

FACTUAL HISTORY

Appellant, a 55-year-old former letter sorting machine operator, has an accepted occupational disease claim for right wrist ganglion cyst, bilateral ring trigger finger and bilateral carpal tunnel syndrome, which commenced on or about October 8, 1993. On May 30, 1996 she underwent an Office-approved right carpal tunnel release. Appellant received schedule awards on February 13, 2002 for 34 percent impairment of the right upper extremity and 32 percent impairment of the left upper extremity.² The awards totaled 205.92 weeks' compensation, covering the period January 21, 2001 to January 2, 2005.

On February 9, 2005 appellant underwent a second Office-approved surgical procedure on her left wrist. Dr. Robert J. Kolesnik, a Board-certified orthopedic surgeon, performed a left carpal tunnel release and left finger flexor tenosynovectomy. The Office paid appellant appropriate wage-loss compensation and in June 2005, she returned to work part time. She resumed her full-time duties on September 22, 2005.

In a report dated December 7, 2005, appellant's treating physician, Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, advised that she had reached maximum medical improvement following her latest surgery. He found 10 percent impairment of the right upper extremity and 12 percent impairment of the left upper extremity due to sensory deficits or pain.

On March 9, 2006 appellant filed a claim for an additional schedule award. The Office referred the case record to its medical adviser, Dr. Ellen L. Pichey. In an August 15, 2006 report, Dr. Pichey found an additional three percent impairment of the right upper extremity.³ Her assessment was based in part on Dr. Einbund's December 7, 2005 examination findings. While there was no evidence of impairment due to loss of range of motion, Dr. Pichey found bilateral upper extremity impairment due to combined motor and sensory deficits involving the median nerve. The left upper extremity impairment was 31 percent, while the right upper extremity impairment was 36 percent. Dr. Pichey also found two percent impairment due to mild triggering in both hands. The bilateral trigger finger impairment combined with the upper extremity motor and sensory deficits, represented an overall right upper extremity impairment of 37 percent and a left upper extremity impairment of 32 percent. According to Dr. Pichey, appellant reached maximum medical improvement on December 7, 2005.

On November 2, 2006 the Office awarded appellant an additional three percent impairment of the right upper extremity, which represented 9.36 weeks' compensation. With respect to the left upper extremity, the Office found that there was no additional impairment beyond the previously awarded 32 percent.

² The overall impairment ratings were based on a combination of upper extremity impairments including loss of range of motion, loss of strength and sensory deficits.

³ Dr. Pichey is Board-certified in both family medicine and occupational medicine. In addition to the August 15, 2006 impairment rating, he provided the July 9, 2001 rating that formed the basis of appellant's February 13, 2002 schedule award.

On December 7, 2006 appellant requested an oral hearing. She acknowledged that her request was beyond the 30-day filing period, but explained that her father's recent death kept her away from home until November 28, 2006.

By decision dated February 21, 2007, the Branch of Hearings & Review denied appellant's request for an oral hearing because it was untimely. Appellant was also denied a discretionary hearing. The Branch of Hearings & Review advised her that she could pursue her claim for an additional schedule award by requesting reconsideration before the Office and submitting additional evidence.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁴ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.⁵ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁶

ANALYSIS -- ISSUE 1

Based on the December 7, 2005 examination findings, the Office medical adviser calculated a right upper extremity impairment of 37 percent and a left upper extremity impairment of 32 percent. Dr. Pichey explained that appellant's left upper extremity symptoms represented a 70 percent deficit and his right upper extremity symptoms represented an 80 percent deficit.⁷ Under Table 16-15, A.M.A., *Guides* 492, the maximum upper extremity impairment for combined motor and sensory deficits involving the median nerve is 45 percent.

To determine the upper extremity impairment one multiplies appellant's impairment classification (70 percent, left and 80 percent, right) by the maximum percentage loss due to combined motor and sensory deficits (45 percent). Applying this formula, appellant had 31 percent impairment for the left upper extremity (70 percent x 45 percent) and 36 percent impairment for the right upper extremity (80 percent x 45 percent).

The additional two percent impairment for bilateral ring trigger finger was calculated by applying Tables 16-18 and 16-29, A.M.A., *Guides* 499, 507. Pursuant to Table 16-18, the

⁴ For a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1) (2000).

⁵ 20 C.F.R. § 10.404.

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁷ See Tables 16-10 and 16-11, A.M.A., *Guides* 482, 484.

maximum upper extremity impairment for disorders affecting the entire ring finger is nine percent. In his December 7, 2005 report, Dr. Einbund noted triggering of both the left and right ring fingers. He did not otherwise describe the severity of the triggering. Therefore, the Office medical adviser rated the severity as mild, which under Table 16-29 represents a 20 percent impairment of the digit. The upper extremity impairment is obtained by multiplying the 9 percent ring finger impairment under Table 16-18 by the 20 percent digit impairment obtained from Table 16-29.⁸ The two percent impairment for ring finger triggering is then combined with the upper extremity impairment due to motor and sensory deficits.⁹ The Office medical adviser properly found 37 percent impairment of the right upper extremity and 32 percent for the left upper extremity. The August 15, 2006 impairment rating is consistent with Dr. Einbund's examination findings and conforms to the A.M.A., *Guides* (5th ed. 2001). As such, the Office medical adviser's impairment rating constitutes the weight of the medical evidence.¹⁰ Because appellant had already received an award for 34 percent impairment of the right upper extremity and 32 percent impairment for the left upper extremity, she was entitled to receive an additional 3 percent impairment for the right upper extremity based on Dr. Pichey's August 15, 2006 rating. She has not presented any evidence that she has greater permanent impairment than what the Office has already awarded her.

LEGAL PRECEDENT -- ISSUE 2

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or a review of the written record.¹¹ A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought.¹² If the request is not made within 30 days, a claimant is not entitled to a hearing or a review of the written record as a matter of right. Although a claimant may not be entitled to a hearing as a matter of right, the Office has discretionary authority to either grant or deny a hearing request and the Office must exercise its discretion.¹³

ANALYSIS -- ISSUE 2

Appellant filed her hearing request more than 30 days after the November 2, 2006 schedule award. Because of the untimely nature of the request, she is not entitled to a hearing as a matter of right. In its February 21, 2007 decision, the Branch of Hearings & Review also denied appellant's request for a hearing on the grounds that the pertinent issue could be addressed by requesting reconsideration and submitting additional relevant evidence. This particular basis for denying appellant's request is considered a proper exercise of discretionary

⁸ See Section 16.7c, A.M.A., *Guides* 506.

⁹ See Combined Values Chart, A.M.A., *Guides* 604-06; section 16.7, A.M.A., *Guides* 498.

¹⁰ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

¹¹ 5 U.S.C. § 8124(b); 20 C.F.R. § 10.616(a).

¹² 20 C.F.R. § 10.616(a).

¹³ See *Herbert C. Holley*, 33 ECAB 140 (1981).

authority.¹⁴ Moreover, there is no evidence in the case record indicating that the Branch of Hearings & Review otherwise abused its discretion. Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's request for a hearing.

CONCLUSION

Appellant has not demonstrated that she has greater than 37 percent impairment of the right upper extremity and greater than 32 percent impairment of the left upper extremity. The Board further finds that the Branch of Hearings & Review properly denied appellant's December 7, 2006 request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2007 and November 2, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 12, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ *Mary B. Moss*, 40 ECAB 640, 647 (1989).