

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

LEMUEL ANDERSON, Appellant

and

**DEPARTMENT OF THE AIR FORCE,
KEESLER AIR FORCE BASE, MS, Employer**

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**Docket No. 06-513
Issued: May 18, 2006**

Appearances:
Lemuel Anderson, 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 December 28, 2005 appellant filed a timely appeal from a December 2, 2005 decision of the Office of Workers' Compensation Programs finding that he had not established entitlement to an augmented schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that he sustained greater than a 45 percent impairment of the left upper extremity and a 15 percent impairment of the right upper extremity, for which he received schedule awards.

FACTUAL HISTORY

This is the third appeal before the Board in this case. By decision dated February 1, 2004,¹ the Board remanded the case to the Office to resolve a conflict of medical opinion

¹ Docket No. 03-2284 (issued February 1, 2004).

between Dr. M.F. Longnecker, Jr., an attending Board-certified orthopedic surgeon, and two Office medical advisers regarding the percentage of upper extremity impairment related to accepted bilateral carpal tunnel syndrome. On remand of the case, the Office referred appellant to Dr. Purser, a Board-certified orthopedic surgeon, for an impartial medical examination. Dr. Purser found that appellant sustained a 41 percent impairment of the left upper extremity and a 4 percent impairment of the right upper extremity according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, the A.M.A., *Guides*). By decision dated January 24, 2005,² the Board affirmed the Office's July 15, 2004 decision finding that appellant did not have more than 41 percent impairment of the left arm and 4 percent impairment of the right arm. The Board found that Dr. Purser's opinion represented the weight of the medical evidence. The law and the facts of the case as set forth in the Board's prior decisions are hereby incorporated by reference.

Following the issuance of the Board's January 24, 2005 decision, appellant requested reconsideration on August 2, 2005. He submitted additional medical evidence.³

In an April 11, 2005 report, Dr. Longnecker noted that appellant presented "for follow-up regarding the carpal tunnel syndrome" with chronic pain. He opined that, according to "[T]ables 18-418-7" of the fifth edition of the A.M.A., *Guides*,⁴ "the pain-related impairment score [was] 56 percent when performing" activities of daily living, "indicating moderately severe pain-related impairment. This [was] in addition to the conventional impairment rating." Referring to paragraph 16-7c, page 506 of the A.M.A., *Guides*,⁵ Dr. Longnecker opined that appellant had a 23 percent impairment for pain of the fingers, 23 percent for tightness and stiffness, or a total of 46 percent, combined with previous impairment ratings.

On May 31, 2005 the Office referred the medical record, including Dr. Longnecker's April 11, 2005 report, to an Office medical adviser for calculation of a schedule award for bilateral upper extremity impairment. In a June 1, 2005 report, an Office medical adviser opined that appellant had reached maximum medical improvement as of July 7, 2004, the date of Dr. Purser's schedule award rating. He stated that he agreed with Dr. Purser's assessment of a 41 percent impairment of the left arm and a 4 percent impairment of the right arm.

By decision dated December 2, 2005, the Office found that appellant had not established that he sustained greater than a 41 percent impairment of the left upper extremity and a 4 percent impairment of the right upper extremity, for which he received schedule awards.⁶ The Office

² Docket No. 04-1964 (issued January 24, 2005).

³ Appellant submitted a February 23, 2004 chart note from Dr. Longnecker that did not mention carpal tunnel syndrome or upper extremity impairments.

⁴ Chapter 18 of the fifth edition of the A.M.A., *Guides* is entitled "Pain." There is no Table 18-418-7. However, Table 18-7, page 584 of the A.M.A., *Guides* is entitled "Determining Impairment Class on the Basis of Total Pain-Related Impairment Score."

⁵ Paragraph 16.7c, page 506 of the fifth edition of the A.M.A., *Guides* is entitled Musculoskeletal Impairments, Intrinsic Tightness. Digit impairments due to intrinsic tightness are addressed in Table 16-28, page 506.

