

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

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**D.B., Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE, KELLY  
AIR FORCE BASE, San Antonio, TX, Employer**

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**Docket No. 07-94  
Issued: April 5, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 12, 2006 appellant filed a timely appeal from the July 7, 2006 merit decision<sup>1</sup> of the Office of Workers' Compensation Programs, finding that he did not have more than an additional three percent impairment of the left upper extremity, a total of six percent impairment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

**ISSUE**

The issue is whether appellant established that he has more than an additional three percent impairment of the left upper extremity, a total of a six percent impairment, for which he received schedule awards.

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<sup>1</sup> On appeal appellant states that he is seeking review of an Office decision dated August 9, 2006. The Board notes, however, that the only decision contained in the case record, which is within the Board's jurisdiction, is the Office's July 7, 2006 schedule award decision.

## **FACTUAL HISTORY**

On January 12, 2002 appellant, then a 58-year-old retired inventory management employee, filed an occupational disease claim.<sup>2</sup> On February 10, 1992 he first realized that his carpal tunnel syndrome was caused by factors of his federal employment. In an accompanying narrative statement, appellant related that he started to experience a tingling sensation in his right index finger which turned into a shooting pain that ran up his shoulder. He also experienced the same problems with his left hand. During a routine medical examination, appellant's primary care physician referred him to Dr. Fidel V. Exconde, Jr., a Board-certified neurologist, who performed an electrodiagnostic study. Appellant stated that his job required him to continuously use the computer on average 8 hours per day, 40 hours per week. He also placed orders, established codes, removed, added and updated information every day and excessively used his hand/wrist. By letter dated February 22, 2002, the Office accepted appellant's claim for bilateral carpal tunnel syndrome and authorized right wrist carpal tunnel release which was performed on September 12, 2002 by Dr. Paul D. Pace, an attending hand surgeon.

On August 18, 2003 appellant filed a claim for a schedule award (Form CA-7). In a November 18, 2002 medical report, Dr. Pace found that appellant reached maximum medical improvement on that date. He determined that appellant had six percent impairment of the right upper extremity. Dr. Pace rated 0 percent each for sensory and motor deficit of the right elbow, based on Table 16-11 at page 484, Table 16-15 at page 492 and Table 16-10 at page 482 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*); 2 percent for motor deficit, based on Table 16-11 at page 484 and Table 16-13 at page 489 (20 percent for a Grade 4 deficit multiplied by 10 percent maximum median nerve impairment); and 3.9 percent (rounded to 4 percent)<sup>3</sup> for sensory deficit, based on Table 16-11 at page 484 and Table 16-15 at page 492 (10 percent for a Grade 2 deficit multiplied by 39 percent maximum median nerve impairment) of the right wrist. Dr. Pace added the percentages for motor and sensory deficit (two plus four) to calculate six percent impairment of the right upper extremity.

Dr. Pace determined that appellant had three percent impairment of the left upper extremity. He rated 0 percent each for motor and sensory deficit of the left elbow; 1 percent for motor deficit (10 percent for a Grade 4 deficit multiplied by 10 percent maximum median nerve impairment); and 1.95 percent (rounded to 2 percent) for sensory deficit (5 percent for a Grade 2 deficit multiplied by 39 percent for maximum median nerve impairment) of the left wrist. Dr. Pace added the percentages for motor and sensory deficit (one plus two) to calculate three percent impairment of the left upper extremity.

On September 10, 2003 an Office medical adviser reviewed Dr. Pace's November 18, 2002 report. He found that appellant reached maximum medical improvement on

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<sup>2</sup> Appellant retired from the employing establishment on September 3, 1999.

<sup>3</sup> The A.M.A., *Guides* provides for rounding impairment to the nearest whole number. A.M.A., *Guides* 20, section 2.5d Interpolating, Measuring and Rounding Off. Percentages should not be rounded until the final percent for award purposes is obtained. Fractions should be rounded down from .49 or up from .50. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.0700.4.b(2) (September 1994).

November 18, 2002. Utilizing the appropriate tables of the A.M.A., *Guides*, the Office medical adviser determined that appellant had six percent impairment of the right upper extremity and three percent impairment of the left upper extremity based on Dr. Pace's findings. He utilized the Combined Values Chart at page 604 of the A.M.A., *Guides*. The Office medical adviser combined four percent for sensory deficit with two percent for motor deficit resulting in six percent impairment of the right upper extremity. He also combined two percent for sensory deficit with one percent for motor deficit resulting in three percent impairment of the left upper extremity.

