

On appeal, appellant, through counsel, contends that there is an unresolved conflict in medical opinion regarding the percentage of impairment to her right upper extremity.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>1</sup> In a June 16, 2008 decision, the Board affirmed an Office hearing representative's December 11, 2006 decision which affirmed the termination of appellant's compensation benefits as of May 14, 2006. The Board found that the September 23, 2005 report of Dr. Thomas DiBenedetto, a Board-certified orthopedic surgeon and an impartial medical specialist, represented the weight of the medical evidence and supported the termination of benefits. The Board also found that appellant failed to establish that she had any continuing employment-related disability after May 14, 2006. The Board found the medical evidence insufficient to support the expansion of her claim to include the condition of bilateral diffuse sensory brachial plexopathies. The Board also affirmed the Office's April 30, 2007 decision denying her request for further merit review. The facts of the case are set forth in the Board's prior decision and are incorporated herein by reference.<sup>2</sup>

Appellant claimed a schedule award and submitted an October 28, 2008 report by Dr. Arthur Becan, an orthopedic surgeon, who provided an impairment rating of her right upper extremity. On examination, Dr. Becan noted no effusion of the right elbow and tenderness was noted along the lateral and medial epicondyle and along the posterior interosseous nerve at the dorsal aspect of the right forearm. He also found a positive Tinel's sign over the ulnar nerve. Grip strength testing performed *via* Jamar hand dynamometer at level three revealed 15 kilograms on the right versus 20 kilograms on the left. Pinch key unit testing measured four kilograms on the right versus seven kilograms on the left. Dr. Becan conducted Semmes-Weinstein monofilament testing, which indicated that diminished light-touch sensibility at 4.6 milligrams over the ulnar nerve distribution of the left hand and at 3.6 milligrams over the median nerve distribution of the left hand.

Dr. Becan advised that appellant had 15 percent right arm impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*). He cited to Table 16-10, page 482 and Table 16-15, page 492, to assign six percent sensory loss for the right ulnar nerve. Dr. Becan also assigned 10 percent impairment for right grip strength deficit, citing to Table 16-34, page 509. He stated that the combined total due to these impairment factors was 15 percent and advised that appellant reached maximum medical improvement on October 28, 2008.

On January 30, 2009 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and Office medical adviser, reviewed the medical evidence. He noted that appellant had been evaluated by Dr. DiBenedetto on September 23, 2005 who found no evidence on examination of residual lateral epicondylitis. Dr. Berman noted that both Dr. Becan and Dr. DiBenedetto revised a normal 2003 electromyogram. The Office medical adviser stated that Dr. Becan's recommendation for a Grade 2 right ulnar nerve sensory deficit was questionable as this finding

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<sup>1</sup> Docket No. 08-244 (issue June 14, 2008).

<sup>2</sup> On October 26, 2002 appellant, then a 37-year-old mail processor, filed a traumatic injury claim alleging that she sustained right carpal tunnel syndrome due to putting mail into trays on October 24, 2002. The Office accepted the claim for right upper extremity epicondylitis and tendinitis. Appellant stopped work on October 25, 2002 and was placed on the periodic rolls for temporary total disability.

was not verified by other examiners and the diagnostic studies were both normal and abnormal in the past.” Dr. Berman also noted that at section 16.8a, the fifth edition of the A.M.A., *Guides* cautioned against rating decreased strength in the presence of painful conditions that prevented effective application of maximum force to the region being evaluated.

Under Table 16-15, Dr. Berman identified the maximum impairments allowed for sensory loss (pain) and involving the ulnar nerves. For the ulnar nerve above the midforearm, a maximum seven percent was allowed. He noted that Dr. Becan had classified appellant’s sensory deficit as Grade 2 or 80 percent. Dr. Berman stated that the findings from examinations by other treating physicians supported classification as Grade 4, for which 25 percent was allowed. He rated sensory loss to the ulnar nerve by multiplying 7 percent times 25 percent to equal 1.75 percent, rounded up to 2 percent.

In an April 15, 2009 decision, the Office granted appellant a schedule award for two percent impairment of the right upper extremity.

