

syndrome. Using pages 433-51, 509 and 565-91 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) to measure appellant's range of motion and grip strength, she determined that appellant had a 20 percent impairment to the right upper extremity and a 27 impairment to the left upper extremity. Using Tables 18-5 through 18-7, pages 576-77 and 584, Dr. Karbonit determined that appellant had a pain impairment of 51.44, or a moderately severe impairment. She concluded that appellant had more than a 50 percent loss of use of her upper extremities.

In a report dated December 5, 2001, an Office referral physician, Dr. Patrick J. Hughes, a Board-certified neurologist, considered appellant's history of injury, performed a physical examination and reviewed results of an x-ray and nerve conduction studies performed in 2000 and a magnetic resonance imaging (MRI) scan performed on June 1, 2001. He concluded that there were no objective findings that the accepted condition of carpal tunnel syndrome was still active because appellant's neurological examination and nerve conduction studies did not support that she had carpal tunnel syndrome. Dr. Hughes stated that the accepted condition had resolved, probably within six months of the injury. He stated that appellant had no current disability and did not require work restrictions or further medical treatment. Dr. Hughes stated that there was no objective basis for an impairment rating.

By decision dated March 22, 2002, the Office denied appellant's claim for a schedule award, stating that the evidence did not support that she had sustained any permanent impairment.¹

Appellant requested an oral hearing before an Office hearing representative which was held on April 23, 2003. At the hearing, appellant's attorney contended that the case should be referred to an impartial medical specialist.

Appellant testified that she returned to modified work in November 2000 but after four days was unable to work. Appellant stated that she was in constant, "terrible, debilitating" pain. She explained that she had trouble lifting up her 22-pound baby, that she was unable to play games such as catch with her 13-year-old son and that she was unable to perform household chores, such as raking or shoveling. Appellant was unable to drive for long periods of time and had difficulty doing any repetitive work.

She submitted several reports from Dr. Karbonit, dated from December 28, 2001 through September 15, 2003, who diagnosed bilateral upper extremity overuse syndrome in both upper extremities, bilateral de Quervain's, and bilateral epicondylitis. Dr. Karbonit stated that appellant continued to be limited in her ability to lift, carry and repetitively grasp. In her last report, Dr. Karbonit noted that the bilateral de Quervain's was quiescent and the bilateral lateral epicondylitis was minimally symptomatic.

By decision dated June 26, 2003, the Office hearing representative found that a conflict in the evidence existed between Dr. Karbonit, appellant's treating physician, and Dr. Hughes, the

¹ On March 22, 2002 the Office also issued a proposed notice of termination of compensation benefits based on Dr. Hughes' report that appellant had no work-related disability but the record does not contain evidence indicating this proposal was finalized.

Office referral physician, regarding whether appellant had any disability or impairment from the accepted carpal tunnel syndrome. The case was remanded to the Office for referral of appellant to an impartial medical specialist.

In a report dated August 15, 2003, Dr. Robert A. Levine, a Board-certified neurologist, selected as the impartial medical specialist, reviewed appellant's history of injury, performed a physical examination and addressed the results of the May 2001 nerve conduction study and the June 2001 MRI scan. He diagnosed bilateral upper extremity pain. Dr. Levine stated that his examination showed no objective neurological findings with intact reflexes, negative Tinel's signs and no atrophy. He noted that the nerve conduction study was normal. Dr. Levine stated that he found no evidence of carpal tunnel syndrome.

In a report dated August 26, 2003, the district medical adviser reviewed Dr. Levine's report and agreed that appellant was not entitled to a schedule award since she did not have carpal tunnel syndrome and no ongoing neurological disability.

By decision dated October 9, 2003, the Office denied appellant's claim for a schedule award, stating that the medical evidence failed to demonstrate that she sustained any permanent impairment.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act and section 10.404 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

ANALYSIS

A conflict in the medical evidence was created between Dr. Karbonit, appellant's treating physician, and Dr. Hughes, the second opinion referral physician, regarding whether appellant had any permanent impairment resulting from the March 7, 2000 employment injury. Using the A.M.A., *Guides* (5th ed. 2001), Dr. Karbonit opined that appellant had more than a 50 percent impairment to her upper extremities. Dr. Hughes opined that appellant had recovered from the accepted condition of bilateral carpal tunnel syndrome and had no objective basis for an impairment rating.

To resolve the conflict, the Office referred appellant to Dr. Levine, selected as the impartial medical specialist. It is well established that, in situations where there are opposing

² 5 U.S.C. § 8107 *et seq.*; 20 C.F.R. § 10.404.

³ *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

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.⁴

In his August 15, 2003 report, Dr. Levine considered appellant's history of injury, performed a physical examination and reviewed diagnostic tests. He noted that appellant had no neurological findings with intact reflexes, negative Tinel's signs and no muscle atrophy. Dr. Levine reported full range of motion and noted that appellant's May 2000 nerve conduction study was normal. He concluded that appellant did not have carpal tunnel syndrome and had no ongoing neurological disability or permanent impairment.

The Board finds that Dr. Levine's report is complete and well rationalized, and as the impartial medical specialist, his opinion is entitled to special weight and constitutes the weight of medical opinion. In a report dated September 15, 2003, an Office medical adviser opined that appellant was not entitled to a schedule award based on the report of Dr. Levine. The Board finds that the weight of the evidence does not establish any permanent impairment causally related to the accepted employment injury.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for a schedule award based on the opinion of the impartial medical specialist, Dr. Levine, that appellant did not have carpal tunnel syndrome and had no objective findings.

⁴ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

ORDER

IT IS HEREBY ORDERED THAT the October 9, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member