

nerve decompression and medial epicondylectomy on June 16, 2004. Appellant requested a schedule award on March 2, 2005.

By decision dated June 1, 2005, the Office granted appellant a schedule award for five percent impairment of the left upper extremity. Appellant requested an oral hearing and by decision dated August 14, 2006, an Office hearing representative affirmed this determination. He requested reconsideration on October 11, 2006. By decision dated November 8, 2006, the Office declined appellant's request for reconsideration of the merits.

Appellant underwent an additional left ulnar nerve neurolysis with anterior transposition on December 19, 2005. Nerve conduction studies dated December 20, 2007 were normal with no electrophysiologic evidence of cervical radiculopathy, plexopathy, polyneuropathy or myopathy and no evidence of ulnar neuropathy or median mononeuropathy.

Appellant sought additional medical treatment on February 25, 2008 from Dr. Mark L. Philips who recommended additional physical therapy. The Office referred him for a second opinion evaluation with Dr. William A. Somers, a Board-certified orthopedic surgeon, who completed a report on May 8, 2008 and recommended further evaluation of flexor pronators and ulnar collateral ligament about the left elbow. Dr. Somers stated that appellant had not reached maximum medical improvement.

Appellant's attending physician, Dr. Mark A. Rowley, a Board-certified orthopedic surgeon, completed a report on January 12, 2009 examining his left elbow and finding 115 degrees of flexion with full rotation as well as mild tenderness. Dr. Rowley diagnosed medial epicondylitis. He stated that appellant had chronic left elbow and upper extremity pain due to medial epicondylitis and residual symptoms of ulnar nerve compression neuropathy. Dr. Rowley noted that nerve conduction studies demonstrated no residual ulnar nerve compression and found that appellant had reached maximum medical improvement. He opined that appellant had 5 percent impairment of the left upper extremity due to Grade 2 pain disturbance of 70 percent multiplied by the maximum upper extremity impairment of the ulnar entrapment above the midforearm of 7 percent.¹ Appellant filed a claim for compensation requesting a schedule award on January 26, 2009.

The Office referred this report to the district medical adviser on February 2, 2009. In reports dated February 3 and 10, 2009, the district medical adviser agreed with Dr. Rowley's findings of five percent impairment of the left upper extremity. In a letter dated February 11, 2009, the Office requested additional medical evidence from appellant supporting more than five percent impairment of the left upper extremity for which he has already received a schedule award.

By decision dated April 1, 2009, the Office denied appellant's request for a schedule award finding that the medical evidence did not establish more than five percent impairment of his left upper extremity for which he had received a schedule award.

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001), 482, Table 16-10 and 492, Table 16-15.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of use, of scheduled members or functions of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*. Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁴

ANALYSIS

The Office granted appellant a schedule award for five percent impairment of his left upper extremity on June 1, 2005. Appellant requested an additional schedule award on January 26, 2009 and submitted a report dated January 12, 2009 from Dr. Rowley, diagnosed medial epicondylitis and noted appellant's symptoms of chronic left elbow and upper extremity pain. Dr. Rowley found that appellant had reached maximum medical improvement. He applied the appropriate edition of the A.M.A., *Guides*, fifth edition, and found that appellant had decreased superficial cutaneous pain and tactile sensibility that may prevent some activity or Grade 2 sensory deficit or pain of the ulnar nerve with a percentage range of 61 to 80 percent. Dr. Rowley found that appellant had 70 percent impairment. He then properly multiplied this percentage by the maximum percent upper extremity impairment due to sensory impairment of the ulnar nerve or seven percent⁵ to reach 4.9 or 5 percent impairment of the upper extremity. The district medical adviser reviewed this report and concurred with the percentage of impairment. There is no medical evidence establishing a greater than five percent impairment of the left upper extremity after appellant reached maximum medical improvement on January 12, 2009, the date of Dr. Rowley's report. As appellant had already received a schedule award for five percent impairment of his left upper extremity, the amount of his current rating of impairment, he is not entitled to an additional schedule award.⁶

² 5 U.S.C. §§ 8101-8193, 8107.

³ 20 C.F.R. § 10.404.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002). For new decisions issued after May 1, 2009 the Office began using the sixth edition of the A.M.A., *Guides*. The A.M.A., *Guides*, sixth edition (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁵ A.M.A., *Guides* 492, Table 16-15.

⁶ *Rose V. Ford*, 55 ECAB 449, 455 (2004).

The Board has reviewed Dr. Rowley's report and the medical evidence of record as requested by appellant's attorney and finds that based on this review the Board finds that appellant has no more than five percent impairment of his left upper extremity for which he has previously received a schedule award.

CONCLUSION

The Board finds that appellant has no more than five percent impairment of his left upper extremity for which he has received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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