

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

D.D., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
FEDERAL AIR MARSHAL SERVICE,)
West Orange, NJ, Employer)

Docket No. 06-1562
Issued: February 7, 2007

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 June 30, 2006 appellant filed a timely appeal from a June 22, 2006 decision of the Office of Workers' Compensation Programs, granting 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 20 percent impairment of the right upper extremity.

FACTUAL HISTORY

On March 24, 2005 appellant, then a 38-year-old federal air marshal, filed a traumatic injury claim alleging that he injured his right wrist while participating in a training exercise (boxing). The Office accepted his claim for a sprain, strain, contusion and effusion of the joint

of the right wrist. On June 13, 2005 appellant underwent surgery consisting of right wrist arthroscopy and repair of a right scaphoid fracture.¹ On December 4, 2005 he filed a claim for a schedule award.

On March 2, 2006 Dr. Emmanuel E. Jacob, an attending Board-certified physiatrist, found that appellant had a 22 percent impairment of the right upper extremity, including 7 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 35 percent maximum nerve impairment) of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² (A.M.A., *Guides*); 3 percent for sensory deficit of the right thumb, based on Table 16-10 (Grade 3) at page 482 and Table 16-15 at page 492 (60 percent multiplied by 5 percent)³; and 12 percent for decreased range of motion of the right wrist, including flexion of 35 degrees (5 percent) and extension of 40 degrees (4 percent), based on Figure 16-28 at page 467, radial deviation of 15 degrees (1 percent) and ulnar deviation of 20 degrees (2 percent), based on Figure 16-31 at page 469. Dr. Jacob added, rather than combined, the percentages for motor deficit, sensory deficit and decreased range of motion (7 plus 3 plus 12).

On May 30, 2006 a district medical adviser, found that appellant had a 20 percent impairment of the right upper extremity based on the physical findings of Dr. Jacob. He indicated that Dr. Jacob did not apply the Combined Values Chart at page 604 of the A.M.A., *Guides*. The district medical adviser combined 7 percent with 12 percent and then combined the resulting 18 percent with 3 percent, yielding a combined impairment of 20 percent of the right upper extremity.

By decision dated June 22, 2006, the Office granted appellant a schedule award for 62.40 weeks for the period March 24, 2005 to June 3, 2006 based on a 20 percent impairment of the right upper extremity.⁴

¹ The scapula is the flat triangular bone in the back of the shoulder (shoulder blade). DORLAND'S *Illustrated Medical Dictionary* (27th ed. 1988), 1489.

² A.M.A., *Guides* (5th ed. 2001).

³ Dr. Jacob indicated that appellant had a sensory deficit of the radial digital nerve of the thumb which equals a seven percent maximum impairment according to Table 16-15. Therefore, the 60 percent from Table 16-10 should be multiplied by 7 percent, not 5 percent. The result is 4.2 percent, rounded to 4 percent, for sensory deficit. The A.M.A., *Guides* provides for rounding an impairment to the nearest whole number. A.M.A., *Guides*, 20, section 2.5d "Interpolating, Measuring and Rounding Off."

⁴ The Federal Employees' Compensation Act provides for 312 weeks of compensation for 100 percent loss or loss of use of an arm. 5 U.S.C. § 8107(c)(1). Multiplying 312 weeks by 20 percent equals 62.40 weeks of compensation. Appellant submitted additional evidence subsequent to the Office decision of June 22, 2006. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

LEGAL PRECEDENT

The schedule award provision of the Act⁵ and its implementing regulation⁶ set 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*⁷ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁸

ANALYSIS

The Office accepted that appellant sustained a sprain, strain, contusion and effusion of the joint of the right wrist in the performance of duty.

Dr. Jacob found that appellant had a 7 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 35 percent maximum nerve impairment) of the A.M.A., *Guides*. As noted, sensory deficit of the right thumb equals a 4 percent impairment, based on Table 16-10 (Grade 3) at page 482 and Table 16-15 at page 492 (60 percent multiplied by 7 percent).⁹ He found a 12 percent impairment for decreased range of motion of the right wrist, including flexion of 35 degrees (5 percent) and extension of 40 degrees (4 percent), based on Figure 16-28 at page 467 and radial deviation of 15 degrees (1 percent) and ulnar deviation of 20 degrees (2 percent), based on Figure 16-31 at page 469. Dr. Jacob added the percentages for motor deficit, sensory deficit and decreased range of motion. However, the impairments must be combined, rather than added, according to the Combined Values Chart at page 604 of the A.M.A., *Guides*. Combining 7 percent for motor deficit with 4 percent for sensory deficit equals 11 percent, according to the chart. Combining 12 percent for decreased range of motion with the combined 11 percent for motor and sensory deficit equals a 22 percent total impairment.

The district medical adviser found that appellant had a 20 percent impairment of the right upper extremity based on Dr. Jacob's physical findings. He first combined 12 percent and 7 percent which, according to the chart, equals 18 percent. The district medical adviser then combined 18 percent with 3 percent which equals 20 percent according to the chart. However, as noted, appellant has four percent impairment for sensory deficit, not three percent. Additionally,

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁸ *See supra* note 6.

⁹ *See supra* note 3.

there are conflicting instructions in the A.M.A., *Guides* as to how the chart is applied to three or more impairment values. Section 16.1c, “Combining Impairment Ratings,” at page 438, states:

“If three or more values are to be combined, *the two lowest values are first selected* and their combined value is found. The combined value and the third value are then combined to give the total value. This procedure can be repeated indefinitely, with the value in each case being a combination of all the previous values.” (Emphasis added.)

The instructions for the Combined Values Chart at page 604 state:

“If three or more values are to be combined, *select any two* and find their combined value.... Then use that value and the third value to locate the combined value of all. This process can be repeated indefinitely, the final value being the combination of all the previous values. In each step of this process, the larger impairment must be identified in the side of the chart.” (Emphasis added.)

Combining the different impairments in the order used by the district medical adviser equals a 21 percent total impairment according to the Combined Values Chart (12 combined with 7 equals 18 percent; 18 percent combined with 4 equals 21 percent. Applying the instructions for the Combined Values Chart in the manner which yields the higher impairment rating for appellant, the Board finds that appellant has a 22 percent impairment of the right upper extremity.

CONCLUSION

The Board finds that appellant has a 22 percent impairment of the right upper extremity. Upon remand of the case, the Office should issue a corrected schedule award decision and calculate the additional compensation to which appellant is entitled based on a 22 percent impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 22, 2006 is affirmed, as modified and the case is remanded for further action consistent with this decision.

Issued: February 7, 2007
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