



appellant underwent a left endoscopic carpal tunnel release. In a medical report dated November 25, 2002, Dr. Earl J. Foster, her treating Board-certified orthopedic surgeon, indicated that she had a full range of motion following her left carpal tunnel release and that her preoperative pain and paresthesias had resolved. However, he noted that electrical studies demonstrated that appellant had moderately severe right-sided carpal tunnel syndrome. On March 7, 2003 the Office authorized right carpal tunnel release surgery, which was performed on April 8, 2003.

On May 20, 2003 appellant filed a claim for a schedule award. By letter dated June 5, 2003, the Office informed her that her claim for a schedule award could not be considered at this time as there was no evidence that she had reached maximum medical improvement.

In a medical report dated July 7, 2003, Dr. Foster indicated that appellant had an excellent result after her right carpal tunnel release, that her preoperative symptoms have completely subsided and that she had full range of motion in her hand. In a work capacity evaluation completed on July 15, 2003, Dr. Foster indicated that maximum medical improvement had been reached and that appellant was capable of performing her usual job. On July 18, 2003 he indicated that appellant could return to work with no restrictions.

On July 28, 2003 appellant filed another claim for a schedule award. By letter dated August 11, 2003, the Office asked Dr. Foster to submit an impairment rating for her upper extremities resulting from carpal tunnel syndrome. Appellant was sent a copy of this letter. The letter was returned with an unsigned note indicating that "Dr. Foster does not and will not assign an impairment rating. Patient needs to be referred out for [a medical examination]."

By decision dated December 17, 2003, the Office denied appellant's claim for a schedule award because the necessary medical evidence had not been submitted. In this decision, the Office indicated that it had notified appellant by letter dated August 11, 2003 of the necessary evidence that was needed to support her claim, but that no further evidence was received.

In a July 7, 2003 note received on December 18, 2003, Dr. Foster reiterated that appellant's preoperative symptoms had completely subsided, that she had a full range of motion in her hand and was discharged. In an August 11, 2003 note, submitted with the July 7, 2003 note, Dr. Foster indicated that he did not do impairment ratings, that appellant's preoperative symptoms had completely subsided and that she reached maximum medical improvement on July 7, 2003.

Nerve conduction studies were performed on February 10, 2004 by Dr. Carl F. McComas, a Board-certified neurologist. He indicated that both median sensory nerve action potential latencies and the distal motor latencies were prolonged. Dr. McComas stated that the study was consistent with bilateral carpal tunnel syndrome. He further indicated that the right median conduction studies were improved compared to the prior study of November 19, 2002.

On April 28, 2004 appellant filed another claim for a schedule award. This was treated by the Office as a request for reconsideration.

By decision dated June 7, 2004, the Office reviewed appellant's denied modification of the December 17, 2003 decision, finding that no medical opinion in the file supported that she

had any permanent impairment to her upper extremities as a result of the accepted condition of bilateral carpal tunnel syndrome and subsequent treatment.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for permanent impairment of the scheduled member or function. A claimant seeking a schedule award under section 8107, therefore, has the burden to establish that she sustained a permanent impairment of a schedule member or function as a result of an injury sustained while in the performance of duty.<sup>1</sup>

### **ANALYSIS**

The Office accepted appellant's claim for bilateral carpal tunnel syndrome. As she seeks a schedule award in this case appellant has the burden to establish that her carpal tunnel syndrome caused a permanent impairment of a scheduled member or function. The Board finds that she has not met her burden of proof.

The record in this case contains no medical opinion affirmatively supporting that appellant's accepted condition of carpal tunnel syndrome caused a permanent impairment of a scheduled member or function. In an August 11, 2003 note, Dr. Foster indicated that he did not do impairment ratings but that appellant's preoperative symptoms had completely subsided and that she had reached maximum medical improvement. He had previously noted in a July 7, 2003 note that appellant had full range of motion in her hand. No other physician indicates that appellant has any residual disability due to her carpal tunnel syndrome. Accordingly, as Dr. Foster's opinion indicates that appellant has no continuing residuals from her employment-related condition and as there is no medical opinion to the contrary, his opinion constitutes the weight of the medical evidence and establishes that the residuals of appellant's work-related carpal tunnel syndrome have resolved without impairment.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she has a permanent impairment of a scheduled member or function causally related to her accepted condition of carpal tunnel syndrome.<sup>2</sup>

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<sup>1</sup> See, e.g., *Ernest P. Govednik*, 27 ECAB 77 (1975) (no medical evidence that the employment injury caused the claimant to have a permanent loss of use of a leg or any other member of the body specified in the schedule).

<sup>2</sup> Appellant submitted additional evidence after the Office's June 7, 2004 decision. The Board's review is limited to evidence that was before the Office at the time it issued its final decision. See *Robert D. Clark*, 48 ECAB 422, 428 n.6 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 7, 2004 and December 17, 2003 are affirmed.

Issued: July 26, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board