



## **FACTUAL HISTORY**

On May 14, 1998 appellant, then a 47-year-old mailhandler, filed a traumatic injury claim alleging that on that date she developed right wrist pain when twisting her hand, wrist and arm. She did not stop work.

On April 14, 1999 appellant was diagnosed by Dr. Paul R. Fassler, a Board-certified orthopedic surgeon, as having bilateral carpal tunnel syndrome. The Office accepted her claim and on November 20, 2001 authorized a right carpal tunnel release which was performed on December 17, 2001. On December 6, 2001 the Office authorized a left carpal tunnel release which was performed on January 11, 2002. Dr. Fassler released appellant to return to regular duty without restrictions on March 9, 2002.

On April 4, 2002 appellant filed a claim for a schedule award. Dr. Fassler noted on April 10, 2002 that she continued with complaints of right arm pain, mild swelling of the fourth compartment extensor tendons and a small amount of fluid around the tendons consistent with extensor tenosynovitis. Appellant filed to amend her claim to include wrist extensor tendinitis, which was accepted by the Office.

On April 24, 2002 appellant resigned her position with the employing establishment and moved to Kansas.

By letter dated June 22, 2002, Dr. Fassler indicated that appellant had reached maximum medical improvement on April 10, 2002 with no restriction of range of motion with regard to her wrists and digits, no significant decrease in strength, abnormal sensibility or ankylosis and only minor discomfort in her hands. He noted: "I arbitrarily assigned [appellant's] three percent impairment of each upper extremity due to mild residuals of bilateral carpal tunnel syndrome (Table 16-15). This combines to two percent impairment of the whole person for each upper extremity according to Table 16-3. Using the Combined Values Chart on page 604 gives [appellant] a total impairment rating of four percent."

On July 23, 2002 the Office requested that Dr. Fassler provide specific information on the percentage sensory deficit for each nerve involved to facilitate impairment calculation. However, no response from him was forthcoming.

On September 30, 2002 the Office advised appellant that she was being referred for a second opinion evaluation to determine the nature and extent of any permanent impairment. The Office referred her, together with a statement of accepted facts and questions to be addressed, to Dr. Joseph W. Huston, a Board-certified orthopedic surgeon, with instructions to apply the fifth edition (2001) of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, to determine appellant's permanent impairment.

By report dated November 5, 2002, Dr. Huston reviewed appellant's history and medical records and statement of accepted facts, noted her present symptomatology, described her physical examination results and concluded that she had impairment due to motor and loss of power deficits from peripheral nerve disorders. He reported that appellant had healed nontender

surgical scars, negative Tinel's signs, full ranges of motion of all fingers and both thumbs, good wrist ranges of motion, no forearm deformity, no swelling, no crepitus, no atrophy, normal sensation throughout and strong dorsiflexion and volar flexion power against resistance, strong grip strength and strong pinching power. He referred to the A.M.A., *Guides* and classified her as Grade 4 and estimated her deficit on each side as 15 percent. Dr. Huston then used Table 16-12b on page 486 involving the median nerve and thenar muscles, used Table 16-15 on page 492 concerning maximum upper extremity impairment due to peripheral nerve deficit and used the median nerve below the mid forearm, which was 10 percent and determined that appellant had a 2 percent impairment of each upper extremity due to carpal tunnel syndrome problems, for a total of a 4 percent impairment of her upper extremities.

On December 5, 2002 an Office medical adviser used Dr. Huston's clinical findings and calculated that appellant had a two percent impairment of each upper extremity.

Using a weekly pay rate effective December 17, 2001, the pay rate following appellant's second surgery, the Office calculated her 87.36 days of entitlement at the 2/3 rate. On February 12, 2003 the Office granted appellant a schedule award for 2 percent impairment of each upper extremity for a total award of 4 percent for the period April 1 to June 6, 2002 for a total of 12.48 weeks of compensation. She received one check for \$5,450.14.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</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 all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

A report containing speculative statements on its face is of reduced probative value and is insufficient to establish a claim.<sup>3</sup> Additionally, the Board notes that in *Gary L. Loser*,<sup>4</sup> it explained that there is no provision under the Act for providing schedule awards based on whole person estimates of physical impairment.

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> See *Philip J. Deroo*, 39 ECAB 1294 (1988) (although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).

