

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

M.P., Appellant

and

DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD,
Philadelphia, PA, Employer

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**Docket No. 06-1085
Issued: September 27, 2006**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 4, 2006 appellant filed a timely appeal of a March 27, 2006 decision of the Office of Workers' Compensation Programs regarding a schedule award. Pursuant to 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 10 percent right upper extremity impairment and 12 percent left upper extremity impairment, for which he received a schedule award on March 27, 2006.

FACTUAL HISTORY

On July 7, 1999 appellant, then a 52-year-old roofer, filed an occupational disease claim (Form CA-2) alleging that on that date he sustained bilateral carpal tunnel syndrome as a result of his federal employment. The Office accepted the claim for bilateral carpal tunnel syndrome.

Appellant underwent a left carpal tunnel release on November 19, 2001 and a right carpal tunnel release on February 25, 2002. He retired from federal employment in April 2004.

In a report dated May 3, 2005, Dr. Richard Malamut, a neurologist, noted that appellant continued to have mild tolerable paresthesias of the fourth and fifth digits, left worse than right. He stated that these symptoms worsened when appellant raised his arms over his head. Dr. Malamut indicated that examination revealed normal power in the arms.

In a report dated January 9, 2006, Dr. Gregory Tadduni, an orthopedic surgeon, reported that appellant had some numbness in the ring and small fingers bilaterally and some decrease in grip. He provided results on examination, noting that an electromyogram from December 29, 2005 showed worsening of ulnar entrapment at the elbow. Dr. Tadduni recommended decompression of the right ulnar nerve.

Appellant submitted a January 12, 2006 report from Dr. George Rodriguez, a physiatrist, who provided a history and results on examination. Dr. Rodriguez stated that appellant had bilateral elbow pain, which is aggravated by range of motion of the elbows, as well as lifting of any weight. He also noted frequent numbness in both hands, aggravated by vibration. With respect to the degree of permanent impairment for the right arm, Dr. Rodriguez identified tables in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.) for “sensory and motor nerve impairment.” Dr. Rodriguez opined that, for the median nerve, the impairment was a Grade 3 impairment of 60 percent of the maximum 45 percent, for a 27 percent right arm impairment. For the left arm, he identified the median and ulnar nerves, grading the impairment at 60 percent of the maximum 45 percent for the median nerve and 25 percent of the maximum 50 percent, for a 36 percent left arm impairment. He stated that maximum medical improvement occurred on September 30, 2003.

The Office requested that a medical adviser review the evidence and provide an opinion with respect to a schedule award. In a March 18, 2006 report, the medical adviser noted that while Dr. Rodriguez graded the impairment using Grade 3, it was more appropriate to use Grade 4, at 25 percent of the maximum. He opined that for the right arm appellant had a 10 percent impairment for the median nerve, based on 25 percent of the maximum 39 percent for sensory deficit. For the left arm, the same impairment was found, with an additional 2 percent for the ulnar nerve based on 25 percent of the maximum 7 percent. The medical adviser did not discuss motor impairment; he stated that the date of maximum medical improvement was January 12, 2006.

By decision dated March 27, 2006, the Office issued a schedule award for a 10 percent right arm impairment and a 12 percent left arm impairment. The award ran for 68.6 weeks from January 12, 2006.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.404 of the implementing federal regulations,² 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* has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

ANALYSIS

In the present case, the Office based its March 27, 2006 decision on the March 16, 2006 report of the Office medical adviser. Appellant argues that the award should be based on the opinion of Dr. Rodriguez. The Board finds that neither report is of sufficient probative value and the case must be further developed.

Dr. Rodriguez does not properly apply the tables cited in the A.M.A., *Guides*. He refers to Table 16-15 and the combined maximum impairment for sensory deficit and motor impairments, and then grades both impairments for the median nerve as “[G]rade 3” or 60 percent of the maximum. The proper procedure for sensory deficit or pain is to apply Table 16-10 and grade the sensory impairment under this table.⁴ With respect to motor impairments, the impairment is graded under Table 16-11. Under this table a Grade 3 impairment results in an impairment of 26 to 50 percent of the maximum,⁵ and yet Dr. Rodriguez apparently graded the motor impairment at 60 percent of the maximum, without further explanation. Moreover, he does not explain why a motor impairment is appropriate here. Drs Malamut and Tadduni both reported normal strength, and although Dr. Rodriguez referred to some loss of grip strength, he does not provide a clear description of an impairment based on motor deficit.

The Office medical adviser did not address the motor impairment issue. With respect to sensory deficit or pain, he graded the impairment at Grade 4, rather than the Grade 3 reported by Dr. Rodriguez.⁶ The Office medical adviser does not, however, discuss Table 16-10 or provide

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.404.

³ *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁴ A.M.A., *Guides* 482, Table 16-10. A Grade 3 sensory deficit or pain impairment is described as “distorted superficial tactile sensibility (diminished light touch and two-point discrimination), with some abnormal sensations or slight pain, that interferes with some activities.” The impairment range is 26 to 60 percent of the maximum impairment.

⁵ *Id.* at 484, Table 16-11. A Grade 3 motor impairment is described as “complete active range of motion against gravity only, without resistance.”

⁶ A Grade 4 classification has an impairment range of 1 to 25 percent of the maximum impairment.

additional explanation. Dr. Malamut noted that appellant's symptoms increased when using his arms overhead, and Dr. Rodriguez reported pain aggravated by elbow motion and lifting. This would appear to be consistent with pain or sensory deficit "that interferes with some activities" as described under Grade 3. If the Office medical adviser does not find Grade 3 appropriate, he should provide some rationale for the grading of the impairment in this case.

On remand the Office should secure medical evidence with a rationalized medical opinion on the issues presented, including the date of maximum medical improvement. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The case will be remanded to the Office to secure a reasoned medical opinion on the schedule award issues presented.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 27, 2006 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: September 27, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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