

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

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**JEAN A. AMISS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Mullica Hill, NJ , Employer**

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**Docket No. 04-364  
Issued: April 9, 2004**

*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On November 24, 2003 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated April 17 and June 26, 2003, denying modification of a schedule award for a five percent permanent impairment of the left and right upper extremities. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue in this case.

**ISSUE**

The issue on appeal is whether appellant sustained greater than a five percent impairment of the left and right upper extremities, for which she received a schedule award. On appeal, appellant asserted that the Office erred by granting the weight of the medical evidence to Dr. Howard Zeidman, an impartial medical examiner, as he did not perform a neurologic examination or provide measurements for grip strength and range of motion.

## **FACTUAL HISTORY**

The Office accepted that, on or before May 21, 1999, appellant, then a 45-year-old rural letter carrier, sustained bilateral carpal tunnel syndrome requiring a right median nerve release on July 21, 1999. Appellant returned to limited duty on September 27, 1999 and to full duty on October 12, 1999.<sup>1</sup> She claimed a schedule award on approximately July 21, 2000.

Dr. David Weiss, an attending Board-certified osteopath specializing in orthopedic surgery, submitted a June 13, 2000 report finding that appellant had attained maximum medical improvement although still symptomatic bilaterally. Dr. Weiss found positive Tinel's and Phalen's signs and a positive carpal tunnel compression test on the left, with thenar atrophy and tenderness over the palmar surface on the right. Pain at the extremes of palmar flexion was observed bilaterally. He observed no sensory deficit or atrophy in the median or ulnar nerve distributions and found grip strength of 26 kilograms (kg) on the right and 18 kg on the left. Dr. Weiss calculated a 20 percent impairment of each upper extremity due to median nerve entrapment at the wrist, according to Table 16 of the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*).

The employing establishment then referred appellant to Dr. Donald F. Leatherwood, II, a Board-certified orthopedic surgeon, for a fitness-for-duty examination. In a November 13, 2000 report, Dr. Leatherwood found an "objectively normal examination" with two-point discrimination at four millimeters in each hand. Grip strength was 28 kg on the right and 22 kg on the left. Dr. Leatherwood calculated a 9.5 percent impairment of each upper extremity based on Grade 2 pain in the median nerve distribution according to Tables 11.a and 15 of the fourth edition of the A.M.A., *Guides*.

The Office noted discrepancies between the opinions of Dr. Weiss and Dr. Leatherwood and so referred appellant to Dr. Gregory S. Maslow, a Board-certified orthopedic surgeon, for a second opinion examination. In a June 19, 2001 report, Dr. Maslow noted tenderness over the volar wrist on the right, negative wrist shake and compression tests and Tinel's sign bilaterally, no "definite sensory deficit to light touch," no atrophy and intact reflexes. Dr. Maslow diagnosed carpal tunnel syndrome at maximum medical improvement equaling a 10 percent impairment of each upper extremity due to mild median nerve entrapment at the wrist according to Table 16 of the fourth edition of the A.M.A., *Guides*.

The Office then found a conflict of medical opinion between Dr. Weiss, for appellant, and Dr. Maslow, for the government, and appointed Dr. Howard Zeidman, a Board-certified orthopedic surgeon, to resolve it. In a February 11, 2002 report, Dr. Zeidman related appellant's account of worsening pain and paresthesias in both hands and wrists. On examination, Dr. Zeidman found "very slight weakness in the right hand grasp," negative Tinel's signs, no atrophy, full range of motion and "intact" sensory functions. He opined that, as his findings were similar to those observed by Dr. Maslow, appellant had attained maximum medical

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<sup>1</sup> Dr. Frederick L. Ballet, an attending Board-certified orthopedic surgeon, submitted reports through September 26, 2000 noting positive Tinel's and Phalen's signs and a positive carpal tunnel compression test on the left with continued subjective symptoms on the right. Dr. Ballet diagnosed left carpal tunnel syndrome and recommended surgical decompression, which appellant declined.

improvement as of June 19, 2001. Dr. Zeidman found that, according to the fifth edition of the A.M.A., *Guides* at page 495, appellant had a five percent permanent impairment of the left and right upper extremities as she had “good return of sensation and strength” and no “significant abnormal physical findings.”<sup>2</sup>

By decision dated June 3, 2002, the Office issued appellant a schedule award for a 10 percent impairment of the “bilateral upper extremities,” equal to 24.40 weeks of compensation. The period of the award ran from February 11 to September 17, 2002. Appellant disagreed and on June 7, 2002 requested an oral hearing, held January 23, 2003. At the hearing, appellant asserted that she should have received 31.20 weeks of compensation but was only paid 24.40 weeks. She also asserted that she had greater than a 10 percent impairment of each upper extremity.

By decision dated and finalized April 17, 2003, the Office hearing representative affirmed the June 3, 2002 schedule award, but returned the case to the Office for payment of additional compensation as appellant “should have been granted compensation for a period of 31.20 weeks as opposed to the 24.40 weeks previously awarded.”

