



On November 29, 2005 appellant returned to limited-duty employment. On June 26, 2006 she underwent a removal of support implant, repair and fusion of the left wrist. Appellant resumed limited-duty employment on August 21, 2006. On March 7, 2007 Dr. Joseph L. Haber, a Board-certified plastic surgeon, performed a left carpal tunnel release, a wrist fusion with allograft, an ulnar head excision and a removal of hardware.

On December 20, 2007 appellant filed a claim for a schedule award. In an impairment evaluation dated December 19, 2007, Dr. Haber diagnosed status post ulnar head resection and related:

“[Appellant] is generally doing well other than some dysfunction with picking up items because her wrist is fused. She is not having any pain at the wrist *per se* though the dorsoradial aspect of the right wrist is somewhat sensitive and she has some slight decreased sensation in this area. [Appellant] has some limitations of supination.”

Dr. Haber applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*) and stated, “[Appellant’s] ratings would be multifactorial based on her range of motion. Her strength weakness is included in the fact that she has ankylosis to her wrist so this would not be specifically added to her impairment.” Dr. Haber measured pronation of 80 degrees and supination of 65 degrees which he found yielded no impairment.<sup>1</sup> He determined that appellant had 21 percent impairment due to wrist ankylosis at 5 degrees extension and 14 percent impairment due to wrist ankylosis at 10 degrees of radial deviation.<sup>2</sup> He further found that she had a Grade 4 sensory impairment of the radial nerve of the dorsal sensory branch, which he classified as 20 percent for pain or abnormal sensation forgotten during activity. He multiplied the 20 percent graded sensory deficit by 5 percent, the maximum for sensory impairments of the radial nerve, to find 1 percent impairment.<sup>3</sup> Dr. Haber added his impairment findings and concluded that appellant had a 36 percent impairment of the left upper extremity. Dr. Haber determined that she reached maximum medical improvement on January 21, 2008.

On January 22, 2008 an Office medical adviser reviewed Dr. Haber’s report. He found that appellant had 22 percent impairment due to wrist arthrodesis of 10 degrees of radial deviation and 5 degrees dorsiflexion.<sup>4</sup> The Office medical adviser further found that she had one percent impairment for loss of range of motion in wrist supination<sup>5</sup> and 1 percent impairment for Grade 4 pains of the radial nerve.<sup>6</sup> He combined his impairment findings of 23 percent for loss of range of motion and 1 percent for pain in the radial nerve to find 24 percent left upper

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<sup>1</sup> A.M.A., *Guides* 474, Table 16-37.

<sup>2</sup> *Id.* at 467, 469, Figures 16-28, 16-31.

<sup>3</sup> *Id.* at 482, 492, Tables 16-10, 16-15.

<sup>4</sup> *Id.* at 467, 469, Figures 16-18, 16-31.

<sup>5</sup> *Id.* at 474, Figure 16-37.

<sup>6</sup> *Id.* at 482, 492, Tables 16-10, 16-15.

extremity impairment. The Office medical adviser indicated that Dr. Haber incorrectly found that appellant was entitled to 20 percent impairment for sensory loss of the radial nerve.

By decision dated March 24, 2008, the Office granted appellant a schedule award for a 24 percent permanent impairment of the left upper extremity. The period of the award ran for 74.88 weeks from December 20, 2007 to May 27, 2009.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>7</sup> and its implementing federal regulation<sup>8</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>9</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>10</sup>

### **ANALYSIS**

The Office accepted that appellant sustained a left distal radius fracture and carpal tunnel syndrome due to an October 5, 2005 employment injury. Appellant underwent a left wrist reduction and fixation on October 7, 2005 and a repair and fusion of the left wrist on June 26, 2006. On March 7, 2007 Dr. Haber performed a left carpal tunnel release, a wrist fusion with allograft, an ulnar head excision and a removal of hardware.

On December 20, 2007 appellant requested a schedule award. She submitted an impairment evaluation dated December 19, 2007 from Dr. Haber who measured elbow pronation of 80 degrees and supination of 65 degrees which he properly determined constituted no impairment.<sup>11</sup> He properly found that appellant had 21 percent impairment due to wrist ankylosis at 5 degrees of extension and 14 percent impairment due to wrist ankylosis at 10 degrees of radial deviation.<sup>12</sup> Dr. Haber further found that she had a Grade 4 sensory impairment of the radial nerve, which he classified as 20 percent.<sup>13</sup> He properly multiplied the 20 percent graded impairment by the maximum allowed for sensory deficit of the radial nerve, 5 percent, to find 1 percent impairment. Dr. Haber added his impairment findings and concluded that

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<sup>7</sup> 5 U.S.C. § 8107.

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> 20 C.F.R. § 10.404(a).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>11</sup> A.M.A., *Guides* 474, Table 16-37.

<sup>12</sup> *Id.* at 467, 469, Figures 16-28, 16-31.

<sup>13</sup> *Id.* at 482, Table 16-10.

appellant had a 36 percent left upper extremity impairment.<sup>14</sup> The Board finds that Dr. Haber's report is in accordance with the A.M.A., *Guides* and constitutes the weight of the evidence. Consequently, appellant is entitled to a schedule award for a 36 percent left upper extremity impairment.

On January 22, 2008 an Office medical adviser reviewed Dr. Haber's report. He found that appellant had one percent impairment for loss of range of motion of wrist supination.<sup>15</sup> The Office medical adviser concurred with Dr. Haber's finding that she had 1 percent impairment for Grade 4 pain of the radial nerve.<sup>16</sup> He next determined that appellant had 22 percent impairment due to wrist arthrodesis of 10 degrees of radial deviation and 5 degrees dorsiflexion according to Figures 16-28 and 16-31 on pages 467 and 469 of the A.M.A., *Guides*. Contrary to the Office medical adviser's findings, however, ankylosis at 10 degrees of radial deviation constitutes a 14 percent impairment under Figure 16-31 on page 469 and ankylosis at 5 degrees of dorsiflexion, or extension, constitutes a 21 percent impairment under Figure 16-28 on page 467. As the Office medical adviser's report does not conform to the A.M.A., *Guides*, it is of diminished probative value.<sup>17</sup>

### CONCLUSION

The Board finds that appellant has a 36 percent permanent impairment of the left upper extremity.

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<sup>14</sup> Dr. Haber should have combined the 35 percent impairment due to loss of range of motion and the 1 percent impairment due to sensory deficit of the radial nerve; however, this error is harmless as adding and combining yield the same result.

<sup>15</sup> *Id.* at 474, Figure 16-37. The Board notes that 65 degrees of supination constitutes between zero and one percent impairment. Dr. Haber rounded up to find no impairment.

<sup>16</sup> *Id.* at 482, 492, Tables 16-10, 16-15. The Office medical adviser misread Dr. Haber's report when he determined that Dr. Haber found a 20 percent impairment of the radial nerve.

<sup>17</sup> *Mary L. Henninger*, 52 ECAB 40 8 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 4, 2008 is affirmed, as modified.

Issued: January 23, 2009  
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