



appellant was assigned limited-duty work repairing damaged mail. The Office accepted the claim for bilateral carpal tunnel syndrome and a right wrist contusion. The Office also accepted a recurrence of disability for the period March 7 to July 12, 2002. Appellant received appropriate benefits and returned to light-duty work on July 13, 2002.

On March 11, 2005 appellant, through her attorney, requested a schedule award. In a report dated December 7, 2004, Dr. David Weiss, an osteopath and family practitioner, noted the history of appellant's work injuries and reviewed medical records. He reported that a January 2001 and a repeat December 2001 electromyogram and nerve conduction velocity (EMG/NCV) studies, which showed mild bilateral median nerve entrapment. A somatosensory evoked potential (SSEP) study showed a left brachial plexopathy. Dr. Weiss reported that appellant had a history of left and right wrist numbness and increased symptoms with weather changes. Right wrist pain, stiffness and swelling were also noted along with restrictions in activities of daily living. Dr. Weiss presented his examination findings and diagnosed cumulative and repetitive trauma disorder, bilateral carpal tunnel syndrome, right ulnar nerve neuropathy at the cubital tunnel and chronic post-traumatic flexor tendinitis to the right wrist secondary to the December 24, 2000 work-related injury. He opined that appellant reached maximum medical improvement. Citing to various tables in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001), Dr. Weiss opined that appellant had sustained a 56 percent right arm and a 21 percent left arm impairment. The right arm impairment was comprised of: a 31 percent sensory deficit right median nerve;<sup>1</sup> a 6 percent sensory deficit right ulnar nerve<sup>2</sup>; a 9 percent motor strength deficit due to a 4/5 right thumb abduction;<sup>3</sup> a 20 percent right key pinch deficit,<sup>4</sup> which Dr. Weiss calculated to be a 53 percent impairment. He then combined the 53 percent arm impairment with a 3 percent pain-related impairment<sup>5</sup> to total 56 percent right arm impairment. The left arm impairment was comprised of a 9 percent motor strength left thumb abduction<sup>6</sup> and a 10 percent left key pinch deficit,<sup>7</sup> which Dr. Weiss calculated was an 18 percent impairment. Dr. Weiss combined the 18 percent impairment with a 3 percent pain impairment<sup>8</sup> to get the total 21 percent left arm impairment.

On March 28, 2005 the Office referred appellant's medical record to an Office medical adviser. In a report dated March 30, 2005, the Office medical adviser opined that, based on Dr. Weiss' December 7, 2004 examination findings, appellant had 12 percent impairment to each

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<sup>1</sup> A.M.A., *Guides* 482, Table 16-10 and 492, Table 16-15.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 484, Table 16-11 and 492, Table 16-15.

<sup>4</sup> *Id.* at 509, Tables 16-33 and 16-34.

<sup>5</sup> *Id.* at 574, Table 18-1.

<sup>6</sup> *Id.* at 484, Table 16-11 and 492, Table 16-15.

<sup>7</sup> *Id.* at 509, Tables 16-33 and 16-34.

<sup>8</sup> *Id.* at 574, Table 181.

upper extremity due to sensory loss or pain. Based on Table 16-10 on page 482 of the A.M.A., *Guides*, the Office medical adviser found that appellant had a Grade 4 or a 25 percent sensory deficit. Under Table 16-15 on page 492 of the A.M.A., *Guides*, he noted that the maximum sensory deficit of the median nerve below the mid forearm was 39 percent. The Office medical adviser then multiplied the 39 percent maximum sensory deficit with the 25 percent sensory deficit to rate sensory loss of 9.75 or 10 percent impairment for both the left and right upper extremities.<sup>9</sup> He also opined that, based on the A.M.A., *Guides*, page 574, Figure 18-1, an additional two percent impairment for pain could be added to each extremity. The Office medical adviser noted that an impairment rating for strength deficit was not appropriate as there was no evidence of a motor deficit. He also stated that, under section 16.8a on page 508 of the A.M.A., *Guides*, strength could not be rated on the presence of loss.

By decision dated April 28, 2005, the Office granted appellant a schedule award for a 12 percent impairment to each upper extremity. The award ran for the period December 7, 2004 to May 15, 2006.

On May 12, 2005 appellant, through her attorney, disagreed with the schedule award and requested an oral hearing which was held on February 24, 2006. No additional medical evidence relevant to a schedule award impairment determination was submitted.

By decision dated April 28, 2006, an Office hearing representative affirmed the April 28, 2005 schedule award decision. The Office hearing representative found that its medical adviser's opinion constituted the weight of the medical opinion evidence.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>10</sup> and its implementing regulation<sup>11</sup> set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>12</sup>

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<sup>9</sup> *Id.* at 482, Table 16-10 and 492, Table 16-15.

<sup>10</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>11</sup> 20 C.F.R. § 10.404.

<sup>12</sup> *See Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

Office procedures<sup>13</sup> provide that 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>14</sup>

Office procedures also indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.<sup>15</sup>

### ANALYSIS

Appellant received a schedule award for a 12 percent impairment to each upper extremity based on the opinion of the Office medical adviser. An Office hearing representative found that an additional schedule award on the basis of the medical evidence was not warranted.

