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<b>ROBERT J. BIERMANN, Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 05-219</b>
	)	<b>Issued: April 11, 2005</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Steeleville, IL, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
ALEC J. KOROMILAS, Chairman  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

On October 28, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated June 24, 2004, denying his claim for a schedule award, and an October 18, 2004 decision denying modification of the finding that he was not entitled to a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

The issue is whether appellant has established that he is entitled to a schedule award for a permanent impairment of the left upper extremity.

On June 4, 2003 appellant, then a 49-year-old letter carrier, filed an occupational disease claim alleging that he sustained numbness and pain in his left hand and fingers. The Office accepted the claim for left carpal tunnel syndrome and authorized an open left carpal tunnel

release, which was performed by Dr. Harvey L. Mirly, a Board-certified orthopedic surgeon, on September 5, 2003. In a progress report dated November 14, 2003, Dr. Mirly stated:

“[Appellant] reports significant improvement in his subjective preoperative complaints. His lateral pinch was measured at 22 on both sides, 3-point pinch was 18 on the right and 24 on the operated left. His five run Jamar yielded 90, 115, 110, 100 and 80 on the right and 85, 125, 105, 100 and 90 on the operated left. At this time I believe he has done excellent. He has good relief of his preoperative symptoms [and] has returned to full duties without restrictions. At this time I believe he has reached maximum medical recovery.”

On November 26, 2003 appellant filed a claim for a schedule award.

By letter dated December 10, 2003, the Office requested that Dr. Mirly provide an impairment evaluation of appellant's left upper extremity in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001). The Office included a form for Dr. Mirly's completion based on the A.M.A., *Guides*.

In a report dated December 10, 2003, Dr. Mirly opined that appellant had a 10 percent impairment due to decreased strength and no impairment due to pain or sensory deficit. He listed the date of maximum medical improvement as November 14, 2003.

On March 29, 2004 an Office medical adviser reviewed Dr. Mirly's reports and found that his lateral pinch strength and grip strength measurements were above the threshold for a permanent impairment according to Tables 16-33 and 16-31 on page 509 of the A.M.A., *Guides*. He opined that appellant had “no objective evidence to support” a permanent impairment and that he reached maximum medical improvement on November 14, 2003.

By decision dated June 24, 2004, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence was insufficient to establish that he sustained any permanent impairment of his left upper extremity.

On August 12, 2004 appellant requested reconsideration. He submitted a December 23, 2003 progress report from Dr. Mirly, who opined that appellant had a 10 percent impairment due to loss of strength according to the A.M.A., *Guides*. Dr. Mirly stated that appellant had “no findings for diminished range of motion or persistent paresthesias” and had no need for further medical treatment.

In a letter to appellant dated August 9, 2004, Dr. Mirly referenced his November 14 and December 23, 2003 progress reports and pages 495 and 509 of the A.M.A., *Guides*. He stated:

“In reviewing your records, I actually have your operated left side being stronger than the right and therefore there would not be a loss of strength on the left side; however, this needs to be taken in consideration of your previous right lateral epicondylar release which may have weakened the right side and therefore it is not a direct comparison to the left.

“As you can see on page 495 under number 2, I think your return of sensation and opposition strengths were good. We did not perform a postoperative nerve conduction study and I do [not] routinely if there are no significant symptoms. However, if there was an abnormal testing at impairment up to [five percent] is awarded.”

On August 30, 2004 an Office medical adviser reviewed Dr. Mirly’s August 9, 2004 letter and accompanying progress reports. He noted that Dr. Mirly found that appellant’s left side was stronger than the right side and that he had good “sensation and opposition strength.” The Office medical adviser again found that appellant’s pinch and grip strength measurements were above the threshold for a permanent impairment rating under Table 16-31 on page 509 of the A.M.A., *Guides*. He concluded that appellant did not have a permanent impairment of the left upper extremity.

