

**United States Department of Labor  
Employees' Compensation Appeals Board**

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D.G., Appellant )

and )

U.S. POSTAL SERVICE, SOUTHERN )  
MARYLAND PROCESSING & DISTRIBUTION )  
CENTER, Capitol Heights, MD, Employer )

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**Docket No. 12-815  
Issued: November 8, 2012**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

**JURISDICTION**

On March 5, 2012 appellant filed a timely appeal of a February 3, 2012 schedule award decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

**ISSUE**

The issue is whether appellant has more than eight percent impairment of the right arm, for which she received schedule awards.

**FACTUAL HISTORY**

On November 3, 2003 appellant, then a 52-year-old mail handler, filed an occupational disease claim alleging right carpal tunnel syndrome. OWCP accepted her claim for right carpal

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

tunnel syndrome and acquired right trigger finger. On September 9, 2004 appellant underwent surgery for right carpal tunnel syndrome of the right wrist and hand and exploration of the right ulnar nerve at the right elbow performed by Dr. Rida N. Azer, an attending Board-certified orthopedic surgeon. On November 4, 2008 Dr. Azer performed right thumb trigger deformity release.

On September 22, 2008 appellant filed a claim for a schedule award. In a September 2, 2009 medical report, Dr. Robert W. Macht, an attending general surgeon, on physical examination, listed range of motion measurements for the right wrist which demonstrated 40 degrees each of flexion and extension, 25 degrees of ulnar deviation and 10 degrees of radial deviation. The right elbow had 110 degrees of flexion and 10 degrees of extension. Appellant had pain with motion of her right wrist and elbow. She also had tenderness on palpation about the flexor wrist and medial elbow region. Scarring was noted in this area. Appellant had decreased sensation to light touch in all fingers on the right hand except the ring finger. Sensation to two-point discrimination was intact. There was no atrophy. A Tinel's sign was positive at the right wrist and elbow. A Phalen's test was also positive. The maximum strength of appellant's right hand grip was 19 kilograms using a dyanometer in position 2. Appellant had mild intrinsic muscle weakness of the right hand. Dr. Macht advised that she was status post release of the right ulnar and median nerves. He noted that a June 2004 nerve study showed evidence of right ulnar and median nerve conduction delay. Utilizing Table 15-23 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>2</sup> Dr. Macht assessed a grade 1 modifier for test findings, a grade 3 modifier for history and a grade 2 modifier for physical findings. He added these figures which totaled six points and then divided by three to calculate two which represented five percent impairment of the right arm due to ulnar nerve entrapment and five percent impairment due to median nerve entrapment. Utilizing Table 15-32,<sup>3</sup> Dr. Macht determined that appellant had three percent impairment for loss of flexion, three percent impairment for loss of extension, two percent impairment for loss of radial deviation and one percent impairment for loss of ulnar deviation of the right wrist, totaling nine percent impairment. Utilizing Table 15-33,<sup>4</sup> he determined that she had three percent impairment due to loss of flexion and two percent impairment for loss of extension of the right elbow, totaling five percent impairment. Dr. Macht combined the impairment ratings for ulnar and median neuropathy and loss of range of motion to calculate a 23 percent impairment of the right upper extremity.<sup>5</sup>

On December 5, 2009 Dr. Lawrence A. Manning, OWCP's medical adviser, reviewed the medical record, including Dr. Macht's September 2, 2009 findings. He noted that the only accepted condition was carpal tunnel syndrome and, thus, it was inappropriate for Dr. Macht to include impairment for ulnar neuropathy and elbow range of motion deficit. Dr. Manning advised that appellant had six percent impairment of the right upper extremity due to her

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<sup>2</sup> A.M.A., *Guides* 449.

<sup>3</sup> *Id.* at 473.

<sup>4</sup> *Id.* at 474.

<sup>5</sup> The Board notes that it appears Dr. Macht's combined right upper extremity impairment should be 22 percent rather than 23 percent based on the figures provided in his report.

accepted right carpal tunnel syndrome based on the sixth edition of the A.M.A., *Guides*. His opinion was based on the peripheral nerve regional grid and impairment for sensory and motor deficit, noting that flexion and extension of the right wrist was up to 40 degrees, ulnar deviation was 25 degrees and radial deviation was 10 degrees. Dr. Manning noted that Dr. Macht did not provide any abnormal findings related to appellant's accepted right trigger finger and November 4, 2008 surgery. He concluded that appellant reached maximum medical improvement on September 9, 2005.

