

Zamarin, a Board-certified orthopedic surgeon, selected as the impartial medical examiner, was not sufficient to resolve the conflict in medical opinion regarding the extent of impairment. The case was remanded for the Office to obtain a supplemental report from Dr. Zamarin and reviewed by an Office medical adviser. The facts of the previous Board decision are incorporated by reference.

On remand the Office provided Dr. Zamarin with an updated statement of accepted facts and requested that he provide a supplemental opinion and range of motion measurements of appellant's left hand. It requested that he further address the extent of permanent impairment based on reexamination of appellant.

In a September 23, 2008 report, Dr. Zamarin noted the history of injury, appellant's treatment and reviewed his prior impairment rating. He noted that appellant had no treatment or therapy since he saw her on December 12, 2006. Appellant's only complaint was that her left wrist occasionally ached when she lifted. She was able to do her normal activities without restrictions. Dr. Zamarin noted that appellant's left wrist bothered her if she worked for a long time or the weather changed. Range of motion findings were provided for appellant's fingers on her left hand through use of a goniometer. Range of motion findings of the left wrist was also provided. Grip strength was noted to be equal bilaterally. Dr. Zamarin opined that appellant had five percent permanent impairment of the left arm under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. For the third finger, he found appellant had eight percent impairment under Figure 16-21, page 461, for 54 degrees flexion of the distal interphalangeal (DIP) joint; a three percent impairment under page 463, Figure 16-23 for 94 degrees flexion of the proximal interphalangeal (PIP) joint; and an eight percent impairment under Figure 16-25, page 464, for 78 degrees flexion at the metacarpophalangeal (MP or MCP) joint. For the fourth finger, Dr. Zamarin found 15 percent impairment under Figure 16-21 for DIP flexion for 40 degrees; 3 percent impairment under Figure 16-23 for 100 degrees PIP flexion; and 6 percent impairment under Figure 16-25 for MP flexion to 80 degrees. Using the Combined Values Chart on page 604, he found 18 percent impairment for the third finger and 22 percent impairment for the fourth finger of the DIP, PIP and MP flexion impairments. Under Table 16-1, page 438, Dr. Zamarin converted the individual digit impairments to hand impairments. He found the 18 percent third digit impairment converted to 4 percent hand impairment and the 22 percent fourth finger impairment converted to 2 percent hand impairment. Dr. Zamarin then added the hand impairment values to total six percent. Under Table 16-2, he found the six percent hand impairment converted to five percent upper extremity impairment. With regard to the wrist, Dr. Zamarin found under Figure 16-8, page 467 and Figure 16-31, page 469, range of motion of 80 degrees flexion, 60 degrees extension, 32 degrees of radial and ulnar deviation, and 90 degrees of pronation and supination did not represent any impairment.

In an October 9, 2008 report, an Office medical adviser reviewed Dr. Zamarin's report and the medical record. He opined that appellant had five percent left arm impairment. The medical adviser stated that, while he arrived at different digit impairments for the left third and fourth fingers than Dr. Zamarin, the hand impairment calculations of four percent hand impairment for the left third finger and two percent hand impairment for the left fourth finger were the same as was the final calculated left hand impairment of six percent and left upper

extremity of five percent.² He advised that, since the five percent left arm impairment was the same impairment value as previously awarded, there was no evidence of greater impairment

By decision dated October 15, 2008, the Office denied appellant's claim for an additional schedule award.

On October 17, 2008 appellant's counsel requested an oral hearing, which was held on February 24, 2009. Counsel argued that Dr. Zamarin's impairment rating was deficient as he did not address whether appellant had impairment due to pain.

By decision dated May 14, 2009, an Office hearing representative affirmed the October 15, 2008 decision. She found that Dr. Zamarin's opinion constituted the weight of medical evidence as to appellant's left arm impairment.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulations⁴ 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. The Act, however, 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 all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁶ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷

² The medical adviser indicated that 100 degrees of flexion of the PIP joint for the left fourth finger did not yield any impairment under Figure 16-23 at page 463 of the A.M.A., *Guides*.

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.404.

⁵ *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁶ 5 U.S.C. § 8123(a).