By decision dated March 24, 2004, the Office granted appellant a schedule award for three percent impairment of the left upper extremity and six percent impairment of the right upper extremity based on the Office medical adviser's opinion.

On January 27, 2005 appellant underwent left wrist carpal tunnel release which was performed by Dr. Pace.

By letter dated April 7, 2005, appellant requested reconsideration of the Office's March 24, 2004 decision. In a May 2, 2005 decision, the Office denied his request for reconsideration on the grounds that it was not timely filed and failed to establish clear evidence of error.

On August 29, 2005 appellant filed a CA-7 form for an additional schedule award for his upper extremities. In an August 8, 2005 report, Dr. Pace found that appellant reached maximum medical improvement on that date. He determined that appellant had six percent impairment each of the right and left upper extremities. Regarding the right upper extremity, Dr. Pace stated that the range of motion of the right elbow included 142 degrees of flexion (0 percent) and no lack of extension (0 percent), based on the A.M.A., *Guides* 472, Figure 16-34; and pronation of 90 degrees (0 percent) and supination of 88 degrees (0 percent), based on the A.M.A., *Guides* 474, Figure 16-37. He further stated that appellant had no motor or sensory deficits secondary to a peripheral nerve injury. Dr. Pace added the motor and sensory losses to calculate zero percent impairment. Regarding the right wrist, Dr. Pace reported 69 degrees of flexion (zero percent) and 70 degrees of extension (zero percent), based on Figure 16-28 at page 467 of the A.M.A., *Guides*; and ulnar deviation of 38 degrees (zero percent) and 29 degrees of radial deviation (zero percent), based on Figure 16-31 at page 469 of the A.M.A., *Guides*. He reiterated his prior findings that appellant's motor and sensory deficits were two percent and four percent, respectively, resulting in six percent impairment. Dr. Pace added the percentages for decreased range of motion and combined motor and sensory deficits (zero plus six) to calculate six percent impairment of the right upper extremity.

Regarding appellant's left upper extremity, Dr. Pace determined that the range of motion of the left elbow included 140 degrees of flexion (zero percent) and no lack of extension (zero percent), based on the A.M.A., *Guides* 472, Figure 16-34; and pronation of 90 degrees (zero percent) and supination of 86 degrees (zero percent), based on the A.M.A., *Guides* 474, Figure 16-37. Dr. Pace stated that appellant had no motor or sensory deficits secondary to a peripheral nerve injury. He added the motor and sensory losses to calculate zero percent impairment of the left elbow. Dr. Pace determined that appellant had 64 degrees of flexion (zero percent) and 63 degrees of extension (zero percent), based on Figure 16-28 at page 467 of the A.M.A., *Guides*;

and ulnar deviation of 36 degrees (zero percent) and 27 degrees of radial deviation (zero percent), based on Figure 16-31 at page 469 of the A.M.A., *Guides* of the left wrist. He further determined that appellant had 2.5 percent for motor deficit (25 percent for a Grade 4 deficit multiplied by 10 percent maximum median nerve impairment); and 3.9 percent for sensory deficit (10 percent for a Grade 4 deficit multiplied by 39 percent for maximum median nerve impairment). Dr. Pace added the percentages for motor and sensory deficits to calculate 6.4 percent impairment (rounded down to 6 percent). He then added the percentages for decreased range of motion and combined motor and sensory deficits (zero plus six) to calculate six percent impairment of the left upper extremity.

On March 9, 2006 an Office medical adviser reviewed Dr. Pace's August 8, 2005 report. He stated that appellant reached maximum medical improvement on August 8, 2005. The Office medical adviser determined that appellant had six percent impairment each of the right and left upper extremities. He utilized the Combined Values Chart at page 604 of the A.M.A., *Guides* to determine the impairment of each extremity. The Office medical adviser combined 3.9 percent for sensory deficit with 2 percent for motor deficit resulting in 5.9 percent (rounded to 6 percent) impairment of the right upper extremity. He noted appellant's prior schedule award for six percent impairment of the right upper extremity and opined that, based on today's recommendation, appellant had no additional impairment of the right upper extremity. Regarding the left upper extremity, the medical adviser combined 3.9 percent for sensory deficit with 2.5 percent for motor deficit resulting in 6.4 percent impairment (rounded down to 6 percent) of the left upper extremity. The Office medical adviser noted that appellant had previously received a schedule award for a three percent impairment of the left upper extremity. He stated that this award should be subtracted from the recommended impairment rating, yielding an additional three percent impairment of the left upper extremity.