By decision dated February 18, 2010, OWCP granted appellant a schedule award for six percent impairment of the right arm based on Dr. Manning's opinion. The period of the award ran from September 26, 2009 to February 4, 2010.<sup>6</sup>

In a July 29, 2010 decision, OWCP's hearing representative set aside the February 18, 2010 decision and remanded the case for OWCP's medical adviser to determine whether appellant sustained a right elbow ulnar nerve condition causally related to her accepted injuries and the extent of any permanent impairment due to all of her accepted employment-related conditions and authorized right elbow surgery.

On September 13, 2010 Dr. Christopher R. Brigham, a Board-certified occupational medicine specialist and OWCP's medical adviser, reviewed the medical record and advised that appellant had right elbow ulnar neuropathy. He further advised that she reached maximum medical improvement on September 9, 2005. Dr. Brigham applied Chapter 15, section 15.4f (Entrapment Neuropathy) of the sixth edition of the A.M.A., *Guides*, in particular Table 15-23 (Entrapment/Compression Neuropathy Impairment).<sup>7</sup> He agreed with Dr. Macht's finding that appellant had a grade 1 modifier for June 17, 2004 test findings of sensory and/or motor conduction delay. Dr. Brigham noted that, while postsurgical electrodiagnostic studies did not show any neuropathy on the right, the A.M.A., *Guides* stated that whether nerve conduction tests recovered to normal after surgical or nonsurgical treatment did not influence an impairment rating. He agreed with Dr. Macht's finding that appellant had a grade 3 modifier for history due to her constant symptoms. Dr. Brigham assessed a grade 3 modifier for physical findings as there was documentation of right hand sensory deficits and weakness of the intrinsics. He added the values of the grade modifiers to calculate 7 (1 + 3 + 3 = 7). Dr. Brigham divided 7 by 3 to calculate an average of 2.33 which rounded down to 2. He stated that the grade 2 modifier for right median nerve impairment represented a five percent default impairment of the upper extremity. Dr. Brigham advised that appellant's functional score seemed consistent with the default rating and no additional impairment or lower value should be assigned. He, thus, agreed with Dr. Macht's opinion that appellant had five percent impairment of the upper extremity due to median neuropathy. Dr. Brigham also agreed with Dr. Macht's opinion that she had five percent impairment of the right upper extremity due to ulnar neuropathy. He assessed grade modifier values of 1 for test findings, 3 for history and 3 for physical findings. Dr. Brigham averaged these values to arrive at 2.33, which rounded down to 2. He assigned a grade 2 modifier which represented a five percent default impairment for ulnar entrapment neuropathy.

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<sup>6</sup> The record indicates that OWCP paid appellant compensation during the stated period February 18, 2010 schedule award.

<sup>7</sup> A.M.A., *Guides* 432-33, 445-50.

Dr. Brigham noted that the A.M.A., *Guides* provided that, in the case of multiple neuropathies, the nerve qualifying for the larger impairment is given the full impairment, while the nerve qualifying for the smaller impairment is related at half the impairment listed. The impairments should be combined and if the rating ended in .5 percent, then it should be rounded to the next integer.<sup>8</sup> Dr. Brigham thus found that appellant had a total impairment of the right upper extremity due to the median and ulnar neuropathies of eight percent or five percent plus half of five percent. He concluded that no additional impairment was included for loss of range of motion of the right wrist or elbow based on section 15.7 (Range of Motion Impairment)<sup>9</sup> and section 15.4f.<sup>10</sup>

By letter dated September 30, 2010, OWCP accepted appellant's claim for right ulnar neuropathy based on Dr. Brigham's September 13, 2010 opinion.

In an October 7, 2010 decision, OWCP granted appellant an additional schedule award for two percent impairment of the right arm also based on Dr. Macht's opinion.<sup>11</sup>

On October 20, 2010 appellant requested reconsideration.

In a November 16, 2010 report, Dr. Azer and two other Board-certified orthopedic surgeons, Dr. Peter S. Trent and Dr. Hampton J. Jackson, Jr., advised that appellant had sensory nerve damage in both hands equal in medial nerve distribution as a result of her work injuries. On the left side, appellant had additional ulnar nerve sensory damage. Based on clinical examination and two-point discrimination testing confirmed by an electromyogram/nerve conduction velocity study, she had a class 2 impairment of the median nerve under Table 15-21 of the sixth edition of the A.M.A., *Guides* which represented 23 percent impairment of the entire upper extremities.<sup>12</sup> Appellant also had a class 1 sensory deficit in the ulnar nerve which represented an additional six percent impairment. In both cases, the physicians assigned grade 2 modifiers, resulting in 29 percent impairment of the left upper extremity and 23 percent impairment of the right upper extremity.

In a March 14, 2011 decision, OWCP denied modification of the October 7, 2010 decision, finding that the medical evidence submitted did not establish that appellant had more than eight percent impairment of the right upper extremity for which she had received schedule awards. It determined that the November 16, 2010 report did not provide appropriate references to pages, tables and figures of the sixth edition of the A.M.A., *Guides* or physical findings to support the 23 percent right upper extremity impairment rating.

