

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

A.L., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL AIR
STATION NORTH ISLAND, San Diego, CA,
Employer**

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**Docket No. 07-790
Issued: July 11, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 30, 2007 appellant filed a timely appeal from a September 12, 2006 merit decision of the Office of Workers' Compensation Programs granting him 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.

ISSUES

The issues are: (1) whether appellant has more than a 10 percent permanent impairment of the left upper extremity; and (2) whether he has any permanent impairment of the right upper extremity.

FACTUAL HISTORY

On August 26, 2003 appellant, then a 52-year-old aircraft production controller, filed a claim for a traumatic injury to his wrists, left elbow and knees which occurred on August 25, 2003 when his feet became tangled in an electrical cord and he fell on a concrete floor. The

Office accepted the claim for a closed fracture of the left radial head and bilateral wrist contusions. Appellant worked limited duty from August 27, 2003 until February 16, 2004. He resumed his regular employment on February 17, 2004.

On February 20, 2004 appellant filed a claim for a schedule award. He submitted an impairment evaluation dated February 16, 2004 from Dr. Arnold Markman, Board-certified in occupational medicine, who diagnosed a healed left radial fracture with residuals. Dr. Markman opined that appellant had reached maximum medical improvement. He noted that appellant was currently performing his regular employment duties and had “no problems with his left elbow.” Dr. Markman listed appellant’s range of motion for the elbow on the “affected left” side as 135 degrees flexion, 180 degrees extension, 75 degrees supination and 75 degrees pronation. For the right side, which he classified as “unaffected,” he measured flexion as 135 degrees, extension as 180 degrees, supination as 85 degrees and pronation as 75 degrees. Dr. Markman measured biceps circumference as 14 inches bilaterally and forearm circumference as 11 inches bilaterally. Appellant had 7 inches wrist circumference on the left and 8 inches on the right. Dr. Markman obtained three grip strength measurements of 105 on the left and 120 on the right. He listed objective factors of disability as the loss of 10 degrees elbow supination on the left and grip strength of 105 on the left compared with 120 degrees on the right.

An Office medical adviser reviewed Dr. Markman’s report on March 25, 2004. He found that appellant had no impairment due to loss of range of motion pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (A.M.A., *Guides*). The Office medical adviser further found no impairment due to atrophy. He stated, “Wrist strength on the left was diminished compared to the right with values averaging 105 compared to 120, and this would indicate an approximately 13 percent loss of anticipated grip strength, and according to Table 16-34, this would be assessed a 10 percent upper extremity impairment.” The Office medical adviser concluded that appellant had a 10 percent permanent impairment of the left upper extremity and no impairment of the right upper extremity. He opined that appellant reached maximum medical improvement on February 16, 2004.

By decision dated September 12, 2006, the Office granted appellant a schedule award for a 10 percent permanent impairment of the left upper extremity. The Office noted that he had no impairment of the right upper extremity. The period of the award ran for 31.20 weeks from February 16 to September 21, 2004.

LEGAL PRECEDENT -- ISSUES 1 & 2

The schedule award provision of the Federal Employees’ Compensation Act,¹ and its implementing federal regulation,² 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

claimants.³ Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁴

ANALYSIS -- ISSUES 1 & 2

The Office accepted that appellant sustained a closed fracture of the left radial head and bilateral wrist contusions due to an August 25, 2003 employment injury. Appellant filed a claim for a schedule award on February 20, 2004. In a report dated February 16, 2004, Dr. Markman diagnosed a healed left radial fracture and opined that appellant had reached maximum medical improvement. He measured range of motion of the left elbow as 135 degrees flexion, 180 degrees extension, 75 degrees supination and 75 degrees pronation. For the right elbow, which Dr. Markman found “unaffected,” he measured range of motion of 135 degrees flexion, 180 degrees extension, 85 degrees supination and 75 degrees pronation. He listed bilateral biceps circumference as 14 inches, bilateral forearm circumference as 11 inches, left wrist circumference as 7 inches and right wrist circumference as 8 inches. Dr. Markman obtained three grip strength measurements of 105 on the left and 120 on the right. He concluded that appellant had an impairment on the left side due to the loss of 10 degrees elbow supination and the loss of grip strength. Dr. Markman did not specify how he rated the extent of the impairment under the A.M.A., *Guides*.

On March 25, 2004 an Office medical adviser reviewed Dr. Markman’s report and applied the tables and pages of the A.M.A., *Guides* to his findings. He determined that appellant had no impairment due to loss of range of motion. The Board notes that 135 degrees bilateral flexion, 180 degrees bilateral extension,⁵ 75 degrees bilateral pronation, 75 degrees supination on the left and 85 degrees supination on the right yields no impairment under the A.M.A., *Guides*.⁶ The Office medical adviser further found no impairment due to atrophy but an impairment due to decreased grip strength on the left compared to the right. Regarding grip strength, the A.M.A., *Guides* provides that in rare cases “if the examiner believes the individual’s loss of strength represents an impairment factor that has not been considered adequately by other methods in the [A.M.A.], *Guides*, the loss of strength may be rated separately.”⁷ The Office medical adviser applied Table 16-34 on page 509 of the A.M.A., *Guides* and determined that grip strength of 105 on the left and 120 on the right yielded a 13 percent loss of left grip strength, for a 10 percent left upper extremity impairment.⁸ He concluded that appellant had a 10 percent permanent impairment of the left upper extremity and no impairment of the right upper extremity. The findings of the Office medical adviser, which are in accordance with the A.M.A., *Guides*,

³ 20 C.F.R. § 10.404(a).

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁵ Dr. Markman apparently means 0 degrees extension rather than 180 degrees extension.

⁶ A.M.A., *Guides* at 472, 474, Figures 16-34, 16-37.

⁷ *Id.* at 508.

⁸ Dr. Markman properly measured appellant’s grip strength three times as provided on page 508 of the A.M.A., *Guides*.

constitute the weight of the medical evidence and establish that appellant has no more than a 10 percent left upper extremity impairment and no impairment of the right upper extremity.

On appeal appellant contends that the schedule award is insufficient as he has to live and work with pain and decreased range of motion of the left arm. The amount payable pursuant to a schedule award does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other lifestyle activities.⁹ The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the upper extremity, the maximum number of weeks of compensation is 312 weeks. Since appellant's permanent impairment of the left upper extremity is 10 percent, he is entitled to 10 percent of 312 weeks, or 31.20 weeks of compensation.¹⁰

CONCLUSION

The Board finds that appellant has no more than a 10 percent permanent impairment of the left upper extremity for which he received a schedule award. The Board further finds that he has no impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 12, 2006 is affirmed.

Issued: July 11, 2007
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

⁹ *Ruben Franco*, 54 ECAB 496 (2003).

¹⁰ Appellant retains the right to file a claim for an increased schedule award before the Office based on new exposure or on medical evidence indicating that the progression of an employment-related condition, without exposure to new employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).