

FACTUAL HISTORY

On January 8, 2007 appellant, then a 54-year-old clerk, filed an occupational disease claim alleging that he sustained a right wrist condition causally related to factors of his federal employment. OWCP accepted the claim for right carpal tunnel syndrome.³ On September 18, 2007 appellant underwent a right median nerve decompression, transverse carpal ligament release and median nerve neurolysis. OWCP accepted that he sustained a recurrence of disability on September 18, 2007 and paid him wage-loss compensation. Appellant returned to modified employment on January 7, 2008.

In an impairment evaluation dated July 21, 2008, Dr. David Weiss, an osteopath, determined that appellant had 31 percent right upper extremity impairment due to a sensory deficit of the right median nerve. He applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*) in reaching his impairment rating. On September 20, 2008 appellant filed a claim for a schedule award.

On October 26, 2008 OWCP's medical adviser questioned Dr. Weiss' sensory deficit finding and recommended a referee examination.⁴ OWCP determined that a conflict in medical opinion arose between Dr. Weiss and OWCP's medical adviser regarding whether appellant had an employment-related permanent impairment. It referred him to Dr. Evangelos Megariotis, a Board-certified orthopedic surgeon, for an impartial medical examination. In a January 12, 2009 evaluation, Dr. Megariotis opined that appellant had "no physically discernible impairments or disabilities of the right hand or upper extremity function and has reached maximum attainable medial and surgical benefits." On March 25, 2009 OWCP's medical adviser concurred with Dr. Megariotis' finding that appellant had no impairment.

By letter dated September 25, 2009, OWCP requested that appellant submit an impairment evaluation in accordance with the sixth edition of the A.M.A., *Guides*. On June 4, 2010 Dr. Weiss applied the sixth edition of the A.M.A., *Guides* to the findings from his July 21, 2008 report. He noted that a February 8, 2007 electromyogram and nerve conduction study showed motor latency of the right median nerve and loss of sensation. Dr. Weiss discussed appellant's complaints of pain and stiffness of the right wrist and difficulty grasping objects. He found a positive Phalen's test and diminished sensibility to light touch over the median nerve. Dr. Weiss determined that the applicable diagnosis was entrapment neuropathy of the right median nerve at the wrist under Table 15-23 on page 449 of the A.M.A., *Guides*. He applied a grade modifier of 1 for test findings, a grade modifier of 3 for history and a grade modifier of 2 for decreased sensation on physical examination, to find an average grade modifier of 2, which yielded a default impairment value of five. Dr. Weiss found that the *QuickDASH* (Disabilities of

³ By decision dated March 5, 2007, OWCP denied appellant's claim after finding that the medical evidence was insufficient to establish that he sustained an employment-related condition. On August 22, 2007 it vacated the March 5, 2007 decision and accepted the claim for right carpal tunnel syndrome.

⁴ By decision dated October 2, 2008, OWCP terminated appellant's compensation and authorization for medical treatment effective that date. On October 7, 2008 appellant's attorney requested a telephone hearing. In a decision dated April 21, 2009, OWCP's hearing representative affirmed the October 2, 2008 decision. By decision dated January 29, 2010, OWCP denied appellant's request for reconsideration as it was insufficient to warrant reopening the case for further merit review. By decision dated May 18, 2010, OWCP denied modification.

the Arm, Shoulder and Hand) score was 45 and thus did not alter the default impairment value of five. He concluded that appellant had a right upper extremity impairment of five percent.

On August 3, 2010 OWCP's medical adviser reviewed Dr. Weiss' June 4, 2010 report and concurred with his findings.

By decision dated September 8, 2010, OWCP granted appellant a schedule award for a five percent permanent impairment of the right upper extremity. The period of the award ran for 15.6 weeks from July 21 to November 7, 2008.

On appeal, appellant's attorney argues that on September 18, 2008 he submitted Dr. Weiss' July 21, 2008 report finding a 31 percent impairment of the right arm but that OWCP did not timely issue a schedule award. He requests that OWCP grant appellant a schedule award for a 31 percent impairment.

LEGAL PRECEDENT

The schedule award provision of FECA,⁵ and its implementing federal regulations,⁶ 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, FECA 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, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.⁹ In Table 15-23, grade modifier levels (ranging from 0 to 4) are described for the categories test findings, history and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down by one percent based on functional scale, an assessment of impact on daily living activities.¹⁰

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁹ *See* A.M.A., *Guides* 449, Table 15-23.

¹⁰ *Id.*; *see also* S.H., Docket No. 10-1867 (issued April 20, 2011).

ANALYSIS

OWCP accepted that appellant sustained right carpal tunnel syndrome due to factors of his federal employment. On September 18, 2007 appellant underwent a right carpal tunnel release. In a July 21, 2008 impairment evaluation, Dr. Weiss found that appellant had a 31 percent impairment of the right upper extremity under the fifth edition of the A.M.A., *Guides*. OWCP's medical adviser disagreed with Dr. Weiss' opinion. OWCP referred appellant to Dr. Megariotis to resolve the conflict in medical opinion. On January 12, 2009 Dr. Mergariotis found that appellant had no impairment of the right upper extremity.

On June 4, 2010 Dr. Weiss submitted a revised impairment evaluation based on the sixth edition of the A.M.A., *Guides*. He discussed appellant's preoperative diagnostic studies finding motor and sensory latencies. On examination Dr. Weiss found a positive Phalen's test on examination and decreased sensation over the median nerve. He evaluated appellant's right arm under Table 15-23, relevant to determining impairments due to entrapment/compression neuropathy. Dr. Weiss applied a grade modifier of 1 for test findings, a grade modifier of 3 for history and a grade modifier of 2 for decreased sensation on physical examination. He averaged these grade modifiers to find a value of two, which yielded a default value of five percent. Dr. Weiss determined that the results of the *QuickDASH* score of 45 did not change the default value and concluded that appellant had a five percent permanent impairment of the right upper extremity. On August 3, 2010 OWCP's medical adviser concurred with Dr. Weiss' rating. The Board finds that there is no evidence conforming to the sixth edition of the A.M.A., *Guides* establishing greater right upper extremity impairment.

On appeal, counsel argued that appellant should have received a schedule award based on Dr. Weiss' impairment calculations using the fifth edition of the A.M.A., *Guides*. He asserts that the delay by OWCP in issuing a schedule award decision resulting in appellant's impairment being rated under the sixth edition of the A.M.A., *Guides*. However, OWCP issued its schedule award decision on September 8, 2010, after May 1, 2009, the effective date of the sixth edition of the A.M.A., *Guides*.

In *Harry D. Butler*,¹¹ the Board noted that Congress delegated authority to the Director regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the Director adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.¹² On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of OWCP should reflect use of the sixth edition of the A.M.A., *Guides*.¹³ The applicable date of the sixth edition is as of the schedule award decision reached. It is not determined by either the date of maximum medical improvement or when the claim for such award was filed.

¹¹ 43 ECAB 859 (1992).

¹² *Id.* at 866.

¹³ FECA Bulletin No. 09-03 (issued March 15, 2009). FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has no more than a five percent permanent impairment of the right upper extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the September 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2011
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