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<sup>8</sup> *Id.* at 448.

<sup>9</sup> *Id.* at 459-61.

<sup>10</sup> *Id.* at 432-33.

<sup>11</sup> The Board notes that, although Dr. Brigham opined that appellant had eight percent impairment of the right upper extremity, she was only entitled to an additional two percent award for the right upper extremity due to her receipt of compensation under the prior schedule award.

<sup>12</sup> A.M.A., *Guides* 438.

On April 7, 2011 appellant requested reconsideration.

In an April 1, 2011 report, Drs. Azer, Trent and Jackson reiterated that there was sensory nerve damage in appellant's bilateral hands as a result of injury to the median nerve which required surgery. This sensory damage included a two-point discrimination impairment which represented a class 2 impairment with moderate sensory deficit or moderate complex regional pain syndrome (CRPS) under Table 15-21.<sup>13</sup> The physicians advised that appellant had 28 percent impairment of each upper extremity. Appellant had the same sensory damage to the ulnar nerve which was exhibited by impairment of a two-point discrimination and questionable CRPS which represented a class 1 impairment under Table 15-21. She had a grade 2 modifier in each instance. The physicians combined the 28 percent impairment ratings under the Combined Values Chart to calculate 48 percent impairment of the right upper extremity.<sup>14</sup>

On July 1, 2011 Dr. Brigham reviewed the April 1, 2011 report. He advised that his prior finding that appellant had eight percent impairment of the right upper extremity under the sixth edition of the A.M.A., *Guides* remained unchanged. Dr. Brigham stated that the panel of physicians in the April 1, 2011 report incorrectly used Table 15-21 to rate appellant's impairment. Table 15-23 for entrapment/compression neuropathies should have been used. Dr. Brigham noted that, based on section 15.4e,<sup>15</sup> Table 15-21 is used to rate impairment from traumatic injury to peripheral nerves. It is not used for nerve entrapments since they are not isolated traumatic events. As discussed in his September 13, 2010 report, Dr. Brigham stated that section 15.4f addressed how to rate various nerve conditions. He reiterated his prior impairment calculations for appellant's right upper extremity median and ulnar neuropathy. Dr. Brigham also reiterated his prior opinion that there was no additional impairment for loss of range of motion of the right wrist or elbow.

In a July 6, 2011 decision, OWCP denied modification of the March 14, 2011 decision. It found that Dr. Brigham's opinion constituted the weight of the evidence and established that appellant had no more than eight percent impairment of the right upper extremity.

By letter dated July 21, 2011, appellant requested reconsideration. She resubmitted the April 1, 2011 report from Drs. Azer, Trent and Jackson.

In a February 3, 2012 decision, OWCP denied modification of the July 6, 2011 decision. It noted that the medical evidence submitted was previously reviewed in its prior decision. OWCP, thus, found that appellant failed to submit any new medical evidence establishing that she had greater impairment than that already awarded.

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 604.

<sup>15</sup> *Id.* at 429.

## LEGAL PRECEDENT

The schedule award provision of FECA<sup>16</sup> and its implementing federal regulations<sup>17</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members, functions and organs of the body. FECA, 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>18</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>19</sup> Effective May 1, 2009, FECA adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.<sup>20</sup>

The A.M.A., *Guides* provide a specific rating process for entrapment neuropathies such as carpal tunnel.<sup>21</sup> This rating process requires that the diagnosis of a focal neuropathy syndrome be documented by sensory or motor nerve conduction studies or electromyogram. The A.M.A., *Guides* do not allow additional impairment values for decreased grip strength, loss of motion or pain.<sup>22</sup> Table 15-23 provides a compilation of the grade modifiers for test findings, history and physical findings which are averaged and rounded to the nearest whole number. This table also provides the range of impairment values as well as the function scale modifier which determines the impairment value within the impairment scale.<sup>23</sup>

## ANALYSIS

OWCP accepted that appellant sustained right carpal tunnel syndrome, acquired right trigger finger and right ulnar neuropathy due to her repetitive work duties. Appellant underwent decompression of the right carpal tunnel syndrome on September 9, 2004 and right thumb trigger deformity release on November 4, 2008. On February 18, 2010 she received a schedule award for six percent impairment of the right upper extremity. On October 7, 2010 appellant received an additional schedule award for two percent impairment of the right upper extremity, totaling

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<sup>16</sup> 5 U.S.C. § 8107.

<sup>17</sup> 20 C.F.R. § 10.404.

<sup>18</sup> *Ausbon N. Johnson*, 50 ECAB 304 (1999).

<sup>19</sup> *Supra* note 17; *Mark A. Holloway*, 55 ECAB 321, 321 (2004).