On April 22, 2009 counsel for appellant requested an oral hearing before an Office hearing representative that was held on July 23, 2009.

In an October 15, 2009 decision, an Office hearing representative affirmed the April 15, 2009 schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act<sup>3</sup> and its implementing regulations<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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup> Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.<sup>6</sup>

### **ANALYSIS**

Appellant’s claim was accepted by the Office for right upper extremity epicondylitis and tendinitis. She received a schedule award for two percent impairment to her right arm based on

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.*

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

the accepted conditions. This rating was based on sensory loss affecting the ulnar nerve above the midforearm. The Board finds that appellant has not established greater impairment.

On appeal, appellant contends that the Office erred by failing to refer her for an impartial medical examination as there was a conflict in medical opinion between Dr. Becan, who rated a 15 percent right upper extremity impairment, and Dr. Berman, who found 2 percent impairment of the right arm.

As noted, the A.M.A., *Guides* at section 16.8 do not assign a large role to grip or pinch strength measurements as they can be influenced by subjective factors. Dr. Becan advised that appellant was able to perform routine household duties such as dishwashing, mowing, cleaning and shopping with some difficulty performing nonspecialized hand activities. He advised there was a positive Tinel's sign. Dr. Becan stated that Semmes-Weinstein monofilament testing revealed diminished light-touch sensibility over the ulnar nerve distribution of the right hand. In light of the principles found at section 16.8, he provided no explanation as to why appellant's loss of strength was not adequately considered with reference to the other methods of the A.M.A., *Guides*. Dr. Becan merely listed measurements obtained on grip and pinch strength testing. The Office medical adviser properly applied the A.M.A., *Guides* to the findings on examination and explained why he disallowed the 10 percent left pinch grip deficit rating found by Dr. Becan under section 16.8a.

The Office medical adviser also explained why he classified the extent of sensory loss under Table 16-10 as Grade 4, which allowed a sensory deficit 25 percent. As to sensory loss, Dr. Becan noted that testing revealed diminished light-touch sensibility. This corresponds to Grade 4, which is described as distorted superficial tactile sensibility (diminished light touch) with or without minimal abnormal sensations or pain. Dr. Becan noted that appellant was able to engage in routine household duties with some difficulty due to pain. The report of the examining physician did not provide any additional discussion of the relative factors that go into determining the classification of sensory loss under section 16.5. The A.M.A., *Guides* provide that the examiner must use clinical judgment to estimate the appropriate percentages of sensory or motor deficits, noting that the maximum value for each grade is not applied automatically. The report of Dr. Becan did not adequately address the factors that go to such clinical judgment when classifying appellant's sensory deficit as Grade 2, of 80 percent. He provided only a footnote reference to the tables he applied in rating impairment. Absent any discussion, Dr. Becan's impairment rating is not well rationalized.

While the report of an examining physician may be found to constitute the weight of medical opinion, such physician should clearly address the principles of the A.M.A., *Guides* in explaining how an impairment rating is reached. Absent such explanation, the Office may rely on the opinion of its medical adviser.<sup>7</sup> In this respect, Dr. Berman addressed the sensory deficit to appellant's right arm caused by the ulnar nerve above the forearm. He explained his application of Table 16-10 for classifying the extent of the sensory deficit as Grade 4, for which he allowed 25 percent. In turn, Dr. Berman identified the maximum upper extremity impairments allowed for sensory loss affecting the ulnar nerve above the midforearm. He

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<sup>7</sup> See *Tommy R. Martin* 56 ECAB 273 (2005).

explained the basis for finding 1.75 percent sensory loss to the right arm which he properly rounded up to 2 percent.<sup>8</sup>

**CONCLUSION**

The Board finds that appellant has no more than two percent impairment of her right 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 October 15, 2009 is affirmed.

Issued: December 16, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>8</sup> The policy of the Office is to round the calculated percentage of impairment to the nearest whole number. *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3b (January 2010). Fractions are rounded up from .50. *See* also *J.P.*, 60 ECAB \_\_\_\_ (Docket No. 08-832, issued November 13, 2008); 57 ECAB 563 (2006).