



the superficial branch of his right wrist radial nerve. On August 11, 2004 appellant submitted a claim for a schedule award.

In notes dated May 25, 2005, Dr. Nader Paksima, an orthopedic surgeon, stated that appellant had full range of motion of his right wrist and hand. Appellant continued to have some numbness of the superficial branch of the radial nerve and some irritation to palpation over the neuroma. Dr. Paksima found that appellant had a 15 percent impairment of his right hand based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>1</sup> He did not explain how he calculated the 15 percent impairment with reference to specific sections or tables of the A.M.A., *Guides*.

In a report dated November 29, 2005, Dr. Joseph Lopez, an orthopedic surgeon and an Office referral physician, stated that appellant had no feeling in the dorsal aspect of the first web space of his right hand. He had some dull pain in bad weather over the dorsal aspect of the first web space of his right hand. Dr. Lopez found that appellant had a five percent impairment of his right upper extremity due to sensory deficit of the radial nerve, based on Figures 16-8 and 16-48 at pages 449 and 488 of the fifth edition of the A.M.A., *Guides*. However, it is not clear how he calculated the five percent impairment.

The Office found a conflict between Dr. Paksima and Dr. Lopez and referred appellant to Dr. Arnold M. Illman, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In a May 19, 1996 report, Dr. Illman reviewed the history of appellant's condition and provided findings on physical examination. He stated:

“[Appellant] complains of change in sensation over the dorsal aspect of the index finger and thumb over the first dorsal web space. This change in sensation is present up to the proximal end of the carpal bones. [Appellant] states that he has normal sensation in the third, fourth and fifth fingers and that he has absence of sensation in the first web space. He does not claim any weakness or change in dexterity of the hand and is working at his regular job. In summary, [appellant] complains of persistent paresthesia over [the] above named areas. He stated that initially he had paresthesia extending over a larger area of the dorsum of his hand, extending up through the third and fourth fingers. This has disappeared.

“I carefully reviewed multiple notes concerning [appellant's] injury, including the operative report, which stated that the superficial radial nerve was repaired at the level just proximal to the wrist and that at this time he is undergoing no further treatment.”

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“[Appellant] was noted to have a healed scar over the distal end of the radial side of the forearm and that he had diminution of light touch sensation over the dorsum of his thumb and index finger, with absence of sensation to light touch

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<sup>1</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

over the first web space. It has extended proximally to just to the level of the wrist. [Appellant] had normal range of motion and normal strength.

“I utilized the [A.M.A., *Guides*, fifth edition] in [appellant’s] evaluation.... [He] ... sustained damage to the superficial radial nerve.... This sensory deficit could be considered a Grade 4, which rates it at a severity level of between 1 and 25 percent. I feel that since there is some sensation present and only a portion of the superficial radial nerve is involved, I selected 12 [percent] as the amount of loss, as noted. In order to determine the impairment value of the entire upper extremity, Table 16-15 selects the number 5 [percent] and, therefore, when one multiplies 5 [percent] by 12, I calculate a 0.6 [percent] impairment loss of the right upper extremity. I did not factor in any motor deficit, as the nerve that was damaged is a pure sensory nerve and [appellant] did not demonstrate any motor weakness and demonstrated full range of motion of all the joints of his wrist and hand.”

On May 30, 2006 an Office medical adviser<sup>2</sup> noted that Dr. Illman indicated that appellant had a Grade 4 sensory deficit of the superficial radial nerve of his right wrist. Dr. Illman selected a 12 percent impairment from Table 16-10 at page 482 of the A.M.A., *Guides*. Multiplying 12 percent by the maximum of 5 percent for the superficial radial nerve from Table 16-15 at page 492 constituted a 0.6 percent impairment, rounded to 1 percent. The Office medical adviser noted that Dr. Illman did not find any motor deficit or range of motor deficit.

On October 6, 2006 the Office granted appellant a schedule award for 3.12 weeks<sup>3</sup> from May 19 to June 9, 2006 based on a one percent impairment of his right upper extremity.

Appellant requested a telephone hearing that was held on February 8, 2007. By decision dated April 16, 2007, an Office hearing representative affirmed the October 6, 2006 decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act<sup>4</sup> and its implementing regulation<sup>5</sup> 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

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<sup>2</sup> See Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate 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, especially when there is more than one evaluation of the impairment present).

<sup>3</sup> The Act provides for 312 weeks of compensation for 100 percent loss or loss of use, of an upper extremity. 5 U.S.C. § 8107(c)(1). Multiplying 312 weeks by one percent equals 3.12 weeks of compensation.

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>6</sup>

Section 8123(a) of the Act provides that, “if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination.”<sup>7</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>8</sup>

### ANALYSIS

Dr. Paksima found that appellant had a 15 percent impairment of his right upper extremity. Dr. Lopez found that he had a five percent impairment. The Office properly found a conflict between Dr. Paksima and Dr. Lopez and referred appellant to Dr. Illman for an impartial medical evaluation.

Dr. Illman reviewed the history of appellant’s condition and provided findings on physical examination. He found that appellant had persistent paresthesia and diminution of light touch sensation over the dorsal aspect of the index finger and thumb and over the first dorsal web space. Dr. Illman had normal sensation in the third, fourth and fifth fingers but an absence of sensation in the first web space. Appellant had no weakness or change in dexterity of his right hand. He had normal range of motion and normal strength. Dr. Illman noted that appellant sustained damage to his superficial radial nerve and rated his sensory deficit at Grade 4 which provides for an impairment percentage between 1 and 25 percent. He selected 12 percent because there was some sensation present and only a portion of the superficial radial nerve was involved. Dr. Illman multiplied the 12 percent impairment from Table 16-10 at page 482 of the A.M.A., *Guides* by the maximum of 5 percent for the superficial radial nerve from Table 16-15 at page 492 which constituted a 0.6 percent impairment, rounded to 1 percent. He explained that he found no impairment due to motor deficit because the nerve that was damaged is a pure sensory nerve and appellant did not demonstrate any motor weakness and had demonstrated full range of motion of all the joints of his wrist and hand.

The Board finds that the report of Dr. Illman is based upon a complete and accurate factual background. Dr. Illman provided thorough medical rationale in support of his impairment rating of appellant’s right upper extremity and explained how he applied relevant sections of the A.M.A., *Guides*. Therefore, his report is entitled to special weight and establishes that appellant has no more than a one percent impairment of his right upper extremity.

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<sup>6</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>7</sup> 5 U.S.C. § 8123(a); see also *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>8</sup> See *Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

**CONCLUSION**

The Board finds that appellant has no more than a one percent impairment of his right upper extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 16, 2007 and October 6, 2006 are affirmed.

Issued: October 19, 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