



June 24, 2001. On October 9, 2001 Dr. Grace performed a carpal tunnel release of appellant's left wrist.<sup>1</sup> He released appellant to resume his regular employment duties on May 30, 2002.

On August 1, 2002 appellant filed a claim for a schedule award. In support of his claim, appellant submitted a work restriction evaluation dated July 24, 2002 from Dr. Grace, who opined that appellant had reached maximum medical improvement. He indicated that appellant had a three percent whole person impairment per hand or a six percent whole person impairment.

An Office medical adviser reviewed Dr. Grace's July 24, 2002 evaluation and opined that it was insufficient to support a schedule award. He recommended that appellant's attending physician submit new calculations in accordance with the applicable section of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) for carpal tunnel syndrome, found on page 495. In a letter dated August 23, 2002, the Office informed appellant of the Office medical adviser's recommendation and requested that he take the Office medical adviser's instructions to his attending physician for further findings.

In a response to the Office dated September 6, 2002, Dr. Grace stated:

"In reference to your letter of August 23, 2002, [appellant] does not meet the enclosed criteria. If [appellant] wants to repeat the NCV [nerve conduction velocity] to see if he does, then you will need to proceed in that direction with a physician of your choice since those tests are not something I provide."

The Office, on September 16, 2002, again requested that Dr. Grace provide an impairment determination in accordance with the A.M.A., *Guides*. The Office enclosed worksheets for Dr. Grace to complete to determine the extent of appellant's impairment due to loss of range of motion of the wrists and any additional impairment due to weakness or pain under the A.M.A., *Guides*.

In an impairment evaluation dated October 3, 2002, Dr. Grace found that, for the left wrist, appellant had 18 degrees radial deviation, 28 degrees ulnar deviation, 40 degrees dorsiflexion and 60 degrees palmar flexion. He determined that appellant had no additional impairment due to pain or weakness and concluded that he had a four percent impairment of the left upper extremity. For the right wrist, Dr. Grace listed range of motion measurements of 20 degrees radial deviation, 20 degrees ulnar deviation, 45 degrees dorsiflexion and 60 degrees palmar flexion. He concluded that appellant had a four percent impairment of the right upper extremity.<sup>2</sup> Dr. Grace indicated that appellant reached maximum medical improvement on May 30, 2002. In an accompanying office visit note dated October 3, 2002, Dr. Grace noted that appellant was status post carpal tunnel releases. He discussed appellant's complaints of "continued intermittent numbness in the right hand" and found decreased strength of the right hand and a ganglion at the wrist. Dr. Grace found normal strength of the left hand.

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<sup>1</sup> Dr. Grace further performed trigger finger releases on appellant's right middle and ring finger on May 3, 2002 and on his left index, middle and ring finger on May 17, 2002.

<sup>2</sup> It is not clear whether Dr. Grace found that appellant also had a one percent impairment due to weakness or marked it as not applicable.

An Office medical adviser reviewed Dr. Grace's impairment rating and concurred with his findings. He stated that page 495 of the A.M.A., *Guides* "would allow" the rating.

By decision dated December 23, 2002, the Office granted appellant a schedule award for an eight percent bilateral upper extremity impairment. The period of the award ran for 24.96 weeks, from May 30 to November 20, 2002.

On January 3, 2003 appellant requested a review of the written record. In a decision dated April 2, 2003, a hearing representative affirmed the Office's December 23, 2002 decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act,<sup>3</sup> and its implementing federal regulation,<sup>4</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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>5</sup> Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.<sup>6</sup>

### **ANALYSIS**

In this case, the Office accepted that appellant sustained bilateral carpal tunnel syndrome in the performance of duty and authorized bilateral carpal tunnel releases. In developing appellant's claim for a schedule award, the Office requested that Dr. Grace, a Board-certified orthopedic surgeon and appellant's attending physician, provide an impairment rating in accordance with the section of the A.M.A., *Guides* relevant to carpal tunnel syndrome. Dr. Grace responded that he did not perform the necessary objective studies and that the Office should refer appellant to another physician. The Office then enclosed forms primarily relevant to determining appellant's loss of range of motion and again requested that Dr. Grace provide an impairment evaluation. However, the Office procedures specifically provide that an upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.<sup>7</sup>

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> 20 C.F.R. § 10.404(a).

<sup>6</sup> See FECA Bulletin No. 01-5 (issued January 29, 2001).

<sup>7</sup> FECA Bulletin No. 01-05 (issued January 29, 2001).

Regarding carpal tunnel syndrome, the A.M.A., *Guides* provide:

“If, after an optimal recovery time, following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present--

(1) Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual CTS [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described earlier.

(2) Normal sensibility and opposition strength with abnormal sensory and or motor latencies or abnormal EMG [electromyogram] testing of the thenar muscles: a residual CTS is still present and an impairment rating not to exceed 5 percent of the upper extremity may be justified.

(3) Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating.”<sup>8</sup>

In this case, Dr. Grace found that he could not rate appellant according to the above guidelines and recommending referring him to a physician who performed objective testing. He then completed range of motion findings for appellant’s wrists as requested by the Office. The Office medical adviser stated that Dr. Grace’s findings were consistent with page 495 of the A.M.A., *Guides* but provided no explanation for his statement.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. The Office shares responsibility in the development of the evidence to see that justice is done.<sup>9</sup>

In this case, Dr. Grace did not evaluate appellant’s impairment due to carpal tunnel syndrome in accordance with the A.M.A., *Guides* nor did the Office medical adviser disclose the evidentiary basis for his concurrence with Dr. Grace’s findings. Accordingly, the Board will remand the case for the Office to refer appellant to an appropriate specialist to determine the extent of his upper extremity impairment.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>8</sup> A.M.A., *Guides* note 5 at 495.

<sup>9</sup> *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 2, 2003 and December 23, 2002 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision.

Issued: March 22, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member