



right wrist sprain, right de Quervain's disease and right carpal tunnel syndrome with radial styloid tenosynovitis. Appellant received compensation for injury-related disability for work.

On January 29, 2008 appellant filed a claim for a schedule award. In a December 6, 2007 report, Dr. Nicholas Diamond, an osteopath specializing in osteomanipulative manipulative medicine, noted appellant's history of injury and treatment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> ed. 2001) (*hereinafter*, A.M.A., *Guides*), he determined that appellant had 56 percent right arm impairment, based on lost range of motion, pinch deficit and sensory deficit and 4 percent left arm impairment.<sup>2</sup>

By letter dated October 21, 2008, OWCP referred appellant, together with a statement of accepted facts, a set of questions and the medical record, to Dr. David Rubinfeld, a Board-certified orthopedic surgeon. In a November 18, 2008 report, Dr. Rubinfeld examined appellant and opined that appellant had 30 percent impairment of the right arm.

On September 29, 2009 OWCP indicated that, since the time of Dr. Rubinfeld's examination, the sixth edition of the A.M.A., *Guides* became effective. It requested that Dr. Rubinfeld provide an addendum report applying the sixth edition of the A.M.A., *Guides*. OWCP did not receive a response. In an April 5, 2010 letter to appellant's Congressional representative, it indicated that a request for an addendum was sent to the second opinion physician on September 29, 2009. However, as a response had not been received, it was in the process of scheduling another second opinion examination.

OWCP referred appellant for a new second opinion examination to Dr. Stanley Askin, a Board-certified orthopedic surgeon. In a report dated April 30, 2010, Dr. Askin utilized the A.M.A., *Guides* and noted appellant's history of injury and treatment. Examination revealed a bony prominence at the right second carpometacarpal joint, which he described as "carpal bossing, an osteoarthritic manifestation." Dr. Askin also noted some tenderness and thickening at the right thumb but no overt triggering of either hand. Appellant displayed "subjective imperfections" when she responded to the physician's request to show what she could do without hurting herself. For example, for the neck, Dr. Askin noted that she "showed full cervical flexion, full rotation to each side without complaint, but when she extended her neck (looking up) she told me that made her dizzy. Spurling's made her dizzy." Also, right shoulder range of motion was limited on examination but, passively, she allowed her right shoulder to be moved with no firm endpoint. Appellant had full range of motion of the elbows, forearms, wrists, fingers and thumbs. Dr. Askin also found that appellant was able to exert with the trapezii, latissimus dorsi, pectoralis major, deltoids, biceps, biceps, wrist flexors or wrist extensors, although he noted that she was not a very strong individual. He also found that there were no atrophic or dystrophic changes about appellant's hands, but that she did report diminished two-point discrimination (more than 1 centimeter) in the right thumb and indexed digits. Dr. Askin noted that the clinical carpal tunnel tests included the Phalen's and Tinel's tests which were both positive (and both subjective). He referred to April 2, 2002 and April 11, 2007 electromyogram reports that were consistent with right carpal tunnel syndrome. Dr. Askin concluded that

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<sup>2</sup> The record reflects that appellant had a separate claim for a June 6, 2002 injury that OWCP accepted for a contusion of the left elbow. This claim is not before the Board on the present appeal.

appellant did not have any clinical evidence of de Quervain's disease at the time of his examination. Regarding appellant's carpal tunnel syndrome, he indicated that a carpal tunnel release would relieve her condition but appellant declined the procedure. Dr. Askin further indicated that there was no objectively determinable impairment due to the right carpal tunnel syndrome as she had full range of motion with no clinical evidence of atrophy or dystrophy. He also indicated that her wrist sprain, had resolved. Dr. Askin concluded that appellant had no ratable impairment and was at maximum medical improvement.<sup>3</sup>

In a June 14, 2010 report, OWCP's medical adviser concurred with Dr. Askin. He concluded that appellant did not have "any ratable permanent impairment." The medical adviser explained that a wrist sprain was a temporary, self-limiting, soft tissue condition that resolved expeditiously, and within several weeks of onset from February 2002. He noted that there was no current objective evidence of de Quervain's disease. Regarding appellant's right carpal tunnel syndrome, OWCP's medical adviser indicated that the electrodiagnostic findings were consistent with "questionable borderline findings." He concluded that due to the "lack of any substantive, objective, probative occupationally[-]related condition(s) or findings" there was "no objective basis or rationale" for any right arm impairment.

