

Appellant was treated by Dr. Richard Kaplan, a physiatrist, who indicated in a February 28, 2000 report, that appellant did not have a ratable permanent impairment. By decision dated May 2, 2000, the Office determined that appellant was not entitled to a schedule award. The decision was affirmed by an Office hearing representative in a decision dated October 18, 2000. Appellant was referred to a second opinion examiner for an opinion as to continuing disability. In a report dated March 15, 2001, Dr. Anthony Salem, an orthopedic surgeon, opined that appellant was not disabled for work.

In a report dated July 21, 2005, Dr. George L. Rodriguez, a physiatrist, provided a history and results on examination. He opined that appellant had an 11 percent permanent impairment to each arm for “combined motor and sensory nerve impairment.” Dr. Rodriguez referred to Table 16-15 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He identified the median nerve below the forearm and graded the impairment at 25 percent of the maximum 45 percent. He noted reduced grip strength from Jamar dynamometer was used to assign the loss of strength grade.

The Office requested that an Office medical adviser review the medical evidence with respect to a right arm impairment. The memorandum stated that appellant was seeking a schedule award for the left arm pursuant to another claim.¹ By report dated May 17, 2006, the Office medical adviser stated that Dr. Rodriguez incorrectly applied the tables of the A.M.A., *Guides*. He stated that Dr. Rodriguez used the combined impairment of 45 percent, which was inappropriate because strength testing with a Jamar dynamometer was subjective in nature and considered to have a poor objective basis. The Office medical adviser noted the maximum sensory deficit/pain impairment of the median nerve was 39 percent and he graded the impairment at 25 percent of the maximum. He stated this results in “9.75 percent or rounded off to 10 percent impairment for the right upper extremity.” The Office medical adviser then summarized his report by stating that appellant had a nine percent impairment to the right arm and the date of maximum medical improvement was March 15, 2001.

By decision dated August 2, 2006, the Office issued a schedule award for a nine percent permanent impairment to the right arm. The period of the award was March 15 to September 27, 2001.²

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.³ Neither the Act nor the regulations specify the manner in which the percentage of

¹ Another memorandum dated May 4, 2006 stated that appellant was seeking a schedule award for the left leg pursuant to the other claim. The memorandum did not mention the left arm.

² The Office stated the number of weeks of compensation was 34.32, but this appears to be incorrect. The stated period of the award corresponds to 28.08 weeks of compensation.

³ 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).

impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁴ As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.⁵

ANALYSIS

In this case, appellant's physician, Dr. Rodriguez, opined that appellant had an 11 percent right arm impairment based on a peripheral nerve disorder affecting the right arm. The A.M.A., *Guides* provides specific evaluation methods for sensory deficit/pain and motor deficit. The first step is to identify the affected nerve under Table 16-15.⁶ Dr. Rodriguez identified the median nerve below the midforearm. If there is sensory deficit/pain in the identified nerve, then the impairment is graded under the provisions of Table 16-10.⁷ The percentage of impairment is the graded percentage of the maximum impairment that is found in Table 16-15 for the affected nerve. If there is motor deficit, then a similar method is followed using the grading provisions of Table 16-11.⁸

Dr. Rodriguez attempted to combine both methods into a single method of grading a combined sensory deficit/pain and motor deficit impairment. Table 16-15 lists the combined maximum impairments to emphasize that, if both impairments are found they are not added but combined using the Combined Values Chart.⁹ This is not an alternative method of evaluation. The impairments for sensory deficit/pain and motor deficit are different impairments and must be separately graded under the appropriate table.

The opinion of Dr. Rodriguez, therefore, is of diminished probative value because he did not properly apply the A.M.A., *Guides* in evaluating the degree of right arm impairment. The Office medical adviser, however, did use a proper evaluation method for a peripheral nerve disorder affecting the upper extremity. He did not find a motor deficit impairment, noting that grip strength testing was subjective in nature.¹⁰ For sensory deficit/pain, the median nerve has a maximum arm impairment of 39 percent. The impairment was graded at 25 percent of the maximum or 9.75 percent.

⁴ A. George Lampo, 45 ECAB 441 (1994).

⁵ FECA Bulletin No. 01-05 (issued January 29, 2001).

⁶ A.M.A., *Guides* 492, Table 16-15.

⁷ *Id.* at 482, Table 16-10.

⁸ *Id.* at 484, Table 16-11.

⁹ *See id.* at 604, Combined Values Chart.

¹⁰ *Id.* at 484 (muscle strength testing remains somewhat subjective until precise methods of measuring muscle contractions become generally available).

As the Office medical adviser noted, 9.75 is rounded up to 10 percent in accordance with Office procedures.¹¹ The Office medical adviser incorrectly summarized his own findings by inadvertently stating that the impairment was nine percent. Accordingly, the August 2, 2006 decision will be modified to reflect that appellant has a 10 percent permanent impairment to the right arm.

The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the right arm, the maximum number of weeks of compensation is 312 weeks. Since appellant's impairment was 10 percent, he is entitled to 31.2 weeks of compensation. While there was some confusion as to the period of the award given in the August 2, 2006 decision it appeared that appellant received 28.08 weeks of compensation (9 percent), not 34.32 weeks (11 percent). Appellant is, therefore, entitled to an additional 3.12 weeks of compensation.

On appeal, appellant refers to the lack of a schedule award for the left arm. The Board may review only final decisions of the Office.¹² The record does not contain a final decision with respect to a schedule award for a left arm impairment. If appellant is requesting a schedule award for the left arm pursuant to this claim, he may pursue such a claim with the Office.

CONCLUSION

The Board finds that based on the probative evidence of record, appellant has a 10 percent right arm impairment.

¹¹ See *Laura Heyen*, 57 ECAB ____ (Docket No. 05-1766, issued February 15, 2006); *Johnnie B. Causey*, 57 ECAB ____ (Docket No. 06-49, issued February 7, 2006). As the Office's procedure manual explains with respect to hearing loss, the number is rounded up from .50 and down from .49. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2) (September 1994).

¹² 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 2, 2006 is modified to reflect appellant's entitlement to a schedule award for a 10 percent right arm impairment and affirmed as modified.

Issued: May 15, 2007
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