



In an August 14, 2003 report, Dr. Michael D. Paul, an orthopedic surgeon, provided findings on examination and opined that appellant had a 27 percent impairment of the right upper extremity based on atrophy (8 percent), loss of grip strength (9 percent) and pain (10 percent) according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001).

In a memorandum dated October 15, 2003, Dr. Willie E. Thompson, the Office medical adviser, stated that Dr. Paul's impairment rating could not be used because the fifth edition of the A.M.A., *Guides*, at page 495, required that appellant undergo objective updated electromyogram (EMG) and nerve conduction studies.

A November 10, 2003 EMG and nerve conduction studies report indicated an abnormal study revealing right median nerve entrapment at the right wrist with mild severity.

In a December 3, 2003 report, Dr. Thompson opined that appellant had a five percent impairment of the right upper extremity based on page 495 of the A.M.A., *Guides* which provided that normal sensibility and opposition strength with abnormal EMG and nerve conduction studies equaled a rating not to exceed five percent.

In a report dated January 21, 2004, Dr. David C. Johnson, an orthopedic surgeon and an Office referral physician, opined that appellant had a five percent impairment of the right upper extremity based on the subjective factors of pain, loss of function, loss of endurance and atrophy according to the fifth edition of the A.M.A., *Guides* at page 495, section 2, under "[c]arpal [t]unnel [s]yndrome."

By decision dated February 11, 2004, the Office granted appellant a schedule award for 15.60 weeks based on a 5 percent impairment of the right upper extremity.<sup>1</sup>

### **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>2</sup> and its implementing regulation<sup>3</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, 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

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<sup>1</sup> Section 8107(b)(1) of the Federal Employees' Compensation Act provides that for total or 100 percent loss of use of the hand an employee is entitled to 312 weeks of compensation. 5 U.S.C. § 8107(b)(1). A 5 percent impairment of the right upper extremity equals 15.60 weeks of compensation (312 weeks multiplied by 5 percent). The Board notes that appellant submitted additional evidence subsequent to the Office decision of February 11, 2004. However, the Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c).

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>4</sup>

### ANALYSIS

The Board finds that this case is not in posture for a decision. Dr. Johnson, the Office's second opinion physician, found that appellant had a five percent impairment of the right upper extremity based on section 2 of page 495 of the A.M.A., *Guides* addressing carpal tunnel syndrome which states that with "Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles: a residual [carpal tunnel syndrome] is still present, and an impairment rating not to exceed five percent of the upper extremity may be justified."

Dr. Paul, appellant's treating physician, however, indicated in his report that appellant had sensory and motor deficits and found a 27 percent impairment of the right upper extremity pursuant to the A.M.A., *Guides* at section 1 of page 495 which states that with "[p]ositive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described [in Table 16-15 at page 492]." The November 10, 2003 EMG and nerve conduction study report indicated right median nerve entrapment.

The Board finds therefore that there is currently a conflict in the medical opinion evidence regarding the degree of appellant's permanent impairment. Section 8123(a) of the Act 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>5</sup>

### CONCLUSION

The Board finds that further development on the issue of appellant's impairment of her right upper extremity is required in this case. On remand of the case, the Office should refer appellant to an impartial medical specialist for an evaluation of her impairment of her right upper extremity in accordance with the A.M.A., *Guides*.

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<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. § 8123.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 11, 2004 is set aside and the case is remanded for further development consistent with this decision.

Issued: July 28, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member