On July 13, 2010 OWCP denied appellant's claim for a schedule award finding that the medical evidence provided did not rate impairment under the A.M.A., *Guides*.

On July 19, 2010 appellant's counsel requested a hearing, which was held on November 5, 2010. During the hearing, appellant indicated that she never had the approved surgery to her right wrist for carpal tunnel release as she could not take time off from work to recuperate. She also indicated that she did not wish to have the surgery due to her age. Appellant's counsel asserted that Dr. Diamond's December 6, 2007 report confirmed that appellant had a significant problem with motion in the wrist and identified median nerve entrapment. He also questioned the validity of Dr. Askin's report noting that he did not provide any wrist measurements. Appellant's counsel alleged that Dr. Askin did not agree with the statement of accepted facts as he discounted the work-related nature of the accepted condition, appellant's carpal tunnel syndrome. He asserted that there was a medical conflict.

In a December 21, 2010 decision, OWCP's hearing representative affirmed the prior decision, finding that appellant had no permanent impairment of the right arm.

### **LEGAL PRECEDENT**

The schedule award provision of FECA,<sup>4</sup> and its implementing federal regulations,<sup>5</sup> 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,

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<sup>3</sup> Dr. Askin also noted that appellant appeared to be suffering from effects of chemotherapy attributable to cancer treatment.

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

FECA 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>6</sup> For decisions issued after May 1, 2009, the sixth edition will be used.<sup>7</sup>

### ANALYSIS

The evidence of record is insufficient to establish that appellant is entitled to a schedule award for the right arm in accordance with the sixth edition of the A.M.A., *Guides*.

The Board notes that while appellant submitted a December 6, 2007 report from Dr. Diamond in support of his claim, that report cannot be utilized to determine impairment as the physician evaluated appellant under the fifth edition of the A.M.A., *Guides*. Effective May 1, 2009, the sixth edition is to be used.<sup>8</sup>

The Board notes that the only medical evidence which provided an impairment rating under the appropriate edition of the A.M.A., *Guides* is Dr. Askin's April 30, 2010 report and the June 14, 2010 report of the medical adviser. Both physicians determined that there were no objective findings to support an impairment rating. Dr. Askin concluded that appellant did not sustain a ratable impairment. He noted appellant's history of injury and treatment and examined appellant. Dr. Askin conducted a thorough examination, during which he observed full range of motion in appellant's right hand and wrist. He found no objective basis on which to rate any impairment of the right arm due to the accepted conditions. In view of the lack of objective findings, Dr. Askin opined that appellant did not sustain ratable upper extremity impairment for her right carpal tunnel syndrome. OWCP's medical adviser reviewed Dr. Askin's report and concurred that appellant had no ratable impairment of upper extremity due to her accepted conditions. The Board finds that Dr. Askin's opinion constitutes the weight of the medical evidence. Dr. Askin examined appellant, reviewed his history and found no basis on which to attribute any permanent impairment to the accepted conditions. There is no current medical evidence conforming with the sixth edition of the A.M.A., *Guides*, that supports work-related permanent impairment of the right arm.

As noted, OWCP evaluates schedule award claims pursuant to the standards set forth in the A.M.A., *Guides*. Appellant has the burden of proof to submit medical evidence supporting that he has permanent impairment of a scheduled member of the body.<sup>9</sup> As such evidence has not been submitted, appellant has not established entitlement to a schedule award.

On appeal, appellant's counsel disagreed with the findings provided by Dr. Askin and suggested a conflict in the medical evidence. The Board notes that Dr. Askin's report is the only

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<sup>6</sup> *Id.* at § 10.404(a).

<sup>7</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>8</sup> *See id.*

<sup>9</sup> *See Annette M. Dent*, 44 ECAB 403 (1993).

report which conformed with the sixth edition of the A.M.A., *Guides*. He explained the reasons why appellant's accepted conditions did not cause permanent impairment of the right arm.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.<sup>10</sup>

**CONCLUSION**

The Board finds that OWCP properly denied appellant's claim for a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 21, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 2011  
Washington, DC

Richard J. Daschbach, Chief 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>10</sup> A.M.A., *Guides* 497, section 16.2.