

developed an overuse syndrome of her left arm. The Office accepted her claims for bilateral epicondylitis with forearm tenosynovitis and right carpal tunnel syndrome.

Appellant requested a schedule award on July 15, 2002. By decision dated August 21, 2002, the Office denied her claim on the grounds that the medical evidence did not establish that she had reached maximum medical improvement.

Appellant's attending physician, Dr. Michael Baghdoian, a Board-certified orthopedic surgeon, indicated that she had reached maximum medical improvement on October 15, 2002. She again requested a schedule award on November 6, 2002. The Office requested additional medical evidence regarding appellant's impairment from Dr. Baghdoian on December 11, 2002. He did not respond and on April 7, 2003 the Office referred her for a second opinion examination with Dr. Donald Paarlberg, a Board-certified orthopedic surgeon. In his April 22, 2003 report, he concluded that appellant had a nine percent impairment of each of her upper extremities due to loss of range of motion. The Office medical adviser reviewed this report on October 23, 2003 and agreed with Dr. Paarlberg's findings and impairment rating. By decision dated October 29, 2003, the Office granted appellant a schedule award for a 9 percent impairment of each of her upper extremities for a total schedule award of 18 percent.¹

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining 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 all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

ANALYSIS

In this case, appellant's attending physician, Dr. Baghdoian stated on October 15, 2002 that appellant had reached maximum medical improvement. He did not provide detailed physical findings describing appellant's impairment and did not offer an impairment rating. The Office requested that he provide a detailed report regarding her impairment, but Dr. Baghdoian did not respond.

¹ Following the October 29, 2003 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

The Office referred appellant for a second opinion evaluation with Dr. Paarlberg, a Board-certified orthopedic surgeon. In his April 22, 2003 report, he noted appellant's history of injury and provided his findings on physical examination. Dr. Paarlberg found that appellant had moderate bilateral elbow pain.⁴ He noted that she had some subcutaneous atrophy at the site of her previous steroid injections in both her right and left elbows. Dr. Paarlberg further found that appellant had 90 degrees of flexion bilaterally and 10 degrees of extension. He concluded that she had nine percent impairment of each of her upper extremities due to loss of range of motion.

The Office medical adviser reviewed this report on October 23, 2003. He found that flexion to 90 degrees was an 8 percent impairment of each of her upper extremities.⁵ The Office medical adviser further found that 10 degrees of extension was a 1 percent impairment.⁶ Adding these impairment ratings equals a 9 percent impairment of each of the upper extremities for a total of an 18 percent impairment of both of the upper extremities. There is no medical evidence in the record following the date of maximum medical improvement suggesting that appellant had more than an 18 percent impairment of both her upper extremities for which she received a schedule award.

CONCLUSION

The Board finds that appellant has no more than a nine percent impairment of each of her upper extremities for which she received a schedule award.

⁴ Dr. Paarlberg did not correlate his findings regarding pain with the A.M.A., *Guides* and did not include any rating for pain within his final impairment rating.

⁵ A.M.A., *Guides*, 472, Figure 16-34.

⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member