



fibrocartilage complex (TFCC) tear of appellant's left wrist on March 30, 2001. Appellant returned to full duty on August 29, 2001.

On March 19, 2002 he filed a schedule award claim and submitted a December 11, 2001 report in which Dr. Nicholas Diamond, an osteopath, noted the history of injury and provided findings on examination. He diagnosed left wrist TFCC tear, status post repair of the tear and chronic, unresolved tenosynovitis and atrophy. Dr. Diamond advised that appellant had reached maximum medical improvement and, in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),<sup>1</sup> he had a left upper extremity impairment totaling 29 percent due to loss of range of motion of the left ring and little fingers, loss of grip strength and a pain-related impairment.

On October 7, 2002 the Office referred appellant to Dr. Richard J. Mandel, a Board-certified orthopedic surgeon, for an impairment evaluation. In a November 21, 2002 report, he reviewed the medical record, history of injury and presented findings on examination. Dr. Mandel advised that appellant reported no pain or numbness with some wrist and finger stiffness and grip weakness on the left. Examination findings included no left hand atrophy or evidence of carpal tunnel syndrome or other peripheral neuropathy. Dr. Mandel advised that appellant's grip strength testing was nonphysiologic, that is, that he was capable of putting forth a greater effort and producing greater grip strength than demonstrated, noting that the same finding was made on a July 2001 functional capacity evaluation. He also stated that appellant's range of motion testing was somewhat inconsistent but with repeated testing it improved and on final testing it was almost normal which, again, suggested submaximal effort. Dr. Mandel's impression was status post TFCC tear of the left wrist as a result of the January 21, 2001 employment injury. He advised that appellant had fully recovered from the tear with complete wrist motion and no evidence of ongoing wrist pathology and could work full duty as a truck driver with no restrictions.

The Office determined that a conflict in medical evidence arose between the opinions of Dr. Diamond and Dr. Mandel regarding whether appellant had an employment-related impairment. It referred him to Dr. Joseph A. Jelen, a Board-certified orthopedic surgeon.<sup>2</sup> In an April 1, 2003 report, he reported his review of the medical records and the history of injury. Dr. Jelen reported that appellant was right-hand dominant and noted that, upon questioning, he did not have any complaints or symptoms, stating that he did not notice any abnormalities in the left wrist. Examination findings included no tenderness to palpation and no radial ulnar instability. Dr. Jelen advised that he could not detect any atrophy of intrinsic muscles of the hands and reported that all strength and motion testing was initially performed slowly and deliberately on the left but as the examination progressed, appellant's motion became more rapid, his grip strength stronger with no appreciable differences present between the right and left. Tinel's was negative at the elbow and wrist over the median and ulnar nerves and reflexes in both upper extremities were equal. Left upper arm circumference was 13 inches on the left and 13 and 3/4 on the right and forearm circumference of 11 and 3/8 on the left and 11 and 7/8

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<sup>1</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

<sup>2</sup> Both Dr. Mandel and Dr. Jelen were provided the medical record, a statement of accepted facts and a set of questions.

on the right which, Dr. Jelen explained, was because appellant was right-hand dominant. Strength testing along the biceps, triceps and wrist flexors and extensors was 5/5 bilaterally. Dr. Jelen's impression was TFCC tear, successfully repaired and healed with no significant objective findings. He stated that the limited motion identified by Dr. Diamond one year previously was not present on his examination and concluded that appellant was fully recovered from his work injury with no symptoms of pain or paresthesias, no abnormal findings on physical examination and no residual disability. In an attached work capacity evaluation, Dr. Jelen advised that appellant could work eight hours a day and could perform all work-related activity without restriction.

By decision dated May 23, 2003, the Office credited the opinion of Dr. Jelen and found that he was not entitled to a schedule award as he had no employment-related impairment. On May 28, 2003 appellant, through his attorney, requested a hearing that was held on January 28, 2004. At the hearing appellant testified regarding his employment injury, surgery and current limitations. He contended that he did not have full strength in his left hand, had problems lifting and continued pain. In a March 18, 2004 decision, an Office hearing representative affirmed the May 23, 2003 decision.

