

open reduction internal fixation right distal radius, capsulotomy of the right radial carpal joint with release of the right first dorsal compartment performed by Dr. Joseph Sheppard, a Board-certified orthopedic surgeon.

In a December 6, 2005 report, Dr. Sheppard advised that appellant had plateaued and his condition was stationary. He noted that appellant had a wrist flexion of 25 degrees, extension of 30 degrees, ulnar deviation of 15 degrees, radial deviation of 12 degrees, supination of 53 degrees, pronation of 75 degrees and grip strength was 40 pounds on the right side versus 115 pounds on the left side. Pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Sheppard opined that appellant had 40 percent right upper extremity impairment.

In a July 7, 2006 letter, the Office requested that appellant obtain an updated report from his treating physician about his permanent impairment. Impairment worksheets for the hand and fingers and the wrist were attached so an impairment rating could be prepared under the fifth edition of the A.M.A., *Guides*.

On August 8, 2006 Dr. Sheppard completed the impairment worksheets and advised that appellant reached maximum medical improvement on November 29, 2005. He found that the right wrist demonstrated a 25 percent loss of function due to limitation of motion and a 15 percent loss of function due to muscle atrophy or weakness. Examination of the right wrist revealed 40 degrees of dorsiflexion; 35 degrees of palmar flexion; 20 degrees of radial deviation; and 15 degrees of ulnar deviation. Examination findings of the right hand and fingers were also provided. The right thumb revealed an interphalangeal (IP) joint flexion of 52 degrees; metacarpophalangeal (MP) joint motion of -12 to 50 degrees and radial abduction of 50 degrees. Also provided were examination findings of the right index, long, ring and small fingers and pinch and grip findings.

By letter dated December 5, 2006, the Office referred appellant, together with his case file, a statement of accepted facts and a list of questions, to Dr. Jon T. Abbott, a Board-certified orthopedic surgeon, for a second opinion examination. In a January 9, 2007 report, Dr. Abbott reviewed the history of injury and noted that appellant was being evaluated for a schedule award in reference to a right wrist injury. He advised that appellant reached maximum medical improvement at the time of his last visit with Dr. Sheppard in April 2006. Dr. Abbott noted appellant's complaints of pain and weakness in the right wrist and provided examination findings of the right wrist and right hand and fingers. Examination of the right wrist demonstrated limited range of motion with dorsiflexion of 40 degrees, palmar flexion of 45 degrees, ulnar deviation of 9 degrees, radial deviation of 15 degrees, pronation of 70 degrees and supination of 70 degrees. Examination of the right thumb demonstrated limited range of motion with IP joint flexion 75 degrees, MP joint motion of 10 to 57 degrees and radial abduction of 35 degrees. Grip strength measurements were also provided. Dr. Abbott found no evidence of any neurologic deficit or instability.

In a January 24, 2007 report, an Office medical adviser reviewed the medical evidence. He applied Dr. Abbott's findings to the tables and figures of the A.M.A., *Guides*. The Office medical adviser found that appellant had an 11 percent impairment for loss of wrist motion. This

was comprised of a three percent impairment for loss of wrist extension under Figure 16-28, page 467; a two percent impairment for loss of wrist flexion under Figure 16-28, page 467; a four percent impairment for loss of wrist ulnar deviation under Figure 16-31, page 469; a one percent impairment for loss of wrist radial deviation under Figure 16-31, page 469; and a one percent impairment for loss of elbow/wrist pronation under Figure 16-37, page 474. The medical adviser additionally found that appellant had a five percent impairment of the thumb which was the equivalent of a two percent upper extremity impairment. This was comprised of a one percent impairment of the thumb for loss of IP joint flexion under Figure 16-12, page 456; a one percent impairment of the thumb for loss of MP joint extension under Figure 16-15, page 457; and a three percent impairment of the thumb for loss of radial abduction. The medical adviser then utilized the Combined Values Chart to rate the 11 percent impairment for loss of wrist motion and the 2 percent impairment for the left thumb to find a total 13 percent impairment of the right upper extremity. The Office medical adviser stated that appellant reached maximum medical improvement April 1, 2006, when he was evaluated by Dr. Abbott.

By decision dated February 6, 2007, the Office granted appellant a schedule award for a 13 percent permanent impairment to his right arm. The period of the award ran for 40.56 weeks from April 1, 2006 to January 9, 2007.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of schedule members or functions of the body. The Act, however, does not specify the manner in which the percentage loss of a member 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.) has been adopted by the Office for evaluating schedule losses.³

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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ See 20 C.F.R. § 10.404; see also *David W. Ferrall*, 56 ECAB ____ (Docket No. 04-2142, issued February 23, 2005).

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

ANALYSIS

The Board finds that this case is not in posture for a decision. Further development of the medical evidence is necessary to determine whether appellant has more than a 13 percent right upper extremity impairment.

