

FACTUAL HISTORY

On June 8, 1998 appellant, then a 54-year-old general clerk, sustained an employment-related left wrist tenosynovitis.¹ On January 4, 1999 the Office accepted that she sustained an exacerbation of preexisting left carpal tunnel syndrome and on January 22, 1999 she underwent left carpal tunnel release, performed by an attending Board-certified orthopedic surgeon, Dr. James M. Lee.

On February 20, 2001 appellant filed a schedule award claim and submitted a report dated January 16, 2001, in which Dr. David Weiss, an attending Board-certified osteopath specializing in orthopedic surgery, noted appellant's subjective complaints of left wrist and hand pain and stiffness, provided examination findings of 75 degrees dorsal and palmar flexion, 20 degrees of radial deviation and 35 degrees of ulnar deviation with pain at the extremes. He found lower arm circumference to be 27 centimeters on the right and 26 centimeters on the left. Dr. Weiss noted tenderness along the palmar aspect, resisted thumb abduction of 4/5 and positive Tinel's, Phalen's and carpal compression signs. He stated that grip strength testing was performed with the Jamar Hand Dynamometer at Level 3 and revealed 42 kg of force strength on the right and 18 kg on the left. Dr. Weiss referenced the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and advised that, under Table 16, appellant had a 20 percent left upper extremity impairment due to entrapment of the median nerve.

By letter dated January 16, 2002, the Office referred appellant, along with the medical record and a statement of accepted facts to Dr. Lester Lieberman, Board-certified in orthopedic surgery, for a second opinion evaluation.

In a report dated January 31, 2002, Dr. Lieberman advised that he had examined appellant the previous day when maximum medical improvement had been reached and diagnosed status post surgery for left carpal tunnel syndrome. He stated that he evaluated her in accordance with the fifth edition of the A.M.A., *Guides* and noted examination findings of wrists 6.5 inches equal bilaterally with no atrophy and negative Tinel's and Phalen's signs. Range of motion of the elbows and shoulders was intact. Wrist dorsal and palmar flexion equaled 70 degrees, pronation and supination were intact, adduction 20 degrees and abduction 30 degrees with no atrophy of the thenar eminences, good grip strength and intact sensation. Dr. Lieberman stated that appellant's left upper extremity disability was only associated with pain in that she had no restriction of motion, decrease of strength, atrophy, ankylosis or sensory changes, but had complaints of tingling and pain at night. He then referenced page 495 of A.M.A., *Guides* which provides guidance for evaluating carpal tunnel syndrome and concluded that appellant had a five percent left upper extremity impairment.

In a report dated July 4, 2002, an Office medical adviser agreed with Dr. Lieberman's conclusion.² By decision dated August 22, 2002, appellant was granted a schedule award for a 5

¹ The record also indicates that on March 18, 1996 appellant sustained an employment-related left wrist sprain,

² The Office medical adviser also provided a comment concerning Dr. Weiss' examination that is illegible.

percent impairment of the left upper extremity, for a total of 15.6 weeks of compensation, to run from January 30 to May 19, 2002.

On September 4, 2002 appellant, through counsel, requested a hearing that was held on April 8, 2003. At the hearing she described the condition of her hands and wrists and her attorney argued that a conflict in medical opinion existed between the reports of Dr. Lieberman and Dr. Weiss. In a decision dated July 2, 2003, an Office hearing representative affirmed the schedule award decision. The hearing representative specifically found that there was not a conflict in medical opinion because none of the findings reported by Dr. Weiss appeared “to be of a nature that would conflict with Dr. Lieberman’s findings such that it would impact the rating in accordance with the fifth edition of the A.M.A., *Guides*’ procedures.”

LEGAL PRECEDENT

Under section 8107 of the Federal Employees’ Compensation Act³ and section 10.404 of the implementing federal regulation,⁴ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*⁵ has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁶ Chapter 16 provides the framework for assessing upper extremity impairments.⁷

Regarding carpal tunnel syndrome, the A.M.A., *Guides* provide that:

“If, after an *optimal recovery time* following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present:

1. Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual CTS is rated according to the sensory and/or motor deficits as described earlier.
2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal electromyogram testing of the thenar muscles:

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁶ See *Joseph Lawrence, Jr.*, *supra* note 5; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁷ A.M.A., *Guides* at 433-521.

a residual CTS is still present and an impairment rating not to exceed five percent of the upper extremity may be justified.

3. Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating.”⁸

ANALYSIS

In the case at hand, appellant received a schedule award for a five percent permanent impairment of the left upper extremity based on the evaluation of Dr. Lieberman, a second opinion examiner.

Office procedures direct the use of the fifth edition of the A.M.A., *Guides* for schedule awards determined on and after February 1, 2001.⁹ In this case, appellant filed her claim for a schedule award February 20, 2001, after the effective date of the fifth edition. While she submitted a medical report dated January 16, 2001, from Dr. Weiss, he provided analysis under the fourth edition of the A.M.A., *Guides*.

Dr. Lieberman, the Office referral physician, however, provided a comprehensive report in which he described his examination findings, applied the fifth edition of the A.M.A., *Guides* and correctly advised that appellant’s range of motion findings were normal and, therefore, insufficient to establish an impairment rating. He noted appellant’s complaints of tingling and pain at night and referenced page 495 of A.M.A., *Guides* which provides guidance for evaluating carpal tunnel syndrome and concluded that appellant had a five percent left upper extremity impairment. The Board, therefore, finds that as Dr. Lieberman provided a basis for his impairment rating and referenced the proper section of the fifth edition of the A.M.A., *Guides* which provides analysis for carpal tunnel syndrome. His report establishes that appellant is not entitled a schedule award for her left upper extremity of greater than five percent.

Finally, the Board agrees with the Office hearing representative that, as Dr. Weiss provided analysis under the fourth edition of the A.M.A., *Guides* rather than the correct edition, the fifth, his report is insufficient to establish that a conflict in medical evidence is present.¹⁰

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she has greater than a five percent permanent impairment of the left upper extremity.

⁸ *Id.* at 495.

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.803(6) (August 2002); see *Joseph Lawrence, Jr., supra* note 5.

¹⁰ The Board notes that appellant retains the right to file a claim for an increased schedule award based on new exposure or on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 2, 2003 be affirmed.

Issued: December 27, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member