

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

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**CAROL E. BROWNING, Appellant**

**and**

**U.S. DEPARTMENT OF LABOR, MINE  
SAFETY & HEALTH ADMINISTRATION,  
Mount Hope, WV, Employer**

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**Docket No. 04-1  
Issued: July 26, 2004**

*Appearances:*  
*Carol E. Browning, pro se*  
*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 September 25, 2003 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated April 2 and July 17, 2003 denying her request for modification of a December 5, 1997 schedule award for a 10 percent permanent impairment of the right and left upper extremities. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue on appeal is whether appellant sustained greater than a 10 percent impairment of the right and left upper extremities, for which she received a schedule award.

**FACTUAL HISTORY**

The Office accepted that on or before September 9, 1993 appellant, then a 47-year-old secretary, sustained bilateral carpal tunnel syndrome in the performance of duty. Appellant underwent a median nerve release on the left on June 6, 1994 and on the right on

November 10, 1994. She subsequently claimed a schedule award and was referred to Dr. Paul Bachwitt, a Board-certified orthopedic surgeon and second opinion physician, who in a June 20, 1997 report found a 10 percent impairment of each upper extremity due to mild median nerve entrapment according to Table 16, page 57 of the fourth edition of the American Medical Association's, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>1</sup> By decision dated December 5, 1997, the Office issued appellant a schedule award for a 10 percent permanent impairment of the right and left upper extremities.

Following a January 26, 1999 diagnosis of recurrent bilateral carpal tunnel syndrome, appellant underwent a repeat median nerve release on the right on May 20, 1999 and on the left on June 24, 1999. She then filed a claim for an additional schedule award. The Office referred her to Dr. Manjula Narayan, a Board-certified physiatrist, who submitted an October 17, 2000 report finding a 10 percent impairment of each upper extremity due to mild median nerve entrapment. By decision dated April 24, 2001, the Office denied appellant's claim for an increased schedule award. Appellant requested an oral hearing on May 23, 2001 later changing her request to a review of the written record. She did not submit additional evidence. By decision dated and finalized May 9, 2002, an Office hearing representative affirmed the April 24, 2001 decision.

Appellant requested reconsideration on February 6, 2003 and submitted an August 22, 2002 report from Dr. Clifford H. Carlson, an attending Board-certified physiatrist. On August 5, 2002 examination Dr. Carlson found decreased cutaneous sensation in the right forearm, bilaterally positive Tinel's and Phalen's signs, grip strength of 20 kilograms (kg) on the left and 12 kg on the right, bilaterally reduced wrist motion,<sup>2</sup> sensory impairment of the right middle finger and thumb and left index, middle finger and thumb and diminished "two-point discrimination for the right middle finger and right thumb." Dr. Carlson stated that, according to Table 16, page 57 of the fourth edition of the A.M.A., *Guides*, appellant had a 10 percent impairment of the left upper extremity and a 15 percent impairment of the right upper extremity for median nerve entrapment evidenced by diminished grip strength and sensory loss.

In a March 23, 2003 report, the Office medical adviser found that Dr. Carlson's report was insufficient to increase the prior schedule award as he relied on the fourth edition of the A.M.A., *Guides* instead of the fifth edition in effect as of February 21, 2001. The Office medical adviser stated that Dr. Carlson's history and findings could not be extrapolated into a rating under the fifth edition of the A.M.A., *Guides* as the sensory impairment rating was not based on Table 16-10 of the fifth edition of the A.M.A., *Guides*.<sup>3</sup> By decision dated April 2, 2003, the Office denied modification of the prior schedule award.

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<sup>1</sup> Table 16, page 57 of the fourth edition of the A.M.A., *Guides* is entitled "Upper Extremity Impairment Due to Entrapment Neuropathy."

<sup>2</sup> On the right, Dr. Carlson found 40 degrees dorsiflexion, 30 degrees palmar flexion, 20 degrees ulnar deviation, and 30 degrees radial deviation. On the left, Dr. Carlson found 50 degrees dorsiflexion, 35 degrees palmar flexion, 20 degrees ulnar deviation and 15 degrees radial deviation.

<sup>3</sup> Table 16-10, page 482 of the fifth edition of the A.M.A., *Guides* is entitled "Determining Impairment of the Upper Extremity Due to Sensory Deficits or Pain Resulting From Peripheral Nerve Disorders."

Appellant again requested reconsideration on April 22, 2003 and submitted an April 17, 2003 report from Dr. Carlson applying Tables 16-10, 16-11<sup>4</sup> and 16-15<sup>5</sup> of the fifth edition of the A.M.A., *Guides* to his August 5, 2002 findings. Regarding the left upper extremity, Dr. Carlson found a Grade 4 motor deficit according to Table 16-11, equaling a 10 percent maximum motor deficit from the median nerve according to Table 16-15. Dr. Carlson then multiplied the maximum value of 25 percent for the median nerve by 10 percent to derive a 2.5 percent impairment of the left upper extremity for reduced grip strength, which he rounded up to 3 percent. Dr. Carlson found a Grade 3 or 33 percent sensory deficit of both upper extremities based on “two-point discrimination findings” of “6 to 8 mm [millimeter] for the median nerve innervated fingers of the right hand and 7 to 8 mm for the median nerve innervated fingers of the left hand. This is applied to a maximum of 39 percent upper extremity impairment for sensory deficit regarding the median nerve,” resulting in a 13 percent impairment of each upper extremity due to loss of sensation. Using the Combined Values Chart, Dr. Carlson combined the 13 percent sensory and 3 percent motor deficits for the left upper extremity to equal 15 percent. Dr. Carlson found a 13 percent right upper extremity impairment for sensory deficit.

