

left upper extremity.¹ The Board determined that Dr. David Weiss, an osteopath and appellant's attending physician, did not provide an impairment rating in conformance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001).² The Board found that the opinion of Dr. Steven J. Valentino, an osteopath, who provided a second opinion examination, represented the weight of the medical evidence and established that appellant had no impairment due to his accepted condition of left lateral epicondylitis.³ The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

On January 18, 2006 Dr. Weiss reviewed Dr. Valentino's report and maintained that it was unclear whether he specifically evaluated wrist extension strength in finding normal strength on examination. He noted that, in a May 31, 2001 examination, he found that appellant had Grade 4/5 weakness on wrist extension. Dr. Weiss asserted that he measured appellant's grip strength three times and found that he had a right and left grip strength deficit of 10 percent. He noted, however, that he could not combine the nine percent impairment for motor deficit and the 10 percent impairment due to loss of grip strength under the A.M.A., *Guides*. Dr. Weiss concluded that appellant had either "a nine percent left upper extremity impairment rating for [G]rade 4/5 motor strength deficit of left wrist extension, or total left upper extremity impairment of 10 percent if we use the grip strength deficit."

An Office medical adviser reviewed Dr. Weiss' January 18, 2006 report. He noted that Dr. Richard J. Mandel, a Board-certified orthopedic surgeon, Dr. Anthony Salem, a Board-certified orthopedic surgeon, and Dr. Valentino found normal grip strength on examination. The Office medical adviser further determined that it was inappropriate for Dr. Weiss to use Table 16-11 on page 484 of the A.M.A., *Guides* to determine loss of strength as appellant did not have a peripheral nerve injury. He also found that the A.M.A., *Guides* required strength testing by "two or more trained observers" for the result to be reliable. The Office medical adviser concluded that appellant did not have a ratable upper extremity impairment based solely on the rating by Dr. Weiss.

By decision dated February 21, 2007, the Office denied modification of its March 4, 2005 decision.

¹ *Mark J. Brady*, Docket No. 05-1510 (issued September 16, 2005). The Office accepted that appellant sustained left elbow lateral epicondylitis due to factors of his federal employment. On April 17, 1998 he underwent an excision of lipoma and a lateral epicondyle release.

² In a report dated May 31, 2001, Dr. Weiss determined that appellant had 10 percent impairment due to loss of grip strength according to Tables 16-32 and 16-34 on page 509 of the A.M.A., *Guides* and 9 percent impairment for loss of motor strength under Tables 16-11 and 16-15 on pages 484 and 492 of the A.M.A., *Guides*. He combined the 9 percent loss of motor strength with the 10 percent impairment due to loss of grip strength to find 18 percent left upper extremity impairment. In a report dated January 3, 2005, Dr. Weiss opined that it was reasonable for a person with lateral epicondylitis to have loss of muscle and grip strength. He noted that the radial nerve traveled by the lateral epicondyle.

³ In a report dated May 15, 2002, Dr. Valentino found that appellant had full range of motion of the upper extremity with no loss of sensation, function, pain, ankylosis, weakness or muscle atrophy. He diagnosed resolved left lateral epicondylitis.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,⁴ and its implementing federal regulations,⁵ 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 determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) as the uniform standard applicable to all claimants.⁶ Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁷

ANALYSIS

The Office accepted appellant's claim for lateral epicondylitis of the left elbow. On prior appeal, the Board determined that the May 31, 2001 opinion of Dr. Weiss did not conform to the A.M.A., *Guides*. In a May 31, 2001 report, Dr. Weiss found that appellant had a 9 percent impairment of the left upper extremity due to motor strength deficit of the left wrist at the radial nerve⁸ and a 10 percent impairment due to loss of grip strength,⁹ for a combined left upper extremity impairment of 18 percent. In a January 3, 2005 report, Dr. Weiss noted that the radial nerve went by the lateral epicondyle and could reasonably cause loss of muscle and grip strength. The Board found that Dr. Weiss did not explain his impairment finding given the lack of significant subjective and objective findings and further found that he improperly combined impairments for motor weakness and loss of grip strength. The Board determined that the opinion of Dr. Valentino, who provided a second opinion evaluation, established that appellant had no upper extremity impairment. Dr. Valentino found essentially normal findings on examination with no loss of range of motion, sensation, weakness, pain or atrophy.

In a report dated January 18, 2006, Dr. Weiss asserted that it was unclear from Dr. Valentino's report whether he had evaluated appellant's wrist extension strength. He indicated that he measured appellant's grip strength three times in finding that he had a 10 percent impairment due to loss of grip strength. Dr. Weiss acknowledged that the A.M.A., *Guides* precludes the combination of motor deficit impairment and the impairment due to loss of grip strength. He concluded that appellant had either a 9 percent impairment due to loss of motor strength of the radial nerve or a 10 percent impairment due to loss of grip strength.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ 20 C.F.R. § 10.404(a).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁸ A.M.A., *Guides* 484, 492, Tables 16-11, 16-15. Dr. Weiss cited to Table 16-32 rather than Table 16-15 in his report; however, this appears to be a typographical error.

⁹ *Id.* at 509, Table 16-34.

Regarding grip strength, the A.M.A., *Guides* provides that in rare cases “if the examiner believes the individual’s loss of strength represents an impairment factor that has not been considered adequately by other methods in the [A.M.A.], *Guides*, the loss of strength may be rated separately.”¹⁰ The grip strength measurements “are usually repeated three times with each hand at different times during the examination, and the values are recorded and later compared.”¹¹ While Dr. Weiss indicated that he performed the grip strength measurements three times, his May 31, 2001 report contains only one measurement for grip strength. Further, he did not explain why he believed that the extent of appellant’s impairment was not adequately determined by the other methods in the A.M.A., *Guides*.

Dr. Weiss also found that appellant had a nine percent impairment due to loss of motor strength of the radial nerve according to Tables 16-11 and 16-15 on pages 484 and 492 of the A.M.A., *Guides*. He did not, however, identify a peripheral nerve disorder in his report. Further, Dr. Weiss did not provide maximum value for the motor deficit of the radial nerve using Table 16-15 on page 492. Table 16-15 specifies that the maximum motor deficit for the radial nerve with loss of triceps is 42 percent and with no loss of triceps is 35 percent.¹² It is unclear whether he found a radial nerve deficit with or without triceps loss. Dr. Weiss also did not identify the grading classification he utilized in rating the motor impairment of the left upper extremity as required by Table 16-11 on page 484 of the A.M.A., *Guides*. Additionally, as previously found by the Board, Dr. Weiss did not explain his impairment determination in view of appellant’s minimal subjective complaints and objective findings on examination.

An Office medical adviser reviewed the May 31, 2001, January 3, 2005 and January 18, 2006 reports of Dr. Weiss and concluded that appellant had no ratable impairment. The Board finds that the weight of the evidence fails to establish that he has a permanent impairment of the left upper extremity.

On appeal, appellant’s attorney contends that a conflict in medical opinion exists between Dr. Weiss and Dr. Valentino. As discussed, however, Dr. Weiss’ impairment rating is insufficiently explained and fails to comport with the A.M.A., *Guides*. Thus, his opinion is insufficient to create a conflict in medical opinion.

CONCLUSION

The Board finds that appellant does not have a ratable permanent impairment of the left upper extremity.

¹⁰ *Id.* at 508.

¹¹ *Id.* at 492, Table 16-15.

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 21, 2007 is affirmed.

Issued: January 9, 2008
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