By decision dated July 7, 2006, the Office granted appellant a schedule award for an additional three percent impairment of the left upper extremity, for a total six percent impairment of the left upper extremity based on the medical adviser's opinion. The award covered a period of 9.36 weeks from August 8 to October 12, 2005.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>4</sup> and its implementing regulation<sup>5</sup> set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>6</sup>

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<sup>4</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.*

## ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome while in the performance of duty. On March 24, 2004 it granted him a schedule award for three percent impairment of his left upper extremity and six percent impairment of his right upper extremity based on the opinion of the Office medical adviser. In support of his claim for an additional schedule award, appellant submitted Dr. Pace's August 8, 2005 report. Dr. Pace determined that appellant had six percent impairment of both the right and left upper extremities. Regarding the right upper extremity, Dr. Pace found that appellant had zero percent impairment for loss of range of motion of the right elbow based on the A.M.A., *Guides* 472, 474, Figures 16-34 and 16-37. He opined that appellant had no motor or sensory deficits secondary to a peripheral nerve injury which constituted zero percent impairment. Regarding the right wrist, Dr. Pace determined that appellant had zero percent impairment for loss of range of motion based on the A.M.A., *Guides* 476, 469, Figures 16-28 and 16-31. He reiterated his prior findings that appellant's motor and sensory deficits were two percent and four percent, respectively, and added, rather than combined these impairments to calculate six percent impairment. Dr. Pace added the percentages for decreased range of motion and combined motor and sensory deficits (0 plus 6) to calculate 6 percent impairment of the right upper extremity.

Regarding appellant's left upper extremity, Dr. Pace determined that he had zero percent impairment for loss of range of motion of the left elbow based on the A.M.A., *Guides* 472, 474, Figures 16-34 and 16-37. He further determined that appellant had no motor or sensory deficits secondary to a peripheral nerve injury which constituted zero percent impairment of the left elbow. Dr. Pace found that he had zero percent impairment for loss of range of motion of the left wrist based on the A.M.A., *Guides* 467, 469, Figures 16-28 and 16-31. Dr. Pace stated that he had 2.5 percent for motor deficit (25 percent for a Grade 4 deficit multiplied by 10 percent maximum median nerve impairment); and 3.9 percent for sensory deficit (10 percent for a Grade 4 deficit multiplied by 39 percent for maximum median nerve impairment). Dr. Pace added, rather than combined, the percentages for motor and sensory deficits to calculate 6.4 percent (rounded to 6 percent impairment). He then added the percentages for decreased range of motion and combined motor and sensory deficits (0 plus 6) to calculate 6 percent impairment of the left upper extremity.

The medical adviser reviewed Dr. Pace's August 8, 2005 report and determined that appellant had six percent impairment each of the right and left upper extremities. He utilized the Combined Values Chart at page 604 of the A.M.A., *Guides* to determine the impairment of each extremity. The medical adviser combined 3.9 percent or 4 percent for sensory deficit with 2 percent for motor deficit resulting in 5.9 or 6 percent impairment of the right upper extremity, for which appellant received a schedule award. He opined that, based on this finding, appellant had no additional impairment of the right upper extremity. Regarding the left upper extremity, the Board finds, however, that the medical adviser's calculation that 3.9 percent or 4 percent for sensory deficit combined with 2.5 percent or 3 percent for motor deficit actually results in 7 percent impairment rather than 6.4 or 6 percent impairment based on the Combined Values Chart. The Board notes that the Office medical adviser added, rather than combined his motor and sensory deficit findings. Appellant received a schedule award for an additional three percent impairment of the left upper extremity. Consequently, he was entitled to a schedule award for an additional four percent impairment for his left upper extremity.

On appeal, appellant contends that the schedule award he received was not adequate compensation for his bilateral carpal tunnel syndrome. As noted, the schedule award provision of the Act provides for compensation to employees sustaining permanent impairment from loss of use of specified members of the body.<sup>7</sup> The Act establishes a maximum of 312 weeks of compensation as the award for total loss of use of an arm.<sup>8</sup> A partial loss of the right and left upper extremities is compensated at a proportionate rate.<sup>9</sup> Accordingly, appellant's award of compensation for an additional four percent impairment of the left upper extremity entitled him to four percent of 312 weeks of compensation or 12.48 weeks of compensation.

**CONCLUSION**

The Board finds that appellant has an additional four percent impairment of his left upper extremity, or a total of seven percent impairment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 7, 2006 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: April 5, 2007  
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

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<sup>7</sup> 5 U.S.C. § 8107(c).

<sup>8</sup> 5 U.S.C. § 8107(c)(1).

<sup>9</sup> 5 U.S.C. § 8107(c)(19).