



the case to the Office for referral to an appropriate impartial examiner.<sup>1</sup> The law and the facts of the previous Board decision are incorporated herein by reference.<sup>2</sup>

The Office referred appellant to Dr. Thomas Corcoran, a Board-certified orthopedic surgeon, for an impartial medical evaluation. Based on Dr. Corcoran's reports, by decision dated November 16, 2001, the Office found that appellant had not sustained a recurrence of disability for the period September 30 to October 5, 1997. Appellant, through her attorney, requested a hearing that was held on March 12, 2002. By decision dated September 5, 2002, an Office hearing representative affirmed the November 16, 2001 decision.

Appellant retired in October 2002. On January 22, 2003 through counsel, she requested reconsideration and submitted a schedule award claim. In an October 28, 2002 report, Dr. David Weiss, an osteopath, stated that he had reviewed the medical record and provided findings on examination. He diagnosed chronic post-traumatic lumbosacral strain and sprain, right lumbar radiculitis, post-traumatic internal derangement to the right knee, status post tear of the lateral meniscus to the right knee, post-traumatic osteoarthritis to the right knee, status post arthroscopic surgery to the right knee with partial debridement of the lateral compartment and partial lateral meniscectomy, advanced degenerative joint disease of the right knee, chronic extensor tendinitis to the hands, de Quervain's tenosynovitis to the left hand, bilateral carpometacarpal joint arthritis and aggravation of underlying pathology by subsequent motor vehicle accident. Dr. Weiss advised that appellant had reached maximum medical improvement. Under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),<sup>3</sup> he rated upper extremity impairments of 13 percent on the right and 23 percent on the left, and lower extremity impairments of 35 percent on the right and 8 percent on the left.

By decision dated August 13, 2003, the Office denied modification of the September 5, 2002 decision denying the recurrence claim.

On August 19, 2003 the Office referred appellant to Dr. Anthony W. Salem, a Board-certified orthopedic surgeon, for an impairment evaluation. In a September 16, 2003 report, he reviewed the medical record, history of injury and provided findings on examination. Dr. Salem advised that appellant was markedly obese with degenerative changes of her back, knees and carpometacarpal junctions of both hands which, were not related to her employment injuries. He advised that her underlying arthritis was the reason for her complaints and that she did not have an impairment as a result of her accepted work injuries.

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<sup>1</sup> Docket No. 99-2064 (issued October 12, 2000).

<sup>2</sup> On March 6, 1994 appellant sustained a torn meniscus and lumbar sprain. She had arthroscopy in June 1994 and returned to a limited-duty file clerk position and received a schedule award for a 16 percent impairment of the right lower extremity. On September 26, 1996 appellant sustained an employment injury when x-ray jackets fell on her. That claim was accepted for lumbar strain, bilateral wrist sprains and bilateral knee sprains. In April 2000, appellant was in a nonwork-related automobile accident and reinjured her right knee.

<sup>3</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

The Office determined that a conflict in medical evidence had been created between the opinions of Dr. Weiss and Dr. Salem regarding whether appellant had an employment-related impairment. It referred her to Dr. Menachem M. Meller, a Board-certified orthopedic surgeon, selected as the impartial medical specialist.<sup>4</sup> In an April 21, 2004 report, he reviewed the medical records, the history of injury and appellant's complaints. Dr. Meller noted that she presented as an elderly retirement-age individual who was overweight and deconditioned with slow deliberate movements consistent with symptom exaggeration behavior. Examination findings included normal elbow and forearm motion. Wrist extension and flexion were 75 degrees bilaterally each. Ulnar deviation was 75 degrees and radial deviation 20 degrees. Tinel's testing at the cubital, carpal and radial tunnels was unremarkable and there were no reflex or sensory abnormalities of the upper extremities. Lumbar spine examination demonstrated no tenderness or spasm. Knee flexion was 120 degrees on the right and 125 degrees on the left with no tenderness, synovitis or effusion and normal strength and stability but moderate crepitus and no motor deficits. Dr. Meller advised that appellant had normal motion at the hips, knees, ankles and feet with no sensory deficits. His impression was that she was elderly, overweight and deconditioned with a passive sedentary existence and subjective complaints of discomfort of both wrist, lower back and both knees. Dr. Meller opined that appellant's work-related injuries were fully and completely resolved without any residuals and that she required no further treatment. In an attached work capacity evaluation, he advised that she could work eight hours a day with no restrictions regarding the employment injuries, noting that her only restrictions were due to her age.

