



On remand the Office requested that Dr. Pashman provide a report clarifying his opinion. In a report dated January 26, 2006, Dr. Pashman indicated that his prior report should have stated that the grip strength study was “invalid” rather than “valid,” since grip strength was due to pain inhibition, and there was lack of a bell-shaped curve and lack of maximal effort by appellant. He further stated:

“In answer to your second question, on Table 16-11, [appellant] had complete range of motion against gravity with some resistance, indicating a percent of motor deficit of 1 [to] 25 percent. As noted on my physical examination, [appellant] had hypesthesia of the dorsoradial aspect to the right hand and dorsoradial sensory branch of the ulnar nerve. As noted on Table 16-15, an abnormality/dysfunction of the mid forearm in the radial palmar digital of the little finger is that of two percent sensory deficit with a combined two percent motor and sensory deficit.

“As I noted, in view of the fact that [appellant’s] weakness in the upper extremity was primarily secondary to pain inhibition, and objective evidence of sensory nerve deficit was only two percent, I estimate his permanent impairment may be between five [to] seven percent. This was reached by Table 16-15 of the [A.M.A., *Guides*], indicating two percent radial palmar digital nerve of the little pain [sic] and an abnormal motor function because of distorted superficial tactile sensation primarily due to pain inhibition, of approximately an additional three percent.”

The Office sent the case to an Office medical adviser. In a report dated February 9, 2006, the medical adviser stated that the impairment rating was two percent based on sensory deficit and there was no motor impairment or valid grip strength measurements. The medical adviser reviewed the evidence and stated that he was confused as to why Dr. Pashman added an additional three percent.

In a decision dated February 15, 2006, the Office determined that appellant was not entitled to more than a seven percent permanent impairment to the right arm. The Office found that the evidence was not sufficient to establish an additional schedule award.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees’ Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>1</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal

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<sup>1</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

justice for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>2</sup>

In order to properly resolve a conflict in the medical evidence with respect to a schedule award, it is the referee examiner who should provide a reasoned medical opinion as to a permanent impairment to a scheduled member of the body in accordance with the A.M.A., *Guides*. An Office medical adviser may review the opinion, but the resolution of the conflict is the responsibility of the referee examiner.<sup>3</sup>

### ANALYSIS

In this case, the Office found that the medical adviser's interpretation of Dr. Pashman's findings represents the weight of the medical evidence. The medical adviser stated that the impairment was two percent based on sensory deficit, without properly referring to the table regarding the grading of a sensory deficit impairment. Moreover, since there was a conflict in the medical evidence under 5 U.S.C. § 8123(a), it is Dr. Pashman who must resolve the conflict and provide a reasoned medical opinion under the A.M.A., *Guides*. Dr. Pashman did not resolve the conflict in the medical evidence. He reported a combination of sensory and motor deficit impairments, without properly applying the identified tables in the A.M.A., *Guides*. For example, he identified the ulnar nerve, radial palmar digital of the little finger. Under Table 16-15, the maximum impairment is two percent for sensory deficit, with no motor impairment.<sup>4</sup>

Although Dr. Pashman appeared to find a two percent sensory deficit impairment, and the Office medical adviser stated that he agreed with Dr. Pashman, a sensory impairment must be graded according to Table 16-10.<sup>5</sup> Neither Dr. Pashman nor the Office medical adviser refer to this table, or explain how the sensory impairment was graded to result in the maximum two percent impairment for the identified nerve. As to a motor impairment, Dr. Pashman found an additional three percent impairment. If the identified nerve is the ulnar nerve, radial palmar digital of the little finger, there would be no motor impairment. Dr. Pashman graded the motor impairment at 1 to 25 percent of the maximum, but this would be applicable only if he identified a nerve under Table 16-15 that can be graded with respect to motor impairments. As noted by the medical adviser, it is not clear how Dr. Pashman determined the degree of permanent impairment.

The Board finds that Dr. Pashman's January 26, 2006 report does not provide a reasoned medical opinion resolving the conflict in the medical evidence. His report is of diminished probative value and cannot resolve the conflict in this case. Since the Office has already sought a supplemental opinion from Dr. Pashman and been unable to resolve the conflict, the case

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<sup>2</sup> A. George Lampo, 45 ECAB 441 (1994).

<sup>3</sup> See Richard R. LeMay, 56 ECAB \_\_\_\_ (Docket No. 04-1652, issued February 16, 2005); see also Thomas J. Fragale, 55 ECAB \_\_\_\_ (Docket No. 04-835, issued July 8, 2004).

<sup>4</sup> A.M.A., *Guides* 492, Table 16-15.

<sup>5</sup> *Id.* at 482, Table 16-10.

should be referred to another referee examiner. After such further development as the Office deems necessary, it should issue an appropriate decision.

**CONCLUSION**

The conflict in the medical evidence remains unresolved and the case will be remanded for resolution of the conflict.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 15, 2006 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: September 22, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board