United States Department of Labor
Employees' Compensation Appeals Board

K.J., Appellant	)	
and	)	**Docket No. 07-1155**
	)	**Issued: September 11, 2007**
DEPARTMENT OF JUSTICE, FEDERAL CORRECTION CENTER, Oakdale, LA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 26, 2007 appellant filed a timely appeal from the March 5, 2007 merit decision of the Office of Workers' Compensation Programs, which awarded schedule compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the schedule award.

ISSUE

The issue is whether appellant has more than a nine percent permanent impairment of his right upper extremity.

FACTUAL HISTORY

On the prior appeal of this case,[1] the Board noted that appellant, a 38-year-old education specialist, sustained injury while locking doors in the education building. He noticed a burning

[1] Docket No. 04-396 (issued April 8, 2004).

and swelling in his right wrist the following day. The Office accepted his claim for right wrist sprain. On March 31, 2003 it issued a schedule award for a seven percent permanent impairment of the right upper extremity. The Board set aside the schedule award and remanded the case for further development. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

On remand, the Office referred appellant to Dr. John P. Sandifer, an orthopedic surgeon, for a current evaluation of impairment. On June 21, 2004 Dr. Sandifer reported that it was much too early to estimate any permanent impairment, as appellant underwent an ulnar osteotomy with shortening and repair of the triangular fibrocartilage in the right wrist on May 24, 2004 and was still in the recovery phase. He thought it appropriate for appellant to continue physical therapy and stated that an impairment rating "probably could be done in approximately 10 to 12 months from now."

On January 17, 2006 Dr. Sandifer reevaluated appellant. He described his findings on physical examination and reported that appellant was presently at maximum medical improvement. Dr. Sandifer found a 10 percent impairment of the upper extremity due to loss of strength, 4 percent due to loss of flexion and extension, 2 percent due to loss of radial and ulnar deviation, 1 percent due to loss of supination and 2 percent due to pain and discomfort. He totaled these numbers for a 19 percent permanent impairment of the right upper extremity.

On January 29, 2007 an Office medical adviser reviewed appellant's record, the statement of accepted facts and Dr. Sandifer's findings. He calculated that Dr. Sandifer's findings represented a five percent impairment due to loss of wrist motion, a two percent impairment due to loss of elbow motion and a two percent impairment due to ongoing pain, for a total impairment of nine percent. The medical adviser explained that he did not include loss of strength because decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities or absence of parts that prevent effective application of maximal force in the region being evaluated.

In a decision dated March 5, 2007, the Office found that appellant had a nine percent permanent impairment of his right upper extremity. The Office explained that, because he already received compensation for a seven percent impairment, he would receive compensation for an additional two percent impairment.

On appeal, appellant is concerned that the Office reduced Dr. Sandifer's rating from 19 percent to 9 percent "apparently based on information from a contracted organization who has never physically examined my injury nor laid eyes on me."

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[2] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of

[2] 5 U.S.C. § 8107.

permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[3]

ANALYSIS

In his January 17, 2006 evaluation, Dr. Sandifer, the orthopedic surgeon and Office referral physician, found impairment due to weakness, range of motion and pain. The A.M.A., *Guides* notes that, because strength measurements are functional tests influenced by subjective factors that are difficult to control and the A.M.A., *Guides* is for the most part based on anatomic impairment, the A.M.A., *Guides* does not assign a large role to such measurements.[4]

With this in mind, the A.M.A., *Guides* states that, in a rare case, if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the A.M.A., *Guides*, the loss of strength may be rated separately. The A.M.A., *Guides* cautions, however:

> "If the examiner judges that loss of strength should be rated separately in an extremity that presents other impairments, the impairment due to loss of strength *could be combined* with the other impairments, *only* if based on unrelated etiologic or pathomechanical causes. *Otherwise, the impairment ratings based on objective anatomic findings take precedence.* Decreased strength *cannot* be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts (*e.g.*, thumb amputation) that prevent effective application of maximal force in the region being evaluated."[5] (Emphasis in the original.)

So impairment due to loss of strength may be rated separately if Dr. Sandifer believes appellant's loss of strength represents an impairing factor that has not been considered adequately by other methods, if the loss of strength is based on unrelated etiologic or pathomechanical causes, and if decreased motion or painful conditions do not prevent effective application of maximal force in the region being evaluated. Dr. Sandifer did not address these matters when he combined a 10 percent impairment due to loss of strength with other impairments in his final rating.

Further, it does not appear that Dr. Sandifer tested grip strength more than once. The A.M.A., *Guides* states that tests repeated at intervals during an examination are considered reliable if there is less than 20 percent variation in the readings. If there is more than 20 percent variation in the readings, one may assume the individual is not exerting full effort. The test is usually repeated three times with each hand at different times during the examination, and the

[3] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001).

[4] A.M.A., *Guides* 507

[5] *Id*. at 508.

values are recorded and later compared.[6] Dr. Sandifer simply reported 13 pounds on the right and 20 pounds on the left. The reliability of these readings is not demonstrated.

The Board will set aside the Office's March 5, 2007 decision and remand the case for further development. In addition to documenting appellant's Strength Loss Index[7] and answering the questions that arise when attempting to combine loss of strength with other impairments, Dr. Sandifer must explain his use of Chapter 18 of the A.M.A., *Guides* to rate a two percent pain-related impairment. The A.M.A., *Guides* states that examiners should not use that chapter to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters.[8] And the A.M.A., *Guides* makes clear that the impairment ratings in the body organ system chapters already make allowance for any accompanying pain.[9] So Dr. Sandifer must take care not to combine upper extremity impairments that may overlap or duplicate one another. After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's entitlement to a schedule award.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted on the impairment ratings given for loss of strength and pain.

[6] *Id*.

[7] *See id*. at 509.

[8] *Id.* at 571.

[9] *Id*. at 20.

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: September 11, 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