On February 6, 2007 appellant received a schedule award for a 13 percent impairment of his right arm. This was based on the Office medical adviser's application of the A.M.A., *Guides* to the findings of Dr. Abbott, the second opinion examiner. The Board, however, notes that the findings of Dr. Abbott may result in more than the 13 percent right upper extremity impairment awarded. The Office medical adviser found that appellant had an 11 percent impairment for loss of wrist motion. Under Figure 16-28, page 467, 40 degrees of dorsiflexion equates to a four percent impairment and 45 degrees of palmar flexion equates to a two percent impairment. Under Figure 16-31, page 469, 9 degrees of ulnar deviation equates to a four percent impairment and 15 degrees of radial deviation equates to a one percent impairment. Under Figure 16-37, page 474, 70 degrees of pronation equates to a one percent impairment while 70 degrees of supination equates to a zero percent impairment. Under the A.M.A., *Guides*, the loss of wrist motion findings would result in a 12 percent impairment as opposed to the 11 percent impairment found by the Office medical adviser who also found that appellant had a 5 percent thumb impairment which equated to a 2 percent upper extremity impairment. Under Figure 16-12, page 456, 75 degrees of IP joint flexion equates to a one percent impairment. Under Figure 16-15, page 457, 57 degrees of MP joint flexion equates to a zero percent impairment. Under Table 16-8a, page 459, 35 degrees of radial abduction equates to a three percent impairment. The A.M.A., *Guides* indicates that appellant has a four percent right thumb impairment as opposed to the five percent impairment found by the Office medical adviser. Conversion of the thumb impairment to upper extremity impairment under Table 16-1, 16-2, pages 438, 439 reveals that both a four percent and a five percent right thumb impairment equates to a two percent upper extremity impairment. However, combining the 12 percent wrist impairment with the 2 percent upper extremity impairment from the thumb results in a 14 percent upper extremity impairment, which is greater than the 13 percent impairment found by the medical adviser.

Furthermore, the Office medical adviser did not address Dr. Sheppard's August 8, 2006 findings were not utilized in the impairment evaluation. A partial comparison of Dr. Sheppard's findings to the A.M.A., *Guides* potentially results in more than a 13 percent right arm impairment. The Board notes that Dr. Sheppard did not supply any findings on wrist pronation or supination so a direct comparison with Dr. Abbott's findings could be made. Application of Dr. Sheppard's loss of motion for the wrist (absent findings on pronation and supination) to the A.M.A., *Guides* results in an 11 percent impairment. Under Figure 16-28, page 467, 40 degrees of dorsiflexion equates to a four percent impairment and 35 degrees of palmar flexion equates to a four percent impairment. Under Figure 16-31, page 469, 15 degrees ulnar deviation equates to a three percent impairment and 20 degrees of radial deviation equates to a zero percent impairment. Application of Dr. Sheppard's thumb findings to the A.M.A., *Guides* results in a three percent thumb impairment which equates to a one percent upper extremity impairment.⁵ Under Figure 16-12, page 456, 52 degrees of IP joint flexion equates to a two percent

⁵ A.M.A., *Guides* 438, 439, Tables 16-1, 16-2.

impairment. Under Figure 16-15, page 457, 50 degrees of MP joint flexion equates to a one percent impairment. Under Table 16-8a, page 459, a 50-degree radial abduction equates to a zero percent impairment. While it appears that Dr. Sheppard's findings would result in a 12 percent upper extremity impairment, which is lower than the 13 percent schedule award received, the Board notes that Dr. Sheppard also provided findings on the right index, long, ring and small fingers. As the Office accepted appellant's claim for a right distal radius fracture, it is unclear from the evidence of record whether any impairment resulting from fingers other than the thumb would be causally related to the accepted condition.

Therefore, the medical evidence is insufficiently developed with regard to whether Dr. Abbott's or Dr. Sheppard's medical evaluation most accurately reflects appellant's employment-related right upper extremity impairment.

Proceedings under the Act are not adversary in nature nor, is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁶ Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.⁷

Consequently, the case must be remanded for the Office to obtain a supplemental report from the Office medical adviser which provides a detailed reasoned medical opinion explaining why Dr. Abbott's January 9, 2007 report was selected over that of Dr. Sheppard's August 8, 2006 worksheets and whether any impairment resulting from fingers other than the thumb would be causally related to the accepted condition. Following this and such other development as deemed necessary, the Office shall issue a *de novo* decision.⁸

CONCLUSION

The Board finds this case is not in posture for decision.

⁶ *John W. Butler*, 39 ECAB 852 (1988).

⁷ *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, Requirements for Medical Reports, Chapter 3.600.4 (October 1990).

⁸ *Robert F. Hart*, 36 ECAB 186 (1984).

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: November 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