



2001, Dr. Schuler found no evidence of ulnar nerve entrapment. On December 16, 2001 the Office accepted contusions to the left leg and elbow and left elbow bursitis and, on May 16, 2003, accepted consequential left shoulder pain.

On January 6, 2002 appellant file a claim for a schedule award.

On March 1, 2002 Dr. Schuler noted left shoulder range of motion findings of 90 degrees of abduction, 150 degrees of flexion, 90 degrees of internal rotation, and 50 degrees of external rotation. The date of maximum medical improvement was listed as June 28, 2001.

In a report dated March 18, 2002, Dr. David H. Garelick, an Office medical adviser, reviewed the medical record and determined that appellant had a seven percent impairment of the left upper extremity.<sup>1</sup> He noted that the date of maximum medical improvement was December 12, 2001. By decision dated April 30, 2002, the Office granted appellant a schedule award for a seven percent impairment to the left upper extremity. The period of award was from December 12, 2001 to May 13, 2002.<sup>2</sup>

On May 5, 2002 appellant requested reconsideration. By decision dated July 8, 2002, the Office denied modification of the April 30, 2002 decision.

On October 18, 2002 appellant again filed a request for reconsideration and, on November 25, 2002, he filed another claim for a schedule award. He submitted an August 30, 2002 report from Dr. Schuler who noted an alteration in sensation in the ulnar distribution in the left hand, chronic left elbow pain related to bursitis, shoulder pain, limitation of motion and paresthesias in the left upper extremity. On September 17, 2002 Dr. Schuler stated that a nerve conduction study (NCS) that day revealed mild left ulnar neuropathy at the elbow. In a report dated October 8, 2002, Dr. Schuler stated that appellant had chronic left bursitis, adhesive capsulitis and left cubital tunnel syndrome (ulnar neuropathy), mild and rated him with a 34 percent impairment based on the workers' compensation standards for the state of Wisconsin.

On December 12, 2002 the Office denied modification of the July 8, 2002 decision. The Office found that Dr. Schuler's October 8, 2002 evaluation provided no basis for his rating as he had referred to factors relevant to Wisconsin State Workers' Compensation.<sup>3</sup>

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<sup>1</sup> Dr. Garelick applied Dr. Schuler's examination results to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> ed. 2001). He noted that 145 degrees of flexion equaled a 0 percent impairment, 10 degrees of extension equaled a 1 percent impairment based on page 472, Figure 16-34, 60 degrees of supination equaled 1 percent impairment and 75 degrees of pronation equaled 0 percent impairment based on page 474, Figure 16-37. He also noted a 1 percent impairment for Grade 4 pain based on page 492, Table 16-15, and page 482, Table 16-10, of the A.M.A., *Guides*, and an additional 4 percent impairment due to weakness in the radial nerve based on the same tables. Using the Combined Values Chart on page 604 of the A.M.A., *Guides*, he determined that appellant had a seven percent impairment of the left upper extremity.

<sup>2</sup> The schedule award incorrectly listed the period as 152.88 weeks of compensation, which would represent a 49 percent impairment.

<sup>3</sup> The Board notes that Dr. Schuler's October 8, 2002 report based on the Wisconsin compensation program is insufficient to permit an estimate of permanent impairment under the A.M.A., *Guides*, the standard used by the Office to evaluate permanent impairment. See 20 C.F.R. § 10.404.

On December 26, 2002 appellant again filed a claim for a schedule award. In a report dated December 17, 2002, Dr. Schuler stated that, in accordance with the A.M.A., *Guides*, appellant had a 12 percent impairment of the left upper extremity. In a report dated April 3, 2003, Dr. Schuler stated that, in accordance with the A.M.A., *Guides*, appellant had an 11 percent impairment for the upper extremity based on loss of range of motion and pain, 4 percent for ulnar neuropathy and 12 percent for shoulder pain/limitations for a total of 25 percent impairment of the left upper extremity.