<sup>4</sup> 38 ECAB 673, 679 (1987).

Board precedent is well settled however that, when an attending physician's report gives an estimate of impairment, but does not indicate that the estimate is based upon the application of the A.M.A., *Guides* or improperly applies the A.M.A., *Guides*, the Office is correct to follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.<sup>5</sup> Board cases are clear that if the attending physician does not utilize the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of any permanent impairment.<sup>6</sup>

### ANALYSIS

In this case, appellant's treating physician, Dr. Fassler, indicated that she had reached maximum medical improvement on April 10, 2002 with no restriction of range of motion with regard to her wrists and digits, no significant decrease in strength, abnormal sensibility or ankylosis and only minor discomfort in her hands. He actually stated that he arbitrarily assigned appellant a three percent impairment of each upper extremity due to mild carpal tunnel residuals, which was speculative and he did not delineate the percent sensory deficit for each nerve involved. This is not in accordance with the A.M.A., *Guides* or the Board's case law, as he failed to provide sufficient information for the Office to determine whether he had properly applied Table 16-15 and he admitted that his assignment of three percent bilateral impairments was arbitrary. As his impairment estimate was speculative, it is of diminished probative value and does not support his conclusions.

Accordingly, appellant was properly referred for a second opinion evaluation.

Dr. Huston referred to the A.M.A., *Guides* and provided an extensive medical report based on a proper factual and medical background, in which he determined that appellant's only impairment was due to motor and a loss of power deficits related to the median nerve from a peripheral nerve disorder. He found healed nontender surgical scars, negative Tinel's signs, full ranges of motion of all fingers and both thumbs, good wrist ranges of motion, no forearm deformity, no swelling, no crepitus, no atrophy, normal sensation throughout and strong dorsiflexion and volar flexion power against resistance, strong grip strength, strong pinching power. Dr. Huston classified appellant as Grade 4 and estimated her median-nerve-related deficit on each side as 15 percent. Dr. Huston then used Table 16-12b on page 486 involving the median nerve and thenar muscles and used Table 16-15 on page 492 concerning maximum upper extremity impairment due to peripheral nerve deficit of the median nerve below the mid forearm, which was 10 percent and determined that she had a 2 percent impairment of each upper extremity due to carpal tunnel syndrome problems, for a total of a 4 percent impairment of her upper extremities.

As Dr. Huston provided thorough information regarding appellant's remaining deficits, identified the nerve and muscles involved and properly applied the A.M.A., *Guides*, to determine her bilateral impairment, his report is entitled to great weight.

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<sup>5</sup> See *Ronald J. Pavlik*, 33 ECAB 1596 (1982); *Robert R. Snow*, 33 ECAB 656 (1982); *Quincy E. Malone*, 31 ECAB 846 (1980).

<sup>6</sup> See *Thomas P. Gauthier*, 34 ECAB 1060 (1983); *Raymond Montanez*, 31 ECAB 1475 (1980).

Thereafter, using the A.M.A., *Guides* the Office medical adviser took Dr. Huston's findings of a Grade 4 motor deficit of both hands, which was equal to a 15 percent impairment of the median nerve on page 484, Table 16-11, noted that maximum median nerve motor deficit was 10 percent of the upper extremity, page 484, Table 16-15 and calculated that 15 percent times 10 percent equaled 2 percent and determined that, therefore, the motor deficit for each arm was 2 percent which resulted in a total bilateral upper extremity impairment of 4 percent. As Dr. Fassler's report was not properly based on the A.M.A., *Guides*, the Office was correct to follow the advice of both Dr. Huston, whose report was in conformance with the A.M.A., *Guides* and the Office medical adviser, who also properly applied the A.M.A., *Guides* and explained in detail how he derived at appellant's total impairment.

There was no other probative medical evidence submitted to the record which supported any greater award.

Accordingly, appellant was properly granted a schedule award of four percent for bilateral upper extremity impairment. There is no evidence in the case record of any greater impairment, as Dr. Fassler's opinion was speculative and included incorrect combinations of calculations and, therefore, is of little probative value.

#### **CONCLUSION**

Appellant has no greater than a four percent impairment of her bilateral upper extremities, for which she has received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 12, 2003 is hereby affirmed.

Issued: June 28, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member