On July 6, 2004 appellant filed an appeal with the Board which requested the case record from the Office. The Office determined that the case record was lost. By order dated November 18, 2004, the Board remanded the case to the Office for reconstruction of the record.<sup>3</sup> Following reconstruction, by decision dated February 8, 2005, the Office reissued the May 23, 2003 decision, finding that appellant was not entitled to a schedule award. On February 16, 2005 counsel again requested a hearing. Appellant did not appear at the hearing but was represented by counsel. By decision dated March 23, 2006, an Office hearing representative affirmed the February 8, 2005 decision.

### **LEGAL PRECEDENT**

Under section 8107 of the Federal Employees' Compensation Act<sup>4</sup> and section 10.404 of the implementing federal regulation,<sup>5</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*<sup>6</sup> has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>7</sup>

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<sup>3</sup> Docket No. 04-1830.

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> A.M.A., *Guides*, *supra* note 1.

<sup>7</sup> See *Joseph Lawrence, Jr.*, *supra* note 1; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>8</sup> When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has no employment-related impairment which would entitle him to a schedule award. He contends on appeal that Dr. Mandel, who performed a second opinion evaluation for the Office, did not give rise to a conflict in medical evidence. Dr. Mandel found a loss of grip strength, made no findings in accordance with the A.M.A., *Guides* and advised that appellant exerted submaximal effort on grip strength testing. Furthermore, he opined that appellant had fully recovered from the January 21, 2001 employment injury with no wrist pathology. It was, therefore, not necessary that he provide an impairment analysis. The Office properly determined that a conflict in the medical evidence was created between Dr. Mandel and that of Dr. Diamond as to whether appellant had an impairment caused by the January 21, 2001 employment injury.<sup>10</sup> The Office properly referred him to Dr. Jelen, a Board-certified orthopedic surgeon, for an impartial evaluation.<sup>11</sup> The Board finds that his report is sufficiently well rationalized such that it can be accorded special weight.<sup>12</sup>

In a comprehensive April 1, 2003 report, Dr. Jelen reported his review of the medical records and history of injury. He reported that appellant who was right-hand dominant did not have any complaints or symptoms. Examination findings included no tenderness to palpation and no radial ulnar instability. Dr. Jelen did not detect any atrophy of intrinsic muscles of the hands and reported that, upon complete testing, appellant's grip strength became stronger with no appreciable differences present between the right and left. Tinel's was negative at the elbow and wrist over the median and ulnar nerves and reflexes in both upper extremities were equal. Strength testing was 5/5. Dr. Jelen also advised that the differences in appellant's left upper and forearm circumferences were explained by his right-hand dominance. His impression was that the TFCC tear had been successfully repaired and had healed with no significant objective findings present. Dr. Jelen specifically noted that the limited motion identified by Dr. Diamond previously was not present on his examination and concluded that appellant was fully recovered from his work injury with no symptoms of pain or paresthesias, no abnormal findings on physical examination and no residual disability. In an attached work capacity evaluation, Dr. Diamond advised that appellant could work eight hours a day and could perform all work-related activity without restriction.

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<sup>8</sup> 5 U.S.C. § 8123(a); see *Geraldine Foster*, 54 ECAB 435 (2003).

<sup>9</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>10</sup> *Supra* note 8.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Since Dr. Jelen provided examination findings and rationale for his opinion that appellant's employment-related TFCC tear had resolved with no residuals, the Board finds that it constitutes the weight of the evidence.<sup>13</sup> The Board, therefore, finds that the Office properly denied appellant's claim for a schedule award as his accepted left wrist condition had resolved.

**CONCLUSION**

The Board finds that appellant has failed to establish that he is entitled to a schedule award for his employment-related condition as the medical evidence establishes that this condition has resolved.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 23, 2006 be affirmed.

Issued: October 16, 2006  
Washington, DC

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

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

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

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<sup>13</sup> See *Sharyn D. Bannick*, 54 ECAB 537 (2003).