



March 19, 2002. The Office subsequently expanded the claim to include bilateral wrist tendinitis.<sup>2</sup>

In a report dated June 19, 2002, Dr. Mitchell L. Goldflies, an attending Board-certified orthopedic surgeon, concluded that appellant had a 21 percent impairment of the left upper extremity. In reaching this conclusion, he reported 30 degrees of radial deviation, 34 degrees of ulnar deviation, 80 degrees of dorsi-flexion and 80 degrees of palmar flexion. Dr. Goldflies included a 20 percent impairment of the arm due to pain, atrophy, weakness or discomfort. In a report dated June 19, 2002, he<sup>3</sup> concluded that appellant had a 23 percent impairment of the right upper extremity. In reaching this conclusion, Dr. Goldflies reported 28 degrees of radial deviation, 30 degrees of ulnar deviation, 80 degrees of dorsi-flexion and 80 degrees of palmar flexion. Dr. Goldflies included a 20 percent impairment of the arm due to pain, atrophy, weakness or discomfort.

The record also contains a June 19, 2002 disability evaluation by Margaret Houltz, a physical therapist, who reported findings using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*). She concluded that appellant had a combined left upper extremity impairment of 21 percent and a combined right upper extremity impairment of 23 percent.

Appellant filed a claim for a schedule award on June 25, 2002.

In a November 13, 2002 report, Dr. Richard H. Sidell, Jr., a second opinion Board-certified orthopedic surgeon, reported:

“No swelling, no inflammation, no discoloration and no change in normal skin appearance. Range of motion of all joints including elbow, wrist and finger joints was considered within normal limits bilaterally. The areas of tenderness as defined by [appellant] were specifically evaluated and were nontender with the exception of very minimal tenderness to palpation over the first dorsal compartment bilaterally. Finkelstein Test was negative. Sensory examination is within normal limits. Motor examination was with normal limits with no visible sign of atrophy. There is a negative Tinnel (sic) Sign over the carpal tunnel and over the ulnar distally and at the elbow.”

In a memorandum dated March 10, 2003, the Office medical adviser reviewed the reports by Drs. Goldflies and Sidell. Relying upon the physical examination performed by Dr. Sidell, the Office medical adviser calculated that appellant had a one percent impairment for the right

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<sup>2</sup> In a letter dated July 22, 2002, the Office informed appellant that it was combining her claim No. 10-2004845 and 10-2006308 with the claim No. 10-2004845 as the master number. Claim No. 10-2006308 was accepted by the Office for a right wrist condition.

<sup>3</sup> There is no signature on this form, but the handwriting is similar to the report for the left upper extremity.

upper extremity and a one percent impairment of the left upper extremity pursuant to the (A.M.A., *Guides*). In reaching this calculation, the Office medical adviser stated:

“There was no significant tenderness except for mild discomfort over the first dorsal compartment in both wrist (sic) awarding 1 percent right and left upper extremity [permanent partial impairment] for [G]rade 4 pain in the distribution of the dorsal branch of the radial sensory nerve according to [T]able 16-15, [page] 492 and [T]able 16-10, page 482 of the A.M.A., *Guides* 5<sup>th</sup> edition.”

The Office medical adviser noted a negative Finkelstein’s test and a negative Tinel’s sign at the wrist and elbow and a normal electromyogram. In concluding, he estimated the date of maximum medical improvement as November 13, 2002, the date of Dr. Sidell’s report.

On June 12, 2003 the Office granted appellant a schedule award for a one percent impairment of the right upper extremity and a one percent impairment of the left upper extremity.

### **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 impairment from loss or loss of use, of scheduled members or functions of the body. The Act, however, 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 to 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*<sup>6</sup> has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>7</sup>

### **ANALYSIS**

The September 15, 2003 schedule award for impairment of appellant’s left and right upper extremities was based on the Office medical adviser’s March 10, 2003 report. The Office medical adviser reviewed the relevant medical evidence, including reports from Dr. Goldflies, appellant’s orthopedic surgeon, who found that she had a 21 percent impairment of the left upper extremity and a 23 percent impairment of the right upper extremity and June 19, 2002 report by Dr. Sidell, a second opinion Board-certified orthopedic surgeon.

Dr. Goldflies, appellant’s attending Board-certified orthopedic surgeon, examined her and detailed his findings in a report dated June 19, 2002. The record also contains a report by

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> 20 C.F.R. § 10.404 (2001).

<sup>6</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB \_\_\_\_ (Docket No. 01-1361, issued February 4, 2002).

<sup>7</sup> *Ronald R. Kraynak*, 53 ECAB \_\_\_\_ (Docket No. 00-1541, issued October 2, 2001).

Ms. Houltz, a physical therapist, who reported findings using the A.M.A., *Guides* and which Dr. Goldflies adopted in determining appellant's impairment rating. Dr. Sidell, the Office referral physician, also examined appellant. He detailed his findings in a report dated November 13, 2002. The record thus, contained evaluations from two physicians within a span of five months. The Office medical adviser reviewed these reports and found that appellant had a one percent impairment of the right upper extremity and a one percent impairment of the left upper extremity. While he referred to Dr. Sidell's physical findings in his report and noted the date of maximum medical improvement as the date of Dr. Sidell's report, he did not provide any rationale for selecting one report over the other.<sup>8</sup> The Board will, therefore, set aside the Office's September 29, 2003 decision and remand the case for clarification by the Office medical adviser of which report he used to calculate appellant's impairment and how he applied the A.M.A., *Guides* to the specific findings of that report to arrive at a one percent impairment of the right upper extremity and a one percent impairment of the left upper extremity or, alternatively, for another evaluation of appellant's impairment in strict accordance with the A.M.A., *Guides*.<sup>9</sup>

### CONCLUSION

The Board finds that this case is not in posture for a decision.

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<sup>8</sup> See *Irving Brichke*, 32 ECAB 1044 (1981) (the Office medical adviser provided no rationale for selecting one evaluation of the four that were conducted within a span of five months); *John C. Messick*, 25 ECAB 333 (1974) (when several audiograms are in the case record and all are made within approximately two years of one another and are submitted by more than one physician, the Office should give an explanation for selecting one audiogram over the others).

<sup>9</sup> See generally Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6 (August 2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 15, 2003 is hereby set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: May 21, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member