On April 30, 2003 an Office medical adviser questioned the two-point discrimination findings included in his April 17, 2003 recalculation as there was no evidence he performed such testing during his August 5, 2002 examination.

By decision dated July 17, 2003, the Office denied modification of the previous decision on the grounds that Dr. Carlson’s April 17, 2003 report did not properly utilize the A.M.A., *Guides*. The Office found that the weight of the medical evidence continued to rest with the rating of the Office medical adviser.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act<sup>6</sup> and its implementing regulation<sup>7</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, all new schedule awards are based on the fifth edition of the A.M.A., *Guides*. Also, as of February 1, 2001, any recalculation of a previous schedule award pursuant to an appeal, request for reconsideration, or decision of an Office hearing

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<sup>4</sup> Table 16-11, page 484 of the fifth edition of the A.M.A., *Guides* is entitled “Determining Impairment of the Upper Extremity Due to Motor and Loss-of-Power Deficits Resulting From Peripheral Nerve Disorders Based on Individual Muscle Rating.”

<sup>5</sup> Table 16-15, page 492 of the fifth edition of the A.M.A., *Guides* is entitled “Maximum Upper Extremity Impairment Due to Unilateral Sensory or Motor Deficits or to *Combined* 100 percent Deficits of the Major Peripheral Nerves.” (Emphasis in original).

<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404 (1999).

representative, is based on the fifth edition of the A.M.A., *Guides* regardless of the date of the medical examination.<sup>8</sup>

### ANALYSIS

In this case, the Office issued two decisions denying appellant's requests for an increased schedule award beyond the 10 percent awarded for each upper extremity on December 5, 1997. By decision dated April 2, 2003, the Office found that an August 22, 2002 report from Dr. Carlson, an attending Board-certified physiatrist, was insufficient to warrant modification of the December 5, 1997 schedule award as it was based on the fourth edition of the A.M.A., *Guides* and not the fifth edition. As medical opinions not based on the appropriate edition of the A.M.A., *Guides* are of diminished probative value, the Office properly afforded the report lesser probative value.<sup>9</sup> The Board also notes that Dr. Carlson based his August 22, 2002 impairment rating in part on diminished grip strength resulting from compression neuropathy of the median nerve. However, the fifth edition of the A.M.A., *Guides* and the Office's procedures provide that in compression neuropathies, additional impairment values are not given for decreased grip strength.<sup>10</sup> Also, Dr. Carlson's findings regarding sensory loss were not sufficiently detailed to allow the Office medical adviser to extrapolate a percentage of impairment under the fifth edition of the A.M.A., *Guides*.

Appellant then submitted an April 17, 2003 report from Dr. Carlson, applying Table 16-10 of the fifth edition of the A.M.A., *Guides* to his August 5, 2002 clinical findings, noting that two-point discrimination at 6 to 8 mm on the right and 7 to 8 mm on the left equaled 13 and 15 percent permanent impairments of the right and left upper extremities respectively. The Office medical adviser questioned whether Dr. Carlson performed two-point discrimination testing during the August 5, 2002 examination and the Office issued its July 17, 2003 decision denying modification of its prior decision. The Board notes, however, that Dr. Carlson stated in his August 22, 2002 report, that he found diminished "two-point discrimination for the right middle finger and right thumb," indicating that he did perform two-point discrimination testing on the right hand. However, he did not include the measurements obtained from that testing in

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<sup>8</sup> *Id.* 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). See also FECA Tr. No. 02-12 (issued August 30, 2002) (all permanent impairment awards determined on or after February 1, 2001, should be based on the fifth edition of the A.M.A., *Guides*, first published in 2001). See also *Stanley B. Klitenic* (Docket No. 02-216; issued June 5, 2002) (citing FECA Bulletin 01-05 in holding that as of February 1, 2001, any recalculation of a previous schedule award is based on the fifth edition of the A.M.A., *Guides*).

<sup>9</sup> See *Carolyn E. Sellers*, 50 ECAB 393, 394 (1999) (medical opinion not based on the appropriate edition of the A.M.A., *Guides* has diminished probative value in determining the extent of a claimant's permanent impairment).

<sup>10</sup> *Silvester DeLuca*, 53 ECAB \_\_\_\_ (Docket No. 01-1904, issued April 12, 2002); A.M.A., *Guides* (5<sup>th</sup> ed.), Chapter 16 -- *The Upper Extremities* at page 494 ("In compression neuropathies, additional impairment values are not given for decreased grip strength."); Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Use of Fifth Edition of A.M.A., Guides to the Evaluation of Permanent Impairment*, Chapter 3.700.3 (FECA Tr. 03-01, June 2003) (noting that the fifth edition of the A.M.A., *Guides* "clearly states that 'in compression neuropathies, additional impairment values are not given for decreased grip strength' page 494)."

his August 22, 2002 report. Thus, there is insufficient contemporaneous evidence to substantiate those measurements or those offered for the left hand.<sup>11</sup> Therefore, the Office properly found that Dr. Carlson's April 17, 2003 report was insufficient to warrant modification of the December 5, 1997 schedule award.

**CONCLUSION**

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained greater than a 10 percent impairment of each upper extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 17 and April 2, 2003 are affirmed.

Issued: July 26, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>11</sup> The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence; *see Eileen R. Kates*, 46 ECAB 573 (1995); *see Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).