

§ 8107. The history of the case provided in the Board's prior decision is incorporated herein by reference.

The Office referred appellant, medical records and a statement of accepted facts to Dr. M. Scot Beall, Jr., a Board-certified orthopedic surgeon, selected as a referee physician. In a report dated February 22, 2007, Dr. Beall provided a history and results on examination. He stated that he did not use a dynamometer, but appellant had very weak grip strength in manual testing bilaterally. Dr. Beall further stated, "[Appellant's] range of motion of her elbow, on examination, in observing her maneuvering to describe her problem was that of full extension on both sides. If one would use full extension as 0, she was able to attain from a 10 degree short of full extension to a 95 degree position. On my physical exam[ination] she obtained an approximately 140 degree range of flexion in the process of moving her arms and describing her problems during the interview portion." Dr. Beall provided range of motion results for the left wrist and elbow. With respect to permanent impairment, he discussed sensory deficit for the median and ulnar nerves, finding a Grade 4 impairment of 10 percent of the maximum for each nerve. Dr. Beall reported a four percent impairment for the median nerve and a one percent impairment for the ulnar nerve, resulting in a five percent left arm impairment. He stated that muscle strength was "difficult to determine, but certainly there was no atrophy or wasting."

The Office requested a supplemental report regarding the date of maximum medical improvement. In a March 22, 2007 report, Dr. Beall indicated that appellant had undergone a left carpal tunnel release on May 20, 2004 and maximum medical improvement was reached about six months later. An Office medical adviser reviewed the evidence in an April 7, 2007 report, identifying Table 16-15 and 16-10 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He concurred that appellant had a five percent left arm impairment under these tables.

By decision dated April 12, 2007, the Office issued a schedule award for a five percent left arm permanent impairment. The period of the award was 15.6 weeks from November 20, 2004.

Appellant requested reconsideration by letter dated April 30, 2007. In a decision dated June 28, 2007, the Office denied modification.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use, of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³

ANALYSIS

The schedule award for a five percent left arm impairment was based on the February 22, 2007 report from Dr. Beall, the referee physician, who found a sensory deficit impairment in the median and ulnar nerves of the left arm. Although Dr. Beall did not identify specific tables under the A.M.A., *Guides*, the medical adviser identified the tables used by Dr. Beall. For impairments due to peripheral nerve disorders, Table 16-15 provides the maximum impairment for sensory deficit or pain in the median nerve is 39 percent and in the ulnar nerve 7 percent.⁴ The impairment is graded under Table 16-10 and Dr. Beall indicated that the impairment was 10 percent of the maximum, resulting in a 4 percent impairment for the median nerve and 1 percent for the ulnar nerve.⁵

Dr. Beall stated that he did not find an impairment based on loss of elbow range of motion. His report, however, is unclear in this regard. Dr. Beall initially referred to full extension based on observation, then he appeared to find that appellant's extension was at 10 degrees, which would result in a one percent impairment under Figure 16-34 and flexion of 95 degrees, resulting in a seven percent impairment under the same figure.⁶ Dr. Beall noted 140 degrees of flexion, referring to physical examination and also the interview portion of the examination. The A.M.A., *Guides* require a clear statement on actual range of motion in the elbow for extension and flexion, so that Figure 16-34 can be properly applied. The case will be remanded for clarification as to whether there was a permanent impairment based on loss of range of motion in the left elbow.

In addition, Dr. Beall indicated that there was no impairment due to loss of muscle strength as it was difficult to determine and there was no atrophy. He noted loss of grip strength in his examination findings. While the A.M.A., *Guides* state that strength measurements are difficult to control and generally loss of grip strength is not rated separately unless loss of strength was not adequately considered by other methods, it also states loss of strength can occur without muscle atrophy.⁷ Dr. Beall does not discuss an impairment based on motor deficit using the tables for peripheral nerve disorders under section 16.5 of the A.M.A., *Guides*. On remand, the medical evidence should also clarify whether an impairment for motor deficit is appropriate in this case.

The Board finds that Dr. Beall did not resolve the conflict in the medical evidence. The case will be remanded to the Office to secure a medical report that properly resolves the schedule

³ A. George Lampo, 45 ECAB 441 (1994).

⁴ A.M.A., *Guides* 492, Table 16-15.

⁵ *Id.* at 482, Table 16-10.

⁶ *Id.* at 472, Figure 16-34.

⁷ *Id.* at 508.

award issue presented. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The report from the referee physician, Dr. Beall, did not fully explain whether there was an additional impairment for loss of elbow range of motion or motor deficit and the case will be remanded for further development.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 28 and April 12, 2007 are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 28, 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