

appellant's claim for sensory disturbance electric shock exposure to the left hand and forearm. Appellant received appropriate compensation benefits.

On March 24, 2004 appellant filed a claim for a schedule award.

By letter dated April 2, 2004, the Office requested that appellant's physician provide an opinion regarding appellant's work-related condition and whether he had reached maximum medical improvement. The Office advised the physician to utilize the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (hereinafter A.M.A., *Guides*) and provide an opinion regarding whether appellant had any impairment, and if so, the percentage of impairment with an explanation of how the calculation was derived.

In an April 23, 2004 report, Dr. Andre Benoit, Board-certified in family medicine, noted appellant's history of injury and treatment. He conducted a physical examination and related that appellant was aware of an "altered sensation described as numbness involving all his fingertips, possibly more in the ulnar distribution." Dr. Benoit noted that appellant did not believe that there was any limitation in range of motion in his wrist, hand or finger joints due to the electrical injury.

By letter dated September 16, 2004, the Office advised appellant that it had received Dr. Benoit's report. However, Dr. Benoit did not address maximum medical improvement, provide pertinent objective findings or provide a percentage of impairment rating.

In a September 20, 2004 report, Dr. Benoit advised that two-point discrimination was intact in all fingers of the left hand, that appellant had negative Tinel's and Phalen's signs, that there was no atrophy and that intrinsic muscle strength was equal compared to the right and left. He noted that appellant did not appear to have an obvious motor loss; however, Dr. Benoit explained that he did not have access to the A.M.A., *Guides* and suggested that referral to another physician was warranted.

On January 4, 2005 appellant advised the Office that he was obtaining a report from a specialist regarding his impairment.

By letter dated January 31, 2005, the Office requested that Dr. James Kuhn, a Board-certified orthopedic surgeon, provide an opinion regarding the extent of any permanent impairment due to appellant's accepted condition.

In reports dated February 11 and 23, 2005, Dr. Kuhn reviewed appellant's history of injury and treatment. He conducted an examination and indicated that appellant had "paresthesias in the ulnar nerve distribution to include the ulnar aspect of the long finger." Dr. Kuhn advised that there was a sharp cut-off in the ulnar nerve distribution with the exception of the long finger and that the median nerve was mildly dysesthetic. He added that appellant had full range of motion of the joints of the left upper extremity. Dr. Kuhn also indicated that he had two-point discrimination which was intact in the radial, median and ulnar nerve distributions on the right and left. He explained that for the left hand two-point discrimination was three millimeters in the left ulnar distribution and two millimeters throughout the remainder and that he had two millimeters for two-point discrimination in the right hand. On July 8, 2005 Dr. Kuhn noted that examination showed diminished sensation in the ulnar nerve distribution of the left

hand from the mid forearm distally and that appellant had dysesthesias. He referred to Table 16-10¹ and indicated that appellant had a 70 percent sensory deficit with decreased superficial cutaneous sensibility and pain. Dr. Kuhn multiplied the value for sensory deficit by seven percent, the maximum upper extremity impairment due to nerve dysfunction with sensory deficit below the forearm. He determined that this would result in an upper extremity impairment of five percent.

By letters dated October 25, 2005, January 18, April 11 and 28, 2006, appellant requested the status of his claim for a schedule award.

By letter dated May 12, 2006, the Office requested that the Office medical adviser review the medical evidence and provide his opinion regarding whether the appellant had any impairment.

In a May 16, 2006 report, the Office medical adviser noted appellant's history of injury and treatment. He noted that on April 23, 2004 Dr. Benoit advised that appellant had awareness of an altered sensation but "no awareness of diminished motor strength." The Office medical adviser reviewed the reports dated February 11 and July 8, 2005 from Dr. Kuhn who initially, found that appellant had a normal sensory examination and then on July 8, 2005 he "inexplicably" opined that his examination of appellant on February 11, 2005 showed "diminished sensation in the ulnar nerve distribution of the left hand from the mid forearm distally." He further noted that Dr. Kuhn indicated that appellant had "demonstrably diminished two-point sensation in this area as well as dysesthesias." The Office medical adviser determined that under Table 16-15 appellant's two-point discrimination of less than or equal to six millimeters demonstrated no sensory loss and a zero percent sensory quality impairment.² He noted that despite appellant's subjective complaints there was no objective sensory loss of the left upper extremity. The Office medical adviser noted that the date of maximum medical improvement was September 20, 2004, the date that appellant's sensory examination demonstrated no objective sensory deficit.