By decision dated October 18, 2004, the Office denied modification of its June 24, 2004 decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act,<sup>1</sup> and its implementing federal regulation,<sup>2</sup> sets 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>3</sup> The 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>4</sup>

The fifth edition of the A.M.A., *Guides*, regarding carpal tunnel syndrome, states:

“If, after optimal recovery time following surgical decompression, an individual continues to complain of pain, paresthasias 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 [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described earlier.

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> 20 C.F.R. § 10.404(a).

<sup>4</sup> See FECA Bulletin No. 01-05 (issued January 29, 2001).

2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal [electromyogram] 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.

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>5</sup>

The A.M.A., *Guides* further provides that, “In compression neuropathies, additional impairment values are not given for decreased grip strength.”<sup>6</sup> Carpal tunnel syndrome is an entrapment/compression neuropathy of the median nerve.<sup>7</sup> Additionally, the Board has found that the fifth edition of the A.M.A., *Guides* provides that an impairment for carpal tunnel syndrome be rated on motor and sensory deficits only.<sup>8</sup>

### ANALYSIS

The Office accepted that appellant sustained employment-related carpal tunnel syndrome on the left side and authorized a left open carpal tunnel release, which Dr. Mirly performed on September 5, 2003. On November 14, 2003 Dr. Mirly opined that appellant had reached maximum medical improvement with no impairment due to pain or sensory deficits. He listed pinch and grip strength measurements and determined that appellant had a 10 percent impairment due to loss of strength. In a progress note dated December 10, 2003, Dr. Mirly again found that appellant’s sole impairment was loss of strength and that he had no loss of range of motion or “persistent paresthesias.” Dr. Mirly, in a letter to appellant dated August 9, 2004, noted that he did not perform electrodiagnostic studies following a carpal tunnel release in the absence of continuing symptoms. He found that appellant had good sensation and that his strength was greater on the left than the right side.<sup>9</sup>

An Office medical adviser, in reports dated March 29 and August 30, 2004, reviewed Dr. Mirly’s findings and concluded that appellant had no objective evidence of a permanent impairment of the left upper extremity. He found that appellant’s grip and pinch strength measurements were greater than that needed to establish a permanent impairment under the A.M.A., *Guides*. The Board notes, however, that the A.M.A., *Guides* does not provide for an additional impairment due to decreased grip strength in compression neuropathies such as carpal tunnel syndrome.<sup>10</sup> Instead, the Board has held that impairments due to carpal tunnel syndrome

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<sup>5</sup> A.M.A., *Guides* 495; see also *Silvester DeLuca*, 53 ECAB 500 (2002).

<sup>6</sup> A.M.A., *Guides* 494; see also *supra* note 4.

<sup>7</sup> A.M.A., *Guides* 492.

<sup>8</sup> A.M.A., *Guides* 494; *Robert V. Disalvatore*, 54 ECAB \_\_\_\_ (Docket No. 02-2256, issued January 17, 2003).

<sup>9</sup> Dr. Mirly noted, however, that appellant’s right side might have been weakened by a prior surgery.

<sup>10</sup> A.M.A., *Guides* 494.

should be rated based on motor or sensory impairments only in accordance with the provisions of the A.M.A., *Guides*.<sup>11</sup> In this case, Dr. Mirly found that appellant had no loss of sensation or paresthesias and that his strength was greater on his left side than his right side. He noted that he did not perform electrodiagnostic studies as appellant did not complain of further symptoms. The medical evidence, consequently, contains no objective evidence upon which to base an impairment rating for carpal tunnel syndrome under the A.M.A., *Guides*. The Office therefore properly denied appellant's claim for a schedule award.

### **CONCLUSION**

The Board finds that appellant has not established that he is entitled to a schedule award for a permanent impairment of the left upper extremity.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 18 and June 24, 2004 are affirmed.

Issued: April 11, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>11</sup> See *Robert V. Disalvatore, supra* note 8; A.M.A., *Guides* 494. Further, paragraph 4 of the attachment to FECA Bulletin No. 01-05 noted that the A.M.A., *Guides* precluded the use of grip or pinch strength in determining impairments due to compression neuropathies. FECA Bulletin No. 01-05 (issued January 29, 2001).