By decision dated June 26, 2003, the Office found that appellant had been paid 31.20 weeks of compensation and was not entitled to further payments. The Office noted that the 24.40 week figure listed on the June 3, 2002 decision was a typographical error.<sup>3</sup>

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act<sup>4</sup> and its implementing regulation<sup>5</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. The Office has adopted the A.M.A., *Guides* as the appropriate standard for evaluating scheduled losses. As of February 1, 2001, the Office uses the fifth edition of the A.M.A., *Guides* to calculate new claims for a schedule award, or to recalculate prior schedule awards pursuant to an appeal, request for reconsideration, or decision of an Office hearing representative.<sup>6</sup>

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<sup>2</sup> In May 22 and 29, 2002 notes, an Office medical adviser stated that the five percent permanent impairment rating for each hand was based on postoperative subjective sensory complaints and objective weakness.

<sup>3</sup> A June 1, 2002 computation log and June 3, 2002 worksheet show that appellant was to receive 218.40 days (31.20 weeks) of compensation on the periodic rolls from February 11 to September 17, 2002 for a 5 percent impairment of each upper extremity. A percentage table of scheduled awards (Form CA-669) showed that a 10 percent of an arm was equivalent to 31.20 weeks or 218.40 days of compensation.

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404 (1999).

<sup>6</sup> See FECA Bulletin 01-05 (issued January 29, 2001) (awards calculated according to any previous edition should be evaluated according to the edition originally used; any recalculations of previous awards which result from hearings, reconsideration or appeals should, however, be based on the fifth edition of the A.M.A., *Guides* effective February 1, 2001).

Utilization of the A.M.A., *Guides* requires that a detailed description of appellant's impairment be obtained from appellant's attending physician<sup>7</sup> such that the claims examiner and others reviewing the file will be able to clearly visualize the restrictions and limitations of the impairment.<sup>8</sup> Should there be a disagreement between the claimant's physician and an examiner for the United States, section 8123 of the Act provides that the Office shall appoint a third physician who shall make an examination.<sup>9</sup> Where the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>10</sup>

### ANALYSIS

In the present case, the Office found that a conflict in the medical evidence existed between appellant's treating physician, Dr. Weiss, who opined that appellant had a 20 percent impairment of each upper extremity, and Dr. Maslow, for the government, who found a 5 percent impairment.<sup>11</sup> Accordingly, the Office referred appellant to Dr. Zeidman, a Board-certified orthopedic surgeon, for the purpose of resolving that conflict. On the basis of Dr. Zeidman's opinion, the Office determined that appellant sustained no greater than a five percent permanent impairment of each upper extremity.

The Office gave the opinion of Dr. Zeidman the special weight accorded to an impartial medical examiner. However, the Board finds that Dr. Zeidman's report is insufficient to resolve the conflict of medical opinion. The fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome is rated on motor and sensory impairments only.<sup>12</sup> While Dr. Zeidman concluded in his February 11, 2002 report that range of motion was full and sensory functions were intact, he did not provide the clinical findings on which these observations were based. Dr. Zeidman did not provide measurements for range of motion. Also, he did not list the tests he performed to determine that appellant had no sensory deficit. Therefore, Dr. Zeidman's status as an impartial medical examiner is insufficient to outweigh the lack of rationale and detail in his report.<sup>13</sup> Thus, the Board finds that Dr. Zeidman's report is insufficient to represent the weight of the medical opinion in this case.

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<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(c) (August 2002).

<sup>8</sup> *Noe L. Flores*, 49 ECAB 344 (1998).

<sup>9</sup> 5 U.S.C. § 8123(a).

<sup>10</sup> *Leanne E. Maynard*, 43 ECAB 482 (1992).

<sup>11</sup> The Board notes that Dr. Maslow improperly relied on the fourth edition of the A.M.A., *Guides* in his June 19, 2001 report as the fifth edition was in effect as of February 1, 2001. However, under the circumstances of the case, this was nondispositive error.

<sup>12</sup> A.M.A., *Guides* (5<sup>th</sup> ed.) at pp. 494-95; *Robert V. DiSalvatore*, 54 ECAB \_\_\_\_ (Docket No. 02-2256, issued January 17, 2003).

<sup>13</sup> See *Willa M. Frazier*, 55 ECAB \_\_\_\_ (Docket No. 04-120, issued March 11, 2004) (the Board found that the opinion of an impartial medical examiner was insufficient to represent the weight of the medical evidence as he cited no clinical findings to substantiate his assertions).

Accordingly, an unresolved conflict of opinion remains between the physician for the Office and appellant's treating physician regarding the percentage of permanent impairment of the upper extremities. Thus, the case must be remanded to the Office for further development, including the appointment of an impartial medical examiner, with appropriate notice to appellant, to resolve the outstanding conflict of medical opinion between Dr. Weiss and Dr. Maslow. Following this and any other necessary development, the Office shall issue an appropriate decision in the case.

As the case must be remanded for further development regarding the appropriate percentage of permanent impairment, the issue of whether appellant was paid the correct number of weeks of compensation is moot.

**CONCLUSION**

The Board finds that the case is not in posture for a decision due to an outstanding conflict of medical opinion evidence between Dr. Weiss, for appellant, and Dr. Maslow, for the government.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 26 and April 17, 2003 are set aside, and the case remanded to the Office for further development consistent with this opinion.

Issued: April 9, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member