

In a November 22, 2005 report, Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon and Office referral physician, reviewed the medical history and provided findings on physical examination.¹ He stated that appellant had full range of motion of the right wrist and provided measurements. There was no discoloration or swelling, no tenderness to palpation of the wrist and no crepitation to range of motion testing. There was no motor or sensory deficit. Dr. Ghanma had excellent grip strength and no wrist instability. He determined that appellant had no impairment based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*). In a supplemental report dated December 8, 2005, Dr. Ghanma stated that there was no evidence of any residuals from appellant's accepted right distal radius fracture and his maximum date of medical improvement was August 24, 2005, the date he returned to full duty.

In a May 21, 2007 report, Dr. Jeffrey C. Kirschman, a physician Board-certified in family practice and occupational medicine, provided findings on physical examination, including range of motion measurements. There was diffuse swelling over the ulnar dorsal aspect and over the scaphoid. There was tenderness to palpation of the palmar wrist and over the ulnar aspect. Mild crepitus was noted over the volar wrist on range of motion testing. Dr. Kirschman calculated appellant's right upper extremity impairment at 15 percent based on Table 16-18 at page 499 of the A.M.A., *Guides*. He stated that a magnetic resonance imaging (MRI) scan revealed abnormal findings in the right wrist and appellant had ongoing focal tenderness and poor tolerance of repetitive activity.

On June 30, 2007 Dr. Jason D. Eubanks, an orthopedic surgeon and an Office medical adviser, reviewed the report from Dr. Kirschman.² He found that appellant had no right upper extremity impairment. Range of motion measurements were normal and Dr. Kirschman provided insufficient explanation as to how he calculated 15 percent right wrist impairment.

By decision dated October 18, 2007, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence did not establish that he had any right upper extremity impairment causally related to his accepted April 16, 2005 right distal radius fracture. Appellant requested a review of the written record.

In an October 30, 2007 report, Dr. Kirschman stated that appellant had 10 percent right upper extremity impairment for loss of grip strength according to Table 16-34 at page 509 of the A.M.A., *Guides*. He provided the results of grip strength testing and calculated 30.2 percent impairment. Applying the value of 30.2 percent to Table 16-34 at page 509 resulted in 10 percent right upper extremity impairment.

¹ Appellant was not able to obtain an impairment rating from a treating physician when first requested by the Office.

² 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).

On March 27, 2008 an Office hearing representative set aside the October 18, 2007 decision and remanded the case for further development of the medical evidence.

On April 9, 2008 Dr. Nabil Angley, an Office medical adviser, reviewed Dr. Kirschman's October 30, 2007 report and calculated that appellant had 10 percent right upper extremity impairment due to grip strength loss according to Table 16-34 at page 509 of the A.M.A., *Guides*.

In a letter received by the Office on May 2, 2008, appellant argued that the correct date of maximum medical improvement was August 24, 2005 as noted in Dr. Ghanma's 2005 reports. He also indicated that he had dependents.³

By decision dated April 14, 2008, the Office granted appellant a schedule award for 10 percent right upper extremity impairment, or 31.20 weeks, from October 30, 2007 to June 4, 2008 with a date of maximum medical improvement of October 30, 2007.⁴

By decision dated July 24, 2008, an Office hearing representative affirmed the April 14, 2008 decision.⁵

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act⁶ 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 permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁷

ANALYSIS

Dr. Kirschman calculated appellant's right upper extremity impairment at 15 percent based on Table 16-18 at page 499 of the A.M.A., *Guides*. He stated that an MRI scan revealed abnormal findings in the right wrist and appellant had ongoing focal tenderness and poor tolerance of repetitive activity. However, Dr. Kirschman provided insufficient explanation as to how he calculated the 15 percent right wrist impairment.

³ The record shows that appellant's April 14, 2008 schedule award was paid at the three-fourths augmented pay rate for claimants with dependents.

⁴ The Act provides for 312 weeks of compensation for 100 percent loss or loss of use of the upper extremity. 5 U.S.C. § 8107(c)(10). Multiplying 312 weeks by 10 percent equals 31.2 weeks of compensation.

⁵ Subsequent to the July 24, 2008 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

⁶ 5 U.S.C. § 8107.

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

In an October 30, 2007 report, Dr. Kirschman stated that appellant had 10 percent right upper extremity impairment for loss of grip strength according to Table 16-34 at page 509 of the A.M.A., *Guides*. He provided the results of grip strength testing and calculated 30.2 percent impairment. Applying the value of 30.2 percent to Table 16-34 at page 509 resulted in 10 percent right upper extremity impairment.

An Office medical adviser reviewed Dr. Kirschman's October 30, 2007 report compared his calculations to the applicable section of the A.M.A., *Guides*, Table 16-34 at page 509, and calculated that appellant had 10 percent right upper extremity impairment due to grip strength loss.

The Board finds that there is no medical evidence establishing that appellant has more than 10 percent right upper extremity impairment.

Regarding appellant's assertion that the Office used an incorrect date of maximum medical improvement in the April 14, 2008 schedule award, the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted employment injury.⁸ It is a well-settled rule that maximum medical improvement arises at the point at which the injury has stabilized and will not improve further. This determination is factual in nature and depends primarily on the medical evidence.⁹ In this case, the appropriate date of maximum medical improvement for the April 14, 2008 schedule award was October 30, 2007, the date of the most recent medical report addressing appellant's right upper extremity impairment.

CONCLUSION

The Board finds that appellant has no more than 10 percent right upper extremity for which he received a schedule award.

⁸ See *Mark A Holloway*, 55 ECAB 321 (2004).

⁹ *Peter C. Belkind*, 56 ECAB 580 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 24 and April 14, 2008 are affirmed.

Issued: May 7, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board