

Appellant received compensation for temporary total disability after her work stoppage in January 2002. She began receiving retirement benefits from the Office of Personnel Management (OPM) in lieu of compensation benefits under the Federal Employees' Compensation Act as of January 22, 2006.

In a report dated April 13, 2006, Dr. Lorenzo Walker, an orthopedic surgeon, provided results on examination. He provided grip strength results and indicated that appellant had reached maximum medical improvement.

The Office referred appellant for a second opinion examination by Dr. Rajeswari Kumar, a Board-certified physiatrist. In a report dated May 20, 2006, Dr. Kumar provided a history and results on examination, including range of motion for the elbows, shoulders and wrists. He diagnosed status post ulnar nerve release, status post extensor tendon release and chronic lumbar strain. The second opinion examiner indicated that appellant had "distressing" right elbow pain and "moderate" right leg pain by checking appropriate boxes. Dr. Kumar did not identify the specific nerves involved. With respect to motor strength, he reported "some give way weakness in the right intrinsic muscle" but appellant was able to make a fist. The date of maximum medical improvement was reported as the middle of 2004.

In a report dated July 2, 2006, an Office medical adviser indicated that she had reviewed Dr. Kumar's report. She reported no impairment due to loss of range of motion. With regard to motor deficit and pain or sensory deficit, the medical adviser identified the ulnar nerve and graded the impairment at 10 percent, without further explanation. She stated that the maximum combined impairment for the ulnar nerve was 40 percent and 10 percent of 40 percent resulted in a 4 percent right arm impairment. For the right leg pain/sensory deficit, the medical adviser identified the S1 nerve, graded the impairment at 25 percent and concluded that appellant had a 1 percent right leg impairment.

By decision dated July 24, 2006, the Office issued a schedule award for an additional two percent to the right arm and one percent for the right leg. The period of the award was 9.12 weeks from January 22, 2006.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.404 of the implementing federal regulation,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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.404.

adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.⁴

ANALYSIS

As noted, a schedule award under the Act must properly be based on the A.M.A., *Guides*. The Office medical adviser attempted to apply the A.M.A., *Guides* to the findings of Dr. Kumar, but failed to provide a rationalized medical opinion.

With respect to impairments for peripheral nerve disorders, the A.M.A., *Guides* provides a clear explanation of the appropriate method. The nerve is identified and then the impairment is graded for pain/sensory deficit (Table 16-10) and motor deficit (Table 16-11).⁵ The impairment is the percentage of the maximum impairment for the identified nerve. If both sensory and motor impairments are involved for the same nerve, “determine the upper extremity impairment for each function (steps 1 through 5) then *combine* the sensory and motor impairment percents” using the Combined Values Chart. (Emphasis in the original.)⁶

The Office medical adviser identified the ulnar nerve under Table 16-15. While this table contains a “combined” value of 40 percent, this merely reflects the combined value of the maximum 35 percent for motor deficit and 7 percent for pain/sensory deficit.⁷ It does not represent an alternate method of determination or relieve the physician of the obligation to calculate each impairment and then combine the impairments under the Combined Values Chart.

In the present case, the Office medical adviser graded the ulnar nerve impairment for both pain/sensory deficit and motor impairment at 10 percent. As noted above, these impairments should be graded separately according to the appropriate table. The Office medical adviser provided no explanation as to why these impairments should be graded at 10 percent of the maximum based on Dr. Kumar’s report. It is noted that both Table 16-10 and 16-11 provide

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

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

⁵ A.M.A., *Guides* 482, 484.

⁶ *Id.* at 481. See also 604, Combined Values Chart.

⁷ *Id.* at 492, Table 16-15.

an impairment range of 1 to 25 for a Grade 4 impairment. A physician should provide an explanation for a particular grade.⁸ In this case, for example, Dr. Kumar appeared to indicate that the right elbow pain was more severe than the right leg pain, and yet the medical adviser graded the right arm pain at 10 percent and the right leg pain at 25 percent of the maximum.

The application of a single grade to the “combined” value for pain and motor deficits also leads to incorrect impairment calculations. Even if the 10 percent grading were appropriate, the impairment for pain/sensory deficit and motor deficit must be calculated separately and then combined. In this case, 10 percent of the maximum 7 percent for ulnar pain/sensory deficit results in a .7 percent impairment, which is rounded to 1 percent. For the motor deficit, 10 percent of 35 percent is 3.5 percent, which would properly be rounded to 4 percent.⁹ Combining four and one percent results in a five percent impairment, not the four percent calculated by the Office medical adviser.¹⁰

The case will be remanded to the Office to secure a rationalized medical opinion as to the degree of permanent impairment under the A.M.A., *Guides*. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The record does not contain a rationalized medical opinion on the degree of permanent impairment. The case is remanded for further development.

⁸ See *Tara L. Hein*, 56 ECAB ____ (Docket No. 05-191, issued April 4, 2005) (the Office medical adviser graded the impairment at 40 percent from a Grade 3 range of 26 to 60 percent under Table 16-10, without providing explanation; the Board remanded the case for further development); see also *John Keller*, 39 ECAB 543, 547 (1988).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (June 2003) provides that the policy of the Office is to round the calculated percentage of impairment to the nearest whole point. As the procedure manual notes with respect to hearing loss, fractions should be rounded down from .49 or up from .50. *Id.* at Chapter 3.700.4(b) (September 1994).

¹⁰ A.M.A., *Guides* 604.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 24, 2006 is set aside and the case remanded for further development consistent with this decision of the Board.

Issued: March 26, 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