⁷ *Rose V. Ford*, 55 ECAB 449 (2006); *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

ANALYSIS

Appellant received a schedule award for five percent left upper extremity impairment on August 19, 2005. The Board remanded the case for supplemental opinion from Dr. Zamarin, the impartial medical examiner, to address the measurements for range of motion of appellant's left hand and whether she had greater impairment.

On September 23, 2008 Dr. Zamarin reexamined appellant. He provided range of motion findings of appellant's fingers and wrist and found that she had five percent impairment of the left arm. An Office medical adviser applied the A.M.A., *Guides* to Dr. Zamarin's findings and, while he arrived at different digit impairments for the left third and fourth fingers, agreed with five percent impairment rating of the impartial medical specialist. The Board finds that a proper application of the A.M.A., *Guides* to Dr. Zamarin's clinical findings results in five percent impairment to appellant's left arm. For the left third finger, Dr. Zamarin found appellant had eight percent impairment under Figure 16-21, page 461, for 54 degrees flexion of the DIP joint; three percent impairment under page 463, Figure 16-23 for 94 degrees flexion of the PIP joint; and eight percent impairment under Figure 16-25, page 464 for 78 degrees flexion at the MP or MCP joint. For the left fourth finger, he found 15 percent impairment under Figure 16-21 for DIP flexion for 40 degrees; 3 percent impairment under Figure 16-23 for 100 degrees PIP flexion; and 6 percent impairment under Figure 16-25 for MP flexion to 80 degrees. The Board notes that, while Dr. Zamarin otherwise provided appropriate impairment findings within the corresponding impairment ranges provided in the figures cited in the A.M.A., *Guides*, he inadvertently indicated that 100 degrees PIP flexion, of the left fourth finger, under Figure 16-23, page 463 resulted in three percent impairment of the left fourth finger; however, this measurement represents no impairment of flexion at the PIP joint. Thus, the combined digit impairment for the left third finger equals 18 percent (8 DIP, 3 PIP, 8 MP) and for the left fourth finger equals 20 percent (15 DIP, 0 PIP, 6 MP). Under Table 16-1, page 438 and Table 16-2, page 439, 18 percent third finger impairment converts to 4 percent hand impairment which, in term is a 4 percent upper extremity impairment. Under the same tables, 20 percent fourth finger impairment converts to 4 percent hand impairment or 2 percent upper extremity impairment. The four percent and two percent impairment when added total six percent impairment. Under Table 16-2, page 439, a six percent hand impairment is five percent upper extremity impairment.⁸ The Office medical adviser reviewed Dr. Zamarin's findings and applied in the A.M.A., *Guides* to rate the same impairment as found by Dr. Zamarin.

The Board finds that Dr. Zamarin's opinion is sufficient to resolve the conflict in the medical evidence. His report establishes that appellant has no more than five percent impairment of the left arm. Appellant has not established greater impairment than previously awarded.

On appeal counsel contends that appellant is entitled to three percent impairment for pain or, in the alternative, a new referee medical examination is needed. He argued that Dr. David Weiss, appellant's treating physician, addressed pain-related impairment, but Dr. Zamarin provided no medical opinion on this matter. While Dr. Weiss did address pain, he was on one

⁸ Any error by Dr. Zamarin in applying the range of motion findings for flexion of the PIP joint of the left fourth to the A.M.A., *Guides* is harmless since the final impairment percentage is unchanged.

side of the medical conflict which arose regarding the extent of permanent impairment of appellant's left upper extremity. As noted, the opinion of an impartial medical specialist is entitled to special weight if sufficiently well rationalized and based upon a proper factual background.⁹ In the December 12, 2006 report, Dr. Zamarin advised that there was no basis for an additional impairment rating for pain. Following his examination of September 23, 2008, he did not find that any impairment rating was warranted. Dr. Zamarin found that appellant's impairment was based on lost motion of the left third and fourth fingers. He found no other basis on which to attribute any impairment under the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant has established no more than five percent left upper extremity impairment, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2009 and October 15, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 27, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁴ *Rose V. Ford*, *supra* note 7.