⁶ The record contains a December 6, 2005 preliminary determination of overpayment. The overpayment issue is not before the present appeal as there is no final decision of record adjudicating this issue.

explained that an Office medical adviser determined that Dr. Longnecker's April 11, 2005 report was insufficient to require modification of the schedule award decision.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act⁷ and its implementing regulation⁸ 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 how 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 and guidelines so that there are uniform standards applicable to all claimants. The Office has adopted the A.M.A., *Guides* as the appropriate standard for evaluating scheduled losses and the Board has concurred in such adoption.⁹

The standards for evaluation the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.¹⁰ Chapter 16 of the fifth edition of the A.M.A., *Guides* provides detailed grading schemes and procedures for determining impairments of the upper extremities due to pain, discomfort, loss of sensation, or loss of strength.¹¹

ANALYSIS

Appellant received schedule awards for a 41 percent permanent impairment of the left upper extremity and a 4 percent permanent impairment of the right upper extremity due to accepted bilateral carpal tunnel syndrome. In a January 24, 2005 decision, the Board affirmed these percentages of impairment, finding that the July 7, 2004 opinion of Dr. Purser, a Board-certified orthopedic surgeon and impartial medical specialist, represented the weight of the medical evidence.

On August 2, 2005 appellant requested reconsideration and submitted an April 11, 2005 report from Dr. Longnecker, an attending Board-certified orthopedic surgeon, assessing additional upper extremity impairment due to stiffness in the fingers and pain. Dr. Longnecker was on one side of the conflict resolved by Dr. Purser. The Board has generally held that any additional reports from a physician on one side of a conflict repeating his earlier findings and conclusions is insufficient to overcome the weight accorded the impartial medical examiner who

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

¹⁰ *Belinda H. Wilson*, 57 ECAB ____ (Docket No. 05-1426, issued October 19, 2005).

¹¹ A.M.A. *Guides* 433-521, Chapter 16, "The Upper Extremities," (5th ed. 2001).

resolved the conflict.¹² However, Dr. Longnecker set forth new findings and new percentages of impairment.

Dr. Longnecker opined that appellant had an additional 46 percent impairment, 23 percent due to stiffness in the fingers and 23 percent for pain. However, he did not indicate if these percentages were pertained to the hand or arm or if they were unilateral or bilateral impairments. Dr. Longnecker did not provide range of motion measurements demonstrating stiffness in the fingers or other objective criteria supporting the percentages of impairment. This vagueness reduces the probative value of his opinion.¹³

Dr. Longnecker did not refer to the appropriate tables or grading schemes in the A.M.A., *Guides*. Dr. Longnecker related the 23 percent pain impairment to “[T]ables 18-418-7.” The A.M.A., *Guides* does not contain a table with this designation. For the impairment due to stiffness, he referred to paragraph 16-7c on page 506 of the fifth edition of the A.M.A., *Guides*, an explanatory section that does not set forth any percentages of impairment. As Dr. Longnecker did not properly use the appropriate portions of the A.M.A. *Guides* in arriving at the offered 46 percent impairment, his opinion is of greatly diminished probative value.¹⁴ The Board finds that Dr. Longnecker’s report is insufficient to outweigh Dr. Purser’s schedule award rating or to create a new conflict of medical opinion. Therefore, Dr. Purser’s opinion that appellant sustained a 41 percent impairment of the left upper extremity and a 4 percent impairment of the right upper extremity continues to represent the weight of the medical evidence in this case.¹⁵

CONCLUSION

The Board finds that appellant has not established that he sustained greater than a 41 percent impairment of the left upper extremity and a 4 percent impairment of the right upper extremity, for which he received schedule awards.

¹² *Thomas Bauer*, 46 ECAB 257 (1994); *Virginia Davis-Banks*, 44 ECAB 389 (1993).

¹³ *Donney T. Drennon-Gala*, 56 ECAB ____ (Docket No. 04-2190, issued April 26, 2005).

¹⁴ *Peter C. Belking*, 56 ECAB ____ (Docket No. 05-655, issued June 16, 2005).

¹⁵ *Phillip H. Conte*, 56 ECAB ____ (Docket No. 04-1524, issued December 22, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 2, 2005 is affirmed.

Issued: May 18, 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