By decision dated September 8, 2004, the Office found that, as appellant had no residuals of her employment-related conditions, she was not entitled to a schedule award. On September 14, 2004 appellant, through her attorney, requested a hearing that was held on July 19, 2005. She testified regarding her employment injury and current limitations. Appellant noted that she had also injured her knees in a nonwork-related motor vehicle accident that occurred after her employment injuries. Counsel contended that Dr. Meller did not consider whether appellant's arthritis was preexisting and failed to provide a proper analysis under the A.M.A., *Guides*. In a November 3, 2005 decision, an Office hearing representative affirmed the September 8, 2004 decision.

### **LEGAL PRECEDENT**

Under section 8107 of the Federal Employees' Compensation Act<sup>5</sup> and section 10.404 of the implementing federal regulation,<sup>6</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

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<sup>4</sup> Both Dr. Salem and Dr. Meller were provided the medical record, a statement of accepted facts and a set of questions.

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

A.M.A., *Guides*<sup>7</sup> has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>8</sup>

Section 8123(a) of the Act<sup>9</sup> provides that, 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> When 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>

### ANALYSIS

The Board finds that appellant has no permanent employment-related impairment which would entitle her to a schedule award. The Office properly determined that a conflict in the medical evidence was created between the opinions of Dr. Weiss, an attending physician, and Dr. Salem who provided a second opinion evaluation for the Office. The conflict arose as to whether appellant had an impairment caused by her accepted conditions of lumbar strain, bilateral wrist sprains and bilateral knee sprains. The Office properly referred appellant to Dr. Meller, Board-certified in orthopedic surgery, for an impartial evaluation.<sup>12</sup> The Board finds that his report is sufficiently well rationalized such that it can be accorded special weight.<sup>13</sup>

In a comprehensive April 21, 2004 report, Dr. Meller reviewed the medical records, the history of injury and appellant's complaints. He noted that she was overweight and deconditioned with slow deliberate movements consistent with symptom exaggeration behavior. Following a thorough physical examination, Dr. Meller advised that appellant had subjective complaints of discomfort of both wrists, the lower back and both knees. However, he stated that her work-related injuries were fully and completely resolved without any residuals or impairment and that she required no further treatment. In an attached work capacity evaluation, Dr. Meller advised that appellant could work eight hours a day with no restrictions regarding the employment injuries, noting that her only restrictions were due to her age.

Dr. Meller provided examination findings and rationale for his opinion that appellant's accepted conditions had resolved with no residuals. The Board finds that it constitutes the

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<sup>7</sup> A.M.A., *Guides*, *supra* note 3.

<sup>8</sup> See *Joseph Lawrence, Jr.*, *supra* note 3; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

<sup>9</sup> 5 U.S.C. §§ 8101-8193.

<sup>10</sup> 5 U.S.C. § 8123(a); see *Geraldine Foster*, 54 ECAB 435 (2003).

<sup>11</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

weight of the evidence.<sup>14</sup> The Board finds that the Office properly denied appellant's claim for a schedule award as her accepted conditions had resolved.

**CONCLUSION**

The Board finds that appellant has failed to establish that she is entitled to a schedule award for her accepted conditions of lumbar strain, bilateral wrist sprains and bilateral knee sprains as the medical evidence establishes that these conditions have resolved.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 3, 2005 be affirmed.

Issued: October 11, 2006  
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

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<sup>14</sup> See *Sharyn D. Bannick*, 54 ECAB 537 (2003).