

opener and the cart shifted tilting the rods on to his right hand. The Office accepted appellant's claim for right arm epicondylitis and resulting ulnar nerve transposition on January 31, 1997.

Dr. Steven G. McLaughlin, appellant's attending physician, found that he had five percent permanent impairment of his right upper extremity due to ulnar nerve impairment. The Office medical adviser found that, based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,¹ appellant had 11 percent impairment of his right upper extremity. By decision dated July 17, 1997, the Office granted appellant a schedule award for 11 percent permanent impairment of his right arm.

Appellant filed a notice of recurrence of disability on October 27, 2003 alleging that on September 24, 2003 his right arm pain increased. The Office accepted the recurrence of disability on December 18, 2003 and opened his claim for medical treatment. On January 27, 2004 appellant underwent surgery for recurrent right cubital tunnel syndrome with medial epicondylitis, a right ulnar nerve decompression with anterior transposition and medial epicondylectomy. The Office entered appellant on the periodic rolls on March 4, 2004.

Dr. William H. DeVries, appellant's surgeon, found a 10 percent impairment of his right upper extremity due to loss of grip strength. Appellant requested a schedule award on July 16, 2004. The Office medical adviser reviewed the medical evidence and agreed with the 10 percent impairment rating on August 6, 2004. By decision dated September 8, 2004, the Office found that appellant was not entitled to an increased schedule award as the medical evidence only supported 10 percent impairment of the right upper extremity and he had already received compensation for 11 percent impairment.

Appellant requested reconsideration on January 10, 2005 and submitted a December 27, 2004 report from Dr. Grafton Thurman, a Board-certified internist, who stated that appellant's 1997 employment injury resulted in carpal tunnel release surgery and 11 percent impairment of his right upper extremity. He stated that appellant's cubital tunnel surgery involved the right elbow and resulted in 10 percent impairment to the right upper extremity. Dr. Thurman stated that the right cubital tunnel syndrome with surgery in January 2004 was an entirely new injury from a gradual process. He concluded that appellant was entitled to both 10 percent impairment due to right cubital tunnel syndrome and the 11 percent impairment which he had already received and which Dr. Thurman attributed to carpal tunnel syndrome.

Appellant also submitted additional reports from Dr. DeVries dated September 16, 2004 and February 11, 2005. Dr. DeVries stated that appellant's recent surgery was due to a worsening of the old injury and that appellant had only 10 percent impairment of his right upper extremity under the A.M.A., *Guides*,² due to his ulnar nerve condition.

By decision dated May 27, 2005, the Office denied modification of the September 9, 2004 decision.

¹ A.M.A., *Guides* (4th ed. 1993).

² (5th ed. 2001).

Appellant, through his attorney, requested reconsideration on July 6, 2005 and submitted an excerpt from the A.M.A., *Guides*. His attorney also alleged that he was providing an additional report from Dr. Thurman which is not included in the record. Appellant again requested reconsideration on March 31, 2006 based on Dr. Thurman's June 24, 2005 report which is not in the record.

By decision dated May 9, 2006, the Office reviewed appellant's claim on the merits and denied modification of the September 8, 2004 decision.³

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulation⁵ 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. Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁶ FECA Bulletin No. 01-05 (issued January 29, 2001) provides that any initial schedule award decision issued on or after February 1, 2001 will be based on the fifth edition of the A.M.A., *Guides*. This bulletin also explains that, as with previous revisions to the A.M.A., *Guides*, awards made prior to February 1, 2001 should not be recalculated merely because a new edition of the A.M.A., *Guides* is in use. A claimant who has received a schedule award under a previous edition may make a claim for an increased award, which should be calculated according to the fifth edition.⁷

Any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.⁸

³ Following the Office's May 9, 2006 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (August 2002).

⁷ *Fritz A. Klein*, 53 ECAB 642, 644 (2002).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7a.(2)(a) (August 2002).

ANALYSIS

Appellant received a schedule award for 11 percent impairment of his right upper extremity on July 17, 1997 due to his accepted condition of epicondylitis of the right arm and resulting surgery. He underwent surgery due to right cubital tunnel syndrome with medial epicondylitis on January 27, 2004. Appellant then filed a claim for an additional schedule award.

There is no medical evidence in the record supporting that appellant has more than 10 percent impairment to his right upper extremity under the fifth edition of the A.M.A., *Guides* following his January 27, 2004 surgery.⁹ Appellant's attending physicians and the Office medical adviser agreed that this is the appropriate impairment rating. As appellant received a schedule award due to a work-related upper extremity injury for 11 percent impairment, he is not entitled to an additional schedule award for the current impairment rating of 10 percent of the same schedule member. The Office's procedures clearly state that appellant's impairment percentage already paid should be subtracted from the total percentage of impairment. As this would leave appellant with a negative impairment rating, he is not entitled to an additional schedule award.

The Board also notes that Dr. Thurman's December 27, 2004 report is based on an improper history as he attributes appellant's 1997 schedule award to carpal tunnel syndrome rather than the accepted condition of epicondylitis of the right elbow. Medical conclusions based on inaccurate or incomplete histories are of little probative value and are insufficient to satisfy a claimant's burden of proof.¹⁰

As there is no rationalized medical opinion evidence based on a proper factual background supporting that appellant currently has an impairment rating of his right upper extremity of more than 11 percent, for which he has already received a schedule award, he is not entitled to an additional schedule award for this scheduled member.

CONCLUSION

The Board finds that appellant has no more than 11 percent impairment of his right upper extremity for which he has already received a schedule award and that as his current impairment rating is less than that he already received for the scheduled member he is not entitled to an additional schedule award.

⁹ As noted above, the fifth edition is the appropriate addition of the A.M.A., *Guides* in this case as appellant filed an additional claim for a schedule award following a second surgery.

¹⁰ *John W. Montoya*, 54 ECAB 306, 308-09 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2006 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: November 16, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board