On May 16, 2003 the Office notified the Office medical adviser that it had accepted left shoulder pain as a consequential injury and requested an impairment rating based on the total work-related injury. In a report dated May 19, 2003, the Office medical adviser noted that the Office expanded his claim to include a shoulder dysfunction and reevaluated appellant's impairment to arrive at a rating of 20 percent of the left upper extremity.<sup>4</sup>

By decision dated June 9, 2003, the Office awarded appellant an additional 13 percent impairment to the initial 7 percent impairment to the left upper extremity for a total award of 20 percent. The period of award ran from May 14, 2002 to February 21, 2003.

On June 17, 2003 appellant requested reconsideration of the Office's June 9, 2003 schedule award. In a report dated August 11, 2003, Dr. Garelick stated that appellant's ulnar neuropathy was not causally related to the accepted injury as "notes after his work-related injury in December 2000 revealed no complaints of pain in the medial aspect of the elbow or any ulnar nerve sensory symptoms." He added that the May 3, 2001 EMG was not suggestive of an ulnar neuropathy. The medical adviser recommended no change in appellant's impairment rating.

On September 16, 2003 the Office denied modification of the June 9, 2003 decision.

On October 6, 2003 appellant requested reconsideration. In a report dated March 18, 2004, Dr. James Bicos, an Office medical adviser, noted his agreement with Dr. Garelick and stated that appellant's ulnar neuropathy was not causally related to the accepted injury. He opined that no additional permanent impairment was warranted.

On August 16, 2004 the Office referred appellant to Dr. Robert P. Hansen, a Board-certified neurologist, to resolve a conflict in medical opinion found between Dr. Schuler, for appellant, and Dr. Garelick and Dr. Bicos, the Office medical advisers. In a September 21, 2004 report, Dr. Hansen reviewed appellant's medical records and the history of injury. On examination, he found no swelling of the left elbow, no tenderness over the olecranon bursa, and a negative Tinel's sign; he noted that the distal sensation and interosseous strength were intact, and that the left elbow range of motion was 10 to 135 degrees. Dr. Hansen stated that appellant's left elbow olecranon bursitis had healed. He determined that appellant's ulnar neuropathy was not causally related to the employment injury because his examination revealed no findings of

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<sup>4</sup> The Office medical adviser reviewed Dr. Schuler's additional reports and determined that appellant had an additional 2 percent impairment based on Grade 3 pain of the suprascapular nerve, page 492, Table 16-15, and page 482, Table 16-10, and a 12 percent impairment based on range of motion findings of 80 degrees of abduction for 5 percent, and 50 degrees for extension based on page 477, Table 16-43, and flexion of 90 degrees for a 6 percent impairment based on page 476, Table 16-40. Use of the Combined Values Chart on page 604 resulted in a new total impairment rating of 20 percent.

ulnar neuropathy. Dr. Hansen found that appellant had no symptoms of ulnar neuropathy on May 25, 2001, and that, if it were causally related to his work-related injury, it would have been manifest within five months of the December 2000 injury. Appellant's range of motion findings on April 6, 2001 suggested no causal relationship between the ulnar neuropathy complaints and the accepted injury. Dr. Hansen noted that no further medical care was indicated and there was no basis for an increase in the permanent impairment rating.

On October 18, 2004 the Office denied modification of the September 16, 2003 decision finding that the weight of the medical evidence was represented by Dr. Hansen, the impartial medical examiner, who determined that appellant's ulnar neuropathy was not related to his employment-related injury, and thus no additional impairment rating was warranted.

On November 27, 2004 appellant requested reconsideration.

In a report dated October 28, 2004, Dr. Scott R. Haupt, a plastic surgeon, stated that, since appellant had an EMG performed on May 3, 2001, he "must have" had prior symptoms of ulnar neuropathy. He noted decreased interosseous strength of the left and decreased sensation by pinwheel test and noted that appellant now had two positive NCSs. Dr. Haupt opined that appellant's decreased distal sensation was causally related to the work-related injury. He noted relying on the history provided by appellant.

