.M.A., *Guides* and thus a proper basis of a schedule award, but only if they are the result of a loss of nerve function.³ As the medical evidence does not indicate appellant's pain and weakness are due to a loss of nerve function, these impairments are not a basis for a schedule award. The amount payable pursuant to a schedule award does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other lifestyle activities.⁴

CONCLUSION

The evidence establishes that appellant has no greater than a 10 percent permanent impairment of the right arm.

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 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

³ A.M.A., *Guides* 482, 484, Chapter 16.5b.

⁴ *Dennis R. Stark*, 57 ECAB ____ (Docket No. 05-1826, issued January 10, 2006).