In a December 7, 2004 report, Dr. Weiss advised that under the A.M.A., *Guides* appellant had a 56 percent right upper extremity impairment and a 21 percent left upper extremity impairment due to sensory loss, strength loss and pain. However, he failed to discuss how he arrived at his impairment rating or indicate how his examination findings conformed to the cited figures and tables of the A.M.A., *Guides*.<sup>16</sup>

With respect to impairment due to sensory loss, Dr. Weiss did not properly calculate the percentage of impairment by using Table 16-15. A proper application of the A.M.A., *Guides* for impairments to the arms due to peripheral nerve disorders requires that specific nerves be identified under Table 16-15, in order to determine the maximum impairment for sensory or motor deficit in the identified nerve.<sup>17</sup> Then the impairment is graded according to Table 16-10 for sensory deficits and 16-11 for motor deficits.<sup>18</sup> These tables provide specific descriptions and a corresponding grade from one to five according to the severity of the impairment. Dr. Weiss generally identified both the median and ulnar nerves but offered no further explanation for his rating under the A.M.A., *Guides*. Table 16-15 includes both the median and ulnar nerves, but also includes specific parts and areas as affected by the listed nerves. For the right upper extremity only, Dr. Weiss opined that appellant had a 31 percent sensory deficit of the median nerve and a 6 percent sensory deficit of the ulnar nerve, without explaining how he used Table 16-15 to determine the maximum impairment or how he graded such impairments

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<sup>13</sup> See FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exhibit 4 (June 2003). See also *Cristeen Falls*, 55 ECAB 420 (2004).

<sup>14</sup> A.M.A., *Guides* 491, 482, 484, 492, respectively; *Joseph Lawrence, Jr.*, *supra* note 12.

<sup>15</sup> See *Thomas J. Fragale*, 55 ECAB 619 (2004). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

<sup>16</sup> See *James R. Hill*, 57 ECAB \_\_\_ (Docket No. 05-1899, issued May 12, 2006) (schedule awards are to be based on the A.M.A., *Guides*; an estimate of permanent impairment is irrelevant and of diminished probative value where it is not based on the A.M.A., *Guides*).

<sup>17</sup> A.M.A., *Guides* 492, Table 16-15.

<sup>18</sup> *Id.* at 482, Table 16-10 and 484, Table 16-11.

under Tables 16-10. No sensory deficit for the left upper extremity was calculated. The Board finds that Dr. Weiss' report is of diminished probative value to the issue presented.

The Office medical adviser reviewed Dr. Weiss' December 7, 2004 report and found that rating impairment due to sensory loss was appropriate. Table 16-15 page 492 of the A.M.A., *Guides* provides that the maximum sensory deficit of the median nerve below the mid forearm is 39 percent. Dr. Weiss advised that appellant had a history of left and right upper extremities numbness with increased symptoms with weather changes. The Office medical adviser determined that these symptoms are consistent with a Grade 4 or 25 percent sensory deficit under Table 16-10 on page 482 of the A.M.A., *Guides*. He multiplied this grade by the 39 percent maximum impairment found at Table 16-15 to total a left and right upper extremity impairment at 10 percent. The medical evidence of record, therefore, establishes that appellant has 10 percent impairment to both the left and right upper extremity due to a sensory deficit.

The Office medical adviser excluded Dr. Weiss' impairment rating due to motor deficit strength as there was no evidence of any motor deficit. The record does not support evidence of motor deficit. Thus, the Office medical adviser properly excluded such determination when calculating appellant's impairment. He found that Dr. Weiss's impairment rating due to strength deficit did not conform to the A.M.A., *Guides*. The A.M.A., *Guides* at page 508, prohibit a rating for decreased strength in the presence of decreased motion, painful conditions, deformities or absence of parts that prevent effective application of force in the region being evaluated.<sup>19</sup> The Office medical adviser properly excluded Dr. Weiss's strength deficit impairment rating for thumb abduction and key pinch deficit in light of the noted sensory loss.

The Office medical adviser agreed with Dr. Weiss that appellant had ratable impairment due to pain under Chapter 18 of the A.M.A., *Guides*. He assigned, under Figure 18-1, page 574 of the A.M.A., *Guides*, two percent impairment. Dr. Weiss assigned three percent impairment due to pain under this provision. However, both Dr. Weiss and the Office medical adviser erred in assigning impairment for pain under Chapter 18 of the A.M.A., *Guides*. The Board notes that the A.M.A., *Guides* prohibit use of Chapter 18 to rate pain-related impairments for conditions that can be adequately rated in other chapters of the A.M.A., *Guides*.<sup>20</sup> Having rated appellant with a 10 percent impairment for sensory deficit (pain) of the median nerve, the Office medical adviser unwittingly by duplicated a rating for pain under Chapter 18.

Consequently, the Board finds that the medical evidence does not establish that appellant has greater than 10 percent impairment of each arm. There is no other evidence of record, conforming to the A.M.A., *Guides*, indicating that appellant has any greater degree of impairment.

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<sup>19</sup> Office procedures also state that grip or pinch strength should not be used to calculate upper extremity impairment caused by a compression neuropathy such as carpal tunnel syndrome. Federal (FECA) Procedure Manual, Part 4 -- Medical, *Schedule Awards*, Chapter 3.700 Exhibit 4 (June 2003).

<sup>20</sup> *Linda Beale*, 57 ECAB \_\_\_ (Docket No. 05-1536, issued February 15, 2006); *Frantz Ghassan*, 57 ECAB \_\_\_ (Docket No. 05-1947, issued February 2, 2006). Section 18.3b of Chapter 18 at page 571 of the fifth edition of the A.M.A., *Guides* provides that "Examiners should not use this chapter to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters of the A.M.A., *Guides*."

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained more than 12 percent impairment to each upper extremity, for which she received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 28, 2006 is affirmed, as modified.

Issued: May 14, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

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