On April 19, 2005 the Office denied modification of the October 18, 2004 decision.<sup>5</sup>

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>6</sup> and its implementing regulation<sup>7</sup> sets forth the number of weeks of compensation payable to employees sustaining permanent 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 A.M.A., *Guides* (5<sup>th</sup> ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>8</sup>

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<sup>5</sup> The Board notes that the Office also issued a decision on the schedule award issue on May 3, 2005; the same day that appellant filed his appeal with the Board. It is well established that the Board and the Office may not exercise concurrent jurisdiction over the same issue in the same case. *Cathy B. Millin*, 51 ECAB 331 (2000); *Douglas E. Billings*, 41 ECAB 880 (1990). Therefore the Office's May 3, 2005 decision is null and void.

<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Willie C. Howard*, 55 ECAB \_\_\_\_ (Docket No. 04-342 & 04-464, issued May 27, 2004).

## ANALYSIS

The Office determined that a conflict in medical opinion was created between Dr. Schuler, who found that appellant's ulnar neuropathy was a result of his accepted injury and warranted an additional impairment, and Dr. Garelick and Dr. Bicos, the Office medical advisers, who determined that appellant's ulnar neuropathy was not work related and thus established no basis for a greater impairment. It referred appellant to Dr. Hansen, an impartial medical examiner, to resolve the conflict.

Section 8123(a) of the Act<sup>9</sup> provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."<sup>10</sup> In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>11</sup>

Dr. Hansen examined appellant, discussed the history of injury, and reviewed the evidence of record. He opined that appellant sustained left elbow injuries due to his December 16, 2000 work-related injury and had reached maximum medical improvement. Dr. Hansen provided a detailed report expressing his opinion that appellant did not have ulnar neuropathy causally related to the work-related injury. He noted that there were no significant examination findings relative to this condition. Dr. Hansen also noted that, if the employment injury had caused an ulnar nerve injury, it would have appeared less than five months after the injury. He relied on his physical examination of appellant, a review of the medical evidence of record, including the findings on physical examination in 2001, in reaching his conclusions. He noted that no further medical treatment was necessary. The Board finds that Dr. Hansen provided a detailed and well-rationalized report based on a proper factual background and thus his opinion is entitled to the special weight accorded an impartial medical examiner. His report, therefore, constitutes the weight of the medical opinion evidence and establishes that appellant does not have ulnar neuropathy due to the December 16, 2000 work-related injury. The Board finds that no additional impairment is warranted.

Following the Office's October 18, 2004 decision, appellant submitted an October 28, 2004 decision by Dr. Haupt, who, based on the history provided by appellant, opined that his ulnar symptoms were present prior to May 25, 2001, as an EMG study was performed on May 3, 2001. However, he provided no objective evidence to support the diagnosis. The record reveals that appellant's EMG study was negative regarding ulnar neuropathy. In addition, although Dr. Haupt found decreased strength and sensation on the left forearm on October 28, 2004, he did not provide a rationalized medical opinion explaining how the employment injury

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<sup>9</sup> 5 U.S.C. §§ 8101-8193.

<sup>10</sup> 5 U.S.C. § 8123(a).

<sup>11</sup> *Barbara J. Warren*, 51 ECAB 413 (2000).

caused or contributed to any additional impairment.<sup>12</sup> Instead, his opinion is based on a limited history and medical record review.<sup>13</sup> The Board finds that Dr. Haupt's report is insufficient to overcome Dr. Hansen's report or to create a new conflict in medical evidence.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained more than a 20 percent impairment of his left upper extremity for which he received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 19, 2005 and October 18, 2004 are affirmed.

Issued: September 9, 2005  
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

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<sup>12</sup> *Calvin E. King*, 51 ECAB 394 (2000); *Linda Thompson*, 51 ECAB 694 (2000).

<sup>13</sup> *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).