<sup>20</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>21</sup> A.M.A., *Guides* 432-50.

<sup>22</sup> *Id.* at 433.

<sup>23</sup> *Id.*

eight percent impairment. The Board finds that she did not meet her burden of proof to establish that she sustained greater impairment.<sup>24</sup>

On September 2, 2009 appellant's attending physician, Dr. Macht opined that appellant had 23 percent impairment of the right upper extremity under the sixth edition of the A.M.A., *Guides*. He incorrectly combined impairment for loss of motion with impairment due to median and ulnar entrapment neuropathy. The A.M.A., *Guides* explains that diagnosis-based impairment is the method of choice for calculating impairment, while range of motion is used principally as an adjustment factor. When other grids refer the evaluator to the range of motion section or when no other diagnosis-based system is applicable, range of motion impairment serves as a stand-alone rating, one that cannot be combined with a diagnosis-based estimate, such as impairment due to entrapment or compression neuropathy.<sup>25</sup> The Board finds, therefore, that Dr. Macht's report is insufficient to constitute the weight of the medical opinion evidence for schedule award purposes.

In impairment evaluations dated November 16, 2010 and April 1, 2011, Drs. Azer, Trent and Jackson, also attending physicians, applied Table 15-21, which is for peripheral nerve impairments.<sup>26</sup> The A.M.A., *Guides* specifically state that the peripheral nerve impairment section is not to be used for nerve entrapment.<sup>27</sup> The physicians did not explain why Table 15-21 would be appropriate in this case and therefore their opinion as to the degree of impairment is of diminished probative value. Further, the Board notes that OWCP has not accepted appellant's claim for a left upper extremity condition. Therefore, the reports from Drs. Azer, Trent and Jackson are insufficient to establish that appellant has more than eight percent impairment of the right upper extremity.

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of permanent impairment and OWCP may rely on the opinion of its OWCP medical adviser to apply the A.M.A., *Guides* to the findings of the attending physician.<sup>28</sup> Dr. Brigham, the medical adviser, reviewed the medical record on September 13, 2010 and July 1, 2011 and found that appellant had eight percent impairment of the right upper extremity. He also found that she reached maximum medical improvement on September 9, 2005. Dr. Brigham correctly stated that Drs. Azer, Trent and Jackson improperly used Table 15-21 to rate appellant's right upper extremity impairment. Applying the provisions of the sixth edition of the A.M.A., *Guides* to Dr. Macht's findings, he rated appellant's impairment due to entrapment neuropathy under Table 15-23 as diagnostic studies and clinical findings confirmed median and ulnar neuropathy. Dr. Brigham applied the appropriate formula

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<sup>24</sup> An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim. *Amelia S. Jefferson*, 57 ECAB 183, 187 (2005).

<sup>25</sup> A.M.A., *Guides* 461.

<sup>26</sup> *Id.* at 436, Table 15-21.

<sup>27</sup> *Supra* note 15.

<sup>28</sup> A.M.A., *Guides* 521. *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

of the sixth edition of the A.M.A., *Guides*, noting that appellant had a grade modifier 1 due to test findings of a conduction delay.<sup>29</sup> Appellant had a grade modifier for a history of constant symptoms.<sup>30</sup> Regarding her physical findings, Dr. Brigham noted sensory deficits and weakness also for a grade 3 modifier. Based on the A.M.A., *Guides*, appellant's final rating category is the average of these, three.<sup>31</sup> The upper extremity impairment default impairment value is five due to average grade modifiers of 2.<sup>32</sup> In cases of multiple, concurrent focal nerve compromise syndromes in the same upper extremity, such as a median and an ulnar neuropathy, the nerve qualifying for the larger impairment is given the full impairment. The nerve qualifying for the smaller impairment is given half of the impairment listed in Table 15-23. The impairments are then combined.<sup>33</sup> Dr. Brigham thus properly determined that appellant was entitled to only half the impairment for the one of the neuropathies, for a total impairment due to her median and ulnar neuropathy of eight percent.

The Board finds that Dr. Brigham properly applied the sixth edition of the A.M.A., *Guides* to the clinical findings of Dr. Macht, to rate impairment of appellant's right upper extremity. The weight of the medical evidence rests with his opinion and establishes the extent of permanent impairment in this case.

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 failed to establish that she has more than eight percent impairment of each upper extremity, for which she received schedule awards.

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<sup>29</sup> *Id.* at 449, Table 15-23.

<sup>30</sup> *Id.*

<sup>31</sup> *Supra* note 8.

<sup>32</sup> *Supra* note 29.

<sup>33</sup> *Supra* note 8.



**ORDER**

**IT IS HEREBY ORDERED THAT** the February 3, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board