

and the facts of this case, as set forth in the Board's prior decisions, are incorporated herein by reference.

On February 13, 2003 appellant, then a 40-year-old roofer sustained a left wrist fracture and a lumbar compression fracture when he fell from a roof while working. On April 10, 2004 he filed a claim for a schedule award. On May 20, 2004 the Office granted appellant a schedule award for 11 percent of his left upper extremity for 34.32 weeks, from January 16 to September 12, 2004.² By decisions dated August 19, 2005 and June 27, 2007, it denied modification of the May 20, 2004 decision.

In an April 18, 2008 memorandum, a senior Office claims examiner asked Dr. Ellen Pichey, an Office medical adviser, to explain whether she disagreed with the physical findings of Dr. Richard Yu, the treating physician, who did not provide an impairment rating, and the impairment rating of Dr. Arthur Harris, an Office medical consultant.

On May 26, 2008 Dr. Pichey provided a report regarding appellant's left wrist impairment.³ The top of the paper submitted to her by the claims examiner for her impairment rating contained a printed note that, "only bookmarked documents should be referred to DM [district medical] consultant." Dr. Pichey stated that Dr. Harris provided rationale in his June 20, 2007 impairment rating for his rating of appellant's grip strength. She opined that appellant had one percent impairment for loss of palmar flexion in the left wrist.⁴ Dr. Pichey did not address the one percent impairment Dr. Harris calculated for residual left wrist pain. She did not provide a rationalized opinion as to appellant's total left wrist extremity impairment.

In a July 18, 2008 decision, the Office found that appellant had no more than 11 percent impairment of his left wrist causally related to his accepted left wrist fracture.

LEGAL PRECEDENT

The schedule award provision of the Act⁵ and its implementing regulations⁶ 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to

² The Federal Employees' Compensation 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 11 percent equals 34.32 weeks of compensation.

³ Dr. Pichey did not personally examine appellant.

⁴ Dr. Harris found no ratable impairment due to decreased left wrist flexion.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷

ANALYSIS

In its January 8, 2007 and April 8, 2008 decisions, the Board noted several deficiencies in the impairment rating provided by Dr. Harris. However, in the memorandum to Dr. Pichey, the Office claims examiner summarized the impairment calculation of Dr. Harris without noting these deficiencies. Additionally, the claims examiner indicated that only bookmarked documents should be referred to the Office medical consultant. Therefore, the medical evidence made available to Dr. Pichey cannot be determined. Dr. Pichey stated that Dr. Harris provided rationale in his June 20, 2007 impairment rating for his rating of appellant's grip strength. She opined that appellant had one percent impairment for left wrist loss of flexion.⁸ Dr. Pichey did not address the one percent impairment Dr. Harris calculated for residual left wrist pain. She did not provide a rationalized opinion as to appellant's total left wrist extremity impairment. Due to these deficiencies, Dr. Pichey's May 26, 2008 report is not sufficient to establish appellant's left wrist impairment. The case must be remanded for further development of the medical evidence.

CONCLUSION

The Board finds that this case is not in posture for a decision and must be remanded for further development of the medical evidence. On remand, the Office should refer appellant to an appropriate medical specialist for an impairment rating of appellant's left wrist based on correct application of the A.M.A., *Guides* and supported by thorough medical rationale. The evaluating physician should review the January 16, 2004 report of Dr. Yu who personally examined appellant, provided findings on physical examination, and found that he had reached maximum medical improvement. As noted in the Board's April 8, 2008 and January 8, 2007 decisions, there are numerous deficiencies in the impairment rating of Dr. Harris. Accordingly, the new evaluating physician should not base any portion of his or her impairment rating on the May 6, 2004 or June 20, 2007 reports of Dr. Harris. After such further development as may be required to obtain an accurate rating of appellant's left wrist impairment, the Office should issue an appropriate decision.

⁷ A.M.A., *Guides* (5th ed. 2001).

⁸ As noted, Dr. Harris found no left wrist impairment due to loss of range of motion.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 18, 2008 is set aside and the case is remanded for further development consistent with this decision.

Issued: July 17, 2009
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