BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RICHARD KUHN	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 236,395 & 236,732
MICRO-LITE, LLC	)	
Respondent	)	
AND	)	
	)	
AMERICAN RISK FUNDING INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent appeals from an Award entered by Administrative Law Judge Jon L. Frobish on July 19, 1999. The Appeals Board heard oral argument December 15, 1999.

APPEARANCES

Robert R. Lee of Wichita, Kansas, appeared on behalf of claimant. Margaret Gallagher Hague of Kansas City, Missouri, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The sole issue on appeal is the nature and extent of claimant's disability. Docket No. 236,395 is a claim for bilateral carpal tunnel syndrome. The ALJ awarded a 21 percent permanent partial general disability. Docket No. 236,732 is a claim for bilateral ulnar nerve entrapment at the elbows. The ALJ awarded a 12 percent permanent partial general disability. In both cases, the ALJ relied on ratings by Dr. Pedro A. Murati to the exclusion of lower ratings by Dr. John B. Moore, IV. On appeal, the respondent contends the ratings by Dr. Moore were more precise, and the Award should be based on Dr. Moore's ratings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds the Award should be affirmed.

Findings of Fact

1. Claimant, a heavy equipment operator, began noticing numbness and tingling in his hands in October 1996. Dr. Moore diagnosed bilateral carpal tunnel syndrome and performed releases in May and June 1997. At the same time, Dr. Moore performed ulnar nerve releases at the wrist. In December 1997, Dr. Moore released claimant and he returned to his regular job. After he returned to work, claimant continued to have problems, and Dr. Moore diagnosed bilateral ulnar nerve entrapment at the elbow. Dr. Moore performed ulnar nerve releases at the elbow in May and June 1998.

2. At the time Dr. Moore released claimant to return to work from the wrist surgeries, in December 1997, Dr. Moore rated claimant's impairment. He rated the right upper extremity as 8 percent impaired, the left as 7 percent impaired, and combined the two for a total 9 percent of the whole body.

3. In October 1998, after the elbow surgeries, Dr. Moore rated the right upper extremity as 6 percent impaired, the left as 5 percent impaired, and he combined the two for a 7 percent whole body impairment. This rating, Dr. Moore testified, included the preexisting carpal tunnel syndrome as well as the elbow impairment and reflected an overall improvement in claimant's condition. Dr. Moore's rating was based on measurements of motion, sensation, and grip and pinch strength as applied under the AMA *Guides to the Evaluation of Permanent Impairment*, Fourth Edition.

4. Claimant's impairment was rated by Dr. Murati using Table 16 on page 57 of the Fourth Edition of the AMA *Guides to the Evaluation of Permanent Impairment*. Using Table 16, Dr. Murati rated claimant's overall impairment as 21 percent of the whole body for the bilateral carpal tunnel and ulnar nerve entrapment at the wrists and 12 percent of the whole body for the ulnar nerve entrapment at the elbows.

5. The Board finds, for reasons more fully explained below, that claimant's impairment from these injuries was 21 percent of the whole body in Docket No. 236,395 for the bilateral wrist injuries and 12 percent of the whole body in Docket No. 236,732 for bilateral elbow injuries.

Conclusions of Law

1. Claimant's injuries are not scheduled injuries and the measure of disability is, therefore, based on standards specified in K.S.A. 1996 Supp. 44-510e.

2. Claimant does not ask for a work disability award. The measure of disability is functional impairment based on the AMA *Guides to the Evaluation of Permanent Impairment*, Fourth Edition. K.S.A. 1996 Supp. 44-510e.

3. The Board concludes the impairment ratings provided by Dr. Murati should be used as the measure of claimant's disability. Both Dr. Moore and Dr. Murati gave opinions based on the Fourth Edition of the AMA *Guides*. Each has employed a different method. It appears both methods are approved by the *Guides* and neither method is preferred by the *Guides*.

Respondent argues the Board should adopt Dr. Moore's ratings because they are based on more specific findings while Dr. Murati's are based on the general diagnosis. But the *Guides* do not in this instance express a preference for either method and the Board is directed to base impairment on the *Guides*. Dr. Moore states in his testimony that it is inappropriate to use Table 16 for nerve entrapment when surgery has been done. But the example shown on page 56 applies Table 16 to a hypothetical individual who has had surgery. The Board concludes Table 16 is appropriate for persons who have had surgery.

The Board has chosen Dr. Murati's ratings because they appear appropriate under the *Guides*, because they separate the two injuries, and because Dr. Moore does not provide a convincing explanation for the decrease in his impairment rating. Dr. Moore has given only a single overall rating which includes both the wrist and elbow injuries. But Dr. Moore does not provide any means of identifying how much is attributable to each injury. The parties have stipulated to two accidental injuries. The decrease in Dr. Moore's permanent impairment rating could be explained by improvement due to the elbow surgery except that Dr. Moore testified claimant did not have the elbow problem when he did the wrist surgery and provided the initial 9 percent rating. This leaves the decrease in Dr. Moore's impairment ratings without explanation other than a general statement that claimant's condition had improved. In the absence of explanation for a change in the permanent impairment, the later permanent rating is, in our view, less reliable. For these combined reasons, the Board agrees with the ALJ's decision to accept Dr. Murati's impairment rating.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish on July 19, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Margaret Gallagher Hague, Kansas City, MO
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director