

did not establish that she sustained permanent impairment due to her accepted bilateral carpal tunnel syndrome.¹ The Board noted that Dr. Raymond Noellert provided an opinion that appellant did not have such impairment. In a September 5, 2007 report, Dr. Noellert stated that she had reached maximum medical improvement in May 2007. On examination, appellant had no active triggering, no measurable loss of motion and no measurable irreversible median nerve damage.

On July 31, 2007 Dr. Noellert indicated that the Tinel's sign was negative over appellant's median nerve bilaterally and that the record contained no electromyogram (EMG) or nerve conduction results showing median nerve dysfunction or abnormal results in the thenar muscles. On December 24, 2007 an Office medical adviser agreed with Dr. Noellert's opinion that appellant did not have impairment of her arms. The facts of the case are set forth in the Board's prior decision and are incorporated herein by reference.

In an August 4, 2009 letter, appellant requested reconsideration of her claim. In a July 30, 2009 report, Dr. Dee A. Bialecki-Haase, an attending Board-certified family practitioner, provided a history of appellant's work activities with the employment establishment. She indicated that on examination there were surgical scars over the volar aspect of both wrists. There was no atrophy of the thenar musculature in either hand. Tinel's and Phalen's tests were negative on the right and there was a positive Phalen's test on the left. Dr. Bialecki-Haase stated that there was a loss of normal two-point discrimination over the left palmar index and middle fingers and over the ulnar aspect of the thumb. Two-point discrimination was five millimeters over the palmar aspect of the right index, middle and little fingers and the ulnar aspect of the thumb. Dr. Bialecki-Haase concluded that under the standards of the fifth edition of the A.M.A., *Guides* appellant had a 14.5 percent impairment of her left arm and a 3.6 percent impairment of her right arm due to sensory loss.²

On October 7, 2009 the medical evidence on file was reviewed by Dr. Nabil F. Angley, a Board-certified orthopedic surgeon and Office medical adviser. He applied the standards of the sixth edition of the A.M.A., *Guides* to the findings of Dr. Bialecki-Haase. Dr. Nabil indicated that, after reviewing the record, he was unable to provide an impairment rating due to incomplete information. Dr. Angley stated:

“Dr. Bialeski-Hasae stated that the [maximum medical improvement] was reached on the date of her examination. She also provided the impairment rating based on the A.M.A., *Guides* 5th Edition, which is no longer acceptable. The calculations, the numbers used, the tables or figures, including the class number, the modifiers and the final adjustments from the A.M.A., *Guides* 6th Edition must be clearly stated in showing how the break down of the impairment rating figures were

¹ Docket No. 08-2413 (issued June 1, 2009). On July 15, 2000 the Office accepted that appellant, then a 40-year-old mail processor, sustained bilateral carpal tunnel syndrome. On April 13, 2005 Dr. Raymond Noellert, an attending Board-certified orthopedic surgeon, performed right carpal tunnel release surgery and on August 23, 2006 he performed left carpal tunnel release surgery. The Office authorized both procedures. It denied appellant's schedule award claim noting that no such impairment was found by Dr. Noellert and Dr. Jason D. Eubanks, a Board-certified orthopedic surgeon, who served as an Office medical adviser.

² Dr. Bialecki-Haase made reference to Chapter 16.5 of the fifth edition of the A.M.A., *Guides*.

obtained as required by [the Office] regulations. Therefore, I suggest that you write to Dr. Bialecki-Haase and ask her to supply an addendum to her report showing the detailed breakdown of how she reached the [permanent partial impairment] rating figures using the A.M.A., *Guides* 6th Edition.” (Emphasis in original).

In an October 16, 2009 decision, the Office determined that appellant had not established that she had sustained permanent impairment due to her accepted bilateral carpal tunnel syndrome. It noted that the July 30, 2009 report of Dr. Bialecki-Haase did not show that appellant had such permanent impairment under the relevant standards for evaluating loss.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act³ and its implementing regulations⁴ set 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* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁶

A proceeding under the Act is not adversary in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, it shares responsibility in the development of the evidence. The Office has the obligation to see that justice is done.⁷ Accordingly, once it undertakes to develop the medical evidence further, the Office has the responsibility to do so in the proper manner.⁸

ANALYSIS

The Office accepted that appellant sustained work-related bilateral carpal tunnel syndrome, but denied her claim for a schedule award for her arms. In a July 30, 2009 report, Dr. Bialecki-Haase, an attending Board-certified family practitioner, provided findings on examination of appellant’s arms and an opinion on permanent impairment based on the standards of the fifth edition of the A.M.A., *Guides*. The Office properly referred the claim to Dr. Angley, a Board-certified orthopedic surgeon serving as an Office medical adviser, to evaluate the findings of

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ *Id.*

⁶ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁷ *Russell F. Polhemus*, 32 ECAB 1066 (1981).

⁸ *See Robert F. Hart*, 36 ECAB 186 (1984).

Dr. Bialecki-Haase under the standards of the sixth edition of the A.M.A., *Guides*. The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁹ On October 7, 2009 Dr. Angley recommended that Dr. Bialecki-Haase be asked to provide an additional report evaluating her findings under the standards of the sixth edition of the A.M.A., *Guides*.

The Board notes that no attempt was made to have Dr. Bialecki-Haase or some other appropriate physician evaluate impairment under the standards of the sixth edition of the A.M.A., *Guides*. Appellant's claim was denied without the recommended action being taken. As noted, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.¹⁰ It should request Dr. Bialecki-Haase to address whether appellant sustained permanent impairment to her arms under the standards of the sixth edition of the A.M.A., *Guides*. If Dr. Bialecki-Haase is unable or unwilling to provide such report, the Office should refer her to an appropriate specialist for examination. After such development as it deems necessary, the Office shall issue an appropriate decision regarding appellant's entitlement to a schedule award.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant has any permanent impairment due to her accepted bilateral carpal tunnel syndrome.

⁹ See *supra* note 6.

¹⁰ See *supra* notes 7 and 8.

ORDER

IT IS HEREBY ORDERED THAT the October 16, 2009 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: August 19, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board