By decision dated June 16, 2006, the Office denied appellant's claim for a schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act³ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁴ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of

¹ A.M.A., *Guides* 482.

² *Id.* at 447, Table 16-5.

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8107.

uniform standards applicable to all claimants.⁵ The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁶

ANALYSIS

The evidence of record is insufficient to establish that appellant has any impairment of his left hand due to his accepted injury.

By letter dated April 2, 2004, the Office requested that appellant's physician submit a report in which he described his condition and determined whether appellant was entitled to an impairment rating. Appellant was also provided a copy of this letter. However, Dr. Benoit explained that he did not have access to the A.M.A., *Guides* and did not provide an impairment rating. Appellant subsequently obtained an impairment rating from his physician, Dr. Kuhn, a Board-certified orthopedic surgeon.

In reports dated February 11 and July 8, 2005, Dr. Kuhn conducted a physical examination and opined that appellant was entitled to an impairment rating of five percent to the left hand. However, in obtaining this rating, he opined that appellant had a sensory deficit of 70 percent under Table 16-10 of the A.M.A., *Guides* which he multiplied by the maximum impairment of 7 percent sensory deficit for ulnar nerve dysfunction below the forearm, under Table 16-15,⁷ to conclude that appellant was entitled to an impairment of 5 percent to the left upper extremity. However, Dr. Kuhn did not explain how he arrived at these values in light of the previous findings of Dr. Benoit who on April 23, 2004 indicated that appellant showed no limits in range of motion and who, in his September 20, 2004 report, related that two-point discrimination was intact in all the fingers of the left hand. Additionally, he also noted on February 23, 2005 that the left hand two-point discrimination was three millimeters in the left ulnar distribution and two millimeters throughout the remainder and that he had two millimeters for two-point discrimination in the right hand. However, when providing an impairment rating on July 8, 2005 Dr. Kuhn noted that his examination showed "demonstrably" diminished sensation in the ulnar nerve distribution of the left hand from the mid forearm distally and that appellant had dysesthesias. He did not address his apparent discrepancy in his reports. Therefore, Dr. Kuhn's opinion is of limited probative value.

In a May 16, 2006 report, the Office medical adviser noted appellant's history of injury and treatment. He explained why the values for diminished two-point sensation could not be utilized as indicated and referenced the reports of Dr. Benoit, dated April 23, 2004, who noted that appellant had "no awareness of diminished motor strength." The Office medical adviser also explained that Dr. Kuhn initially noted that appellant had a normal sensory examination and then on July 8, 2005 "inexplicably" opined that his examination of February 11, 2005 showed "diminished sensation in the ulnar nerve distribution of the left hand from the mid forearm distally." He further noted that Dr. Kuhn had previously indicated in his July 8, 2005 report that

⁵ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁶ 20 C.F.R. § 10.404.

⁷ Although, Dr. Kuhn did not specifically list this table, the value of seven percent was obtained from this table.

appellant had “demonstrably diminished two-point sensation in this area as well as dysesthesia.” The Office medical adviser explained that under Table 16-15 two-point discrimination of less than or equal to six millimeters demonstrated no sensory loss and warranted no sensory impairment.⁸ He noted that despite appellant’s subjective complaints there was no objective sensory loss of the left upper extremity and opined that he reached maximum medical improvement on September 20, 2004. In the absence of objective findings warranting a rating under the A.M.A., *Guides*, the medical evidence did not support a schedule award as there was no demonstrable impairment of the right upper extremity.

Appellant did not submit any medical reports from a physician explaining how, pursuant to the fifth edition of the A.M.A., *Guides*, his accepted conditions of sensory disturbance electric shock exposure to the left hand and forearm caused a permanent impairment to a scheduled member of the body. As noted above, the Office evaluates schedule award claims pursuant to the standards set forth in the A.M.A., *Guides*. Appellant has the burden of proof to submit medical evidence supporting that he has permanent impairment of a schedule member of the body.⁹ As such evidence has not been submitted, he has not established entitlement to a schedule award.

CONCLUSION

The Board finds that the Office properly denied appellant’s claim for a schedule award.

⁸ A.M.A., *Guides* 447, Table 16-5.

⁹ See *Annette M. Dent*, 44 ECAB 403 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 16, 2006 is affirmed.

Issued: March 14, 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