



Taras, a Board-certified orthopedic surgeon, selected to resolve a conflict in medical opinion, constituted the weight of the medical evidence. He found that appellant had no further disability for work or injury-related residuals after March 24, 2002, causally related to her December 26, 1998 accepted employment injury. The facts and the circumstances of the case are presented in this prior decision and are hereby incorporated by reference. As relevant to this appeal, the conflict in medical opinion arose between appellant's physician, Dr. Scott M. Fried, a Board-certified neurologist, and Dr. Richard J. Mandel, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion evaluation. The issue in dispute was whether she had residuals from her accepted employment-related injury. The Office referred appellant to Dr. Taras, who in a report dated November 29, 2001, determined that appellant had fully recovered from the effects of the employment injury.

By letter dated January 2, 2002, the Office issued a notice of proposed termination of compensation benefits. In a decision dated February 12, 2002, the Office finalized the termination of compensation and medical benefits.

On April 13, 2004 appellant, by her representative, filed a request for a schedule award, and submitted a report dated January 29, 2004 from Dr. David Weiss, a Board-certified osteopath, who provided his findings on examination and a history of appellant's condition. He reviewed the medical records, including diagnostic test results. Dr. Weiss diagnosed post-traumatic radial tunnel syndrome of the left forearm; chronic post-traumatic extensor tendinitis of the left wrist; and mild deQuervainisteno synovitis of the left wrist. He opined that appellant's date of maximum medical improvement was January 29, 2004.

Objective factors of continuing injury-related disability included exquisite tenderness over the radial tunnel. Dr. Weiss reported that the long finger extension sign was positive. Range of motion of the left wrist revealed dorsiflexion and palmar flexion of 0-75/75 degrees; radial deviation of 0-20/20 degrees; and ulnar deviation of 0-35/35 degrees. The Watson shift test and the TFCC provocative, load and metacarpal tests were negative. Examination revealed no tenderness over the APL and EPB. Finkelstein's test was mildly positive. A sensory examination revealed a perceived sensory deficit over the radial nerve distribution involving the left forearm into the left hand, but no sensory deficit over the median or ulnar nerve.

Referring to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2000),<sup>2</sup> Dr. Weiss calculated that appellant had a 10 percent left grip strength deficit, pursuant to Table 16-34, page 509; a 28 percent sensory deficit involving the left radial nerve, pursuant to Table 16-15, page 492 and Table 16-10, page 482; and a 3 percent combined left upper extremity pain-related impairment, pursuant to Figure 18-1, page 574. Using the combined values of left upper extremity, appellant resulted in having a 35 percent permanent impairment, which when added to a 3 percent impairment for pain, resulted in a 38 percent total left upper extremity impairment, with a date of maximum medical improvement noted as January 29, 2004. Dr. Weiss opined that the work-related injury of December 26, 1998 was the competent producing factor for her subjective and objective findings.

---

<sup>2</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

By decision dated May 12, 2004, the Office denied appellant's request for a schedule award, based on the report of Dr. Taras who found that appellant no longer had residuals or any permanent impairment as a result of the work injury.

On May 17, 2004 appellant, by her representative, submitted a request for an oral hearing. At the February 14, 2005 hearing, counsel argued that the report of the impartial medical examiner should not represent the weight of medical evidence in that his opinion was rendered as a result of a conflict regarding the issue of whether appellant had residuals from the accepted injury, not for purposes of a schedule award. He also contended that Dr. Weiss was the only physician who had provided an impartial opinion under the A.M.A., *Guides*.

By decision dated May 11, 2005, the Office hearing representative affirmed the May 12, 2004 decision denying appellant's claim for a schedule award.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>3</sup> The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>4</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>5</sup>

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background, must be given special weight.<sup>6</sup>

### **ANALYSIS**

Dr. Taras, a Board-certified orthopedic surgeon, selected as the impartial medical specialist, provided a comprehensive report dated November 29, 2001 in which he found that appellant had no residual medical condition causally related to the December 26, 1998 employment injury. Based on his examination and physical findings, the Office properly denied appellant's request for a schedule award for a permanent impairment causally related to the employment injury.

---

<sup>3</sup> 5 U.S.C. § 8107(a), (c).

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); FECA Bulletin No. 01-05 (issued January 29, 2001). *See also Brent A. Barnes*, 56 ECAB \_\_\_\_ (Docket No. 04-2025, issued February 15, 2005).

<sup>6</sup> *Elaine Sneed*, 56 ECAB \_\_\_\_ (Docket No. 04-2039, issued March 7, 2005); *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

After the prior appeal, appellant filed a claim for a schedule award based on the January 29, 2004 report from Dr. Weiss. Dr. Taras had been appointed to resolve the conflict in medical evidence between Dr. Fried and Dr. Mandel. He accomplished this objective by providing a well-rationalized medical report establishing that appellant had fully recovered from the effects of her employment injuries. Dr. Taras reported a “normal objective examination;” saw no swelling, atrophy, skin lesions, ecchymosis, scar, deformity or palpable masses; and found no abnormal warmth, joint instability, or triggers. Tinel’s, Phalen’s, and Finkelstein’s tests were negative. Dr. Taras provided an impression of “subjective left upper extremity pain” and opined to a reasonable degree of medical certainty that appellant was not suffering from an ongoing work injury. On September 23, 2003 the Board accepted Dr. Tara’s findings when it affirmed the Office’s decision finding no residuals.

Dr. Weiss examined appellant on January 29, 2004, almost two years after the effective date of termination of compensation. Although Dr. Weiss stated that he found objective evidence of permanent impairment in determining that appellant had a 38 percent total impairment of her left upper extremity, he did not provide any explanation as to why the impairments he found were caused by the December 26, 1998 employment injury. Dr. Weiss’ comments with regard to the cause of the impairment are limited to the conclusory statement, “the work-related injury of December 26, 1998 was the competent producing factor for the claimant’s subjective and objective findings of today.” Dr. Weiss’ report lacks probative value in that it fails to provide a rationalized medical opinion regarding the relationship between the December 26, 1998 employment injury and appellant’s current condition.<sup>7</sup> Moreover, the impairments rated by Dr. Weiss do not conform with the protocols of the A.M.A., *Guides*. He rated grip strength under Table 16.34 without discussion of why such loss of strength should be rated separately under the principles discussed at 16.8a. Dr. Weiss also found a 28 percent impairment for sensory loss under Table 16-15 which provides a maximum for sensory deficit of the radial nerve of five percent. Additionally, he rated pain under Table 18-1, which is not in conformance with FECA Bulletin 01-05 without explanation as to why the sensory deficit tables under Chapter 16 were not adequate. In contrast, in a detailed and rationalized report, Dr. Taras opined that appellant had fully recovered from her employment injuries. The Board finds that the report of Dr. Taras continues to represent the weight of the evidence, establishing that appellant does not have residuals of the December 26, 1998 injury and, therefore, suffers no permanent impairment. The Board finds Dr. Weiss’ report insufficient to overcome the special weight accorded to the report of the impartial medical examiner.

### CONCLUSION

Appellant has not met her burden of proving that she has a permanent impairment of a scheduled member of the body that is causally related to her December 26, 1998 employment injury.

---

<sup>7</sup> See *Mary A. Ceglia*, 55 ECAB \_\_\_\_ (Docket No. 04-113, issued July 22, 2004); *Albert C. Brown*, 52 ECAB 152 (2000) (a medical opinion not fortified by rationale is of diminished probative value).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 11, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

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