



impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) and a 9 percent left arm impairment. He explained that the right arm impairment was based on a median nerve impairment under Tables 16-15, 16-10 and 16-11, resulting in five percent for pain/sensory deficit and five percent motor deficit. For the left arm, the same tables resulted in five percent for pain/sensory deficit and four percent for motor deficit in the median nerve.

The Office referred the case to an Office medical adviser for review. In a report dated October 6, 2005, the medical adviser stated that the report from Dr. Ellis was not sufficient to make an impairment determination and the case should be referred for additional development.

The Office referred appellant to Dr. Richard Brown, a Board-certified physiatrist, for a second opinion evaluation. In a report dated January 27, 2005, Dr. Brown provided a history and results on examination. He noted range of motion for the right wrist: 72 degrees flexion, 70 degrees dorsiflexion, 25 degrees radial deviation and 30 degrees ulnar deviation. For the left wrist, the results were: 75 degrees flexion, 70 degrees dorsiflexion, 25 degrees radial deviation and 25 degrees ulnar deviation. Dr. Brown concluded that appellant had a one percent left arm impairment from loss of ulnar deviation. He also reported sensory and motor deficits along the median nerve at the radial palmar digital of the thumb, index finger and middle finger. Dr. Brown noted that under Table 16-15 there was no impairment for motor deficit. For sensory deficit, the maximum impairment for the radial palmar digital of thumb was seven percent and five percent each for the radial palmar digital of index finger five percent and middle finger. He then stated: "Next step is to multiply the sensory deficit, which is [G]rade [four and seven] percent and then combine these values with [five] percent and again [five] percent and you get a combined impairment of [one] percent." The second opinion physician concluded that appellant had a one percent right arm impairment and a two percent left arm impairment.

In a report dated February 23, 2006, an Office medical adviser calculated appellant's impairment by grading the sensory deficit impairments for the radial palmar digital nerves of the thumb, index and middle fingers at seven percent of the maximum for each nerve. The medical adviser, therefore, concluded that appellant had a .49 percent arm impairment for sensory deficit in the radial palmar digital of the thumb, .35 percent for the index finger and the middle finger, resulting in a total 1 percent impairment for each arm. The medical adviser stated that it was inappropriate to add an impairment for decreased motion in the case of compression neuropathies and, therefore, the total impairment was one percent to each arm.

By decision dated June 14, 2006, the Office issued a schedule award for one percent impairment to each arm. The period of the award was 6.24 weeks commencing January 24, 2006.

## LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.404 of the implementing federal regulation,<sup>2</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>3</sup>

Office procedures provide 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.<sup>4</sup>

## ANALYSIS

As noted a schedule award under the Act must properly be based on the A.M.A., *Guides*. In the present case, the medical evidence of record is not of sufficient probative value to allow the Board to make a proper determination regarding the degree of permanent impairment.

An attending physician, Dr. Ellis, attempted to calculate the percentage of permanent impairment by using Table 16-15. A proper application of the A.M.A., *Guides* for impairments to the arms due peripheral nerve disorders requires that the specific nerves be identified under Table 16-15, in order to determine the maximum impairment for sensory or motor deficit in the identified nerve.<sup>5</sup> Then the impairment is graded according to Table 16-10 for sensory deficits and 16-11 for motor deficits.<sup>6</sup> These tables provide specific descriptions and a corresponding grade from one to five according to the severity of the impairment. Dr. Ellis generally identified the median nerve, without further explanation. Table 16-15 includes the median nerve, but also includes specific palmar digital nerves as part of the median nerve. He opined that appellant had five percent for sensory deficit and motor deficit, without explaining how he used Table 16-15 to determine the maximum impairment or how he graded the impairment under Tables 16-10 and 16-11. Dr. Ellis' report is of diminished probative value to the issue presented.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

<sup>4</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

<sup>5</sup> A.M.A., *Guides* 492, Table 16-15.

<sup>6</sup> *Id.*, 482, Table 16-10, 484, Table 16-11.

The second opinion examiner, Dr. Brown, also attempted to use Tables 16-15 and the grading tables. He does identify under Table 16-15 the specific radial palmar digital nerves for the thumb, index and middle finger. Dr. Brown correctly noted that the maximum arm impairments for sensory deficit in these nerves was seven percent for the thumb nerve, five percent for the index finger nerve and five percent for the middle finger nerve. There are no motor deficit impairments for these nerves under Table 16-15. The problem is with the grading of the impairments. Dr. Brown refers to “grade [four] [seven] percent” and then combining with five percent and five percent. The medical adviser apparently interpreted the statement as grading the impairment at seven percent of the maximum for each impairment. It is not clear how Dr. Brown was attempting to grade the impairment, since seven percent is also the maximum impairment for the radial palmar digital nerve of the thumb. He did not provide any additional explanation. Moreover, the Office medical adviser provided no explanation as to why a seven percent grading was appropriate. Under Table 16-10, a Grade 4 impairment is from 1 to 25 percent of the maximum for “distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity.” While the selection of a percentage from the allowable range involves a subjective judgment, the selection cannot be made without explanation.<sup>7</sup> There is no explanation from Dr. Brown or the Office medical adviser as to why 7 percent, based on a range of 1 to 25 percent, would be appropriate under Table 16-10 in this case.

The Office should have requested clarification from Dr. Brown on the issue. On remand, the Office should secure a reasoned medical report regarding the relevant tables of the A.M.A., *Guides*. After such further development as the Office deems necessary, it should issue an appropriate decision.

### **CONCLUSION**

The record does not contain a reasoned medical opinion on the degree of permanent impairment and the case is remanded for further development.

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<sup>7</sup> See *Tara L. Hein*, 56 ECAB \_\_\_\_ (Docket No. 05-191, issued April 4, 2005) (the Office medical adviser graded the impairment at 40 percent from a Grade 3 range of 26 to 60 percent under Table 16-10, without providing explanation; the Board remanded the case for further development); see also *John Keller*, 39 ECAB 543, 547 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 14, 2006 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: February 23, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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