

In a report dated May 4, 1999, Dr. Robert L. Shackleton, a Board-certified orthopedic surgeon, indicated that he had performed a release of the tendons of the right wrist on January 29, 1999. On November 21, 2000 the Office requested that he provide an opinion regarding the extent of any permanent impairment. Dr. Shackleton did not respond to the Office's request. By decision dated September 19, 2002, the Office denied appellant's claim for a schedule award.

On July 3, 2003 appellant filed a claim for a schedule award. By letter dated July 25, 2003, the Office requested that Dr. Shackleton provide an opinion regarding the extent of any permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

In a report dated September 9, 2003, Dr. Shackleton discussed appellant's right shoulder and right hand complaints. On examination he found "some tenderness about the metacarpal phalangeal (MCP) joint and carpal metacarpal (CMC) joint of the right thumb" with no loss of sensation or "atrophy of the thenar eminence." In an accompanying form, Dr. Shackleton indicated that she had a five percent permanent impairment of the right upper extremity due to decreased strength.

An Office medical adviser determined that Dr. Shackleton's September 9, 2003 findings were insufficient for evaluating the extent of appellant's permanent impairment and recommended a second opinion evaluation.

By letter dated March 1, 2004, the Office referred appellant to Dr. Stephen Kishner, a Board-certified physiatrist, for an impairment evaluation.

In an evaluation dated April 16, 2004, Dr. Kishner noted appellant's accepted conditions were left hand tenosynovitis and right carpal tunnel syndrome. He related:

"On physical examination [appellant] has normal strength of both hands and wrists. She has a scar over the right carpal tunnel surgery and left de Quervain's surgery, both of which are nontender. [Appellant] has full range of motion of wrists, hands and fingers. There is no swelling or change in color of either hand. She has normal reflexes in her upper extremities. [Appellant] has negative Phalen's sign, negative reverse Phalen's sign, [and] negative Tinel's sign all over the carpal tunnel area of the median nerves at the wrists. She has tenderness of the left carpometacarpal joint, much worse over the right carpometacarpal joint. [Appellant] has a mild causative right Finkelstein's test. On sensation, she has good sensation, but she feels her entire right upper extremity is numb, and this goes right to the shoulder. [Appellant] has restricted right shoulder motion with abduction at 130 degrees, with significant pain.

"At the present time she appears to have some chronic de Quervain's tenosynovitis, which is tendinitis of the left wrist. She does not have any evidence of carpal tunnel syndrome at the present time. Her main problems at the present time appear to be from her right shoulder, with a possible right shoulder-hand syndrome. With regard to both hands, according to the [A.M.A., *Guides*],

she does not have any impairment rating. At this point her impairment related to these would be zero.”

In an accompanying evaluation form, Dr. Kishner found that appellant had mild finger pain and discomfort that did not interfere with daily activity, no sensory loss, atrophy or weakness, and no loss of range of motion.

By decision dated May 10, 2004, the Office denied appellant’s claim for a schedule award.

In a progress report dated October 15, 2004, Dr. Shackleton listed findings of tenderness over the joints of the thumbs. He noted that appellant had no current swelling of the hands, good grip strength and pinch strength “about 50 percent of normal.”

By letter dated March 18, 2005, appellant requested reconsideration of her schedule award claim.¹ She described the problems that she had using her hands to perform activities of daily living.²

By decision dated May 12, 2005, the Office denied modification of its May 10, 2004 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act,³ and its implementing federal regulation,⁴ sets 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. However, the Act 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 for all claimants, the Office has adopted the A.M.A., *Guides* (5th ed. 2001) as the uniform standard applicable to all claimants.⁵ Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁶

¹ In a letter dated March 17, 2005, appellant’s niece discussed the problems that she had using her hands and how her lifestyle had changed due to her hand pain.

² Appellant also submitted chart notes, disability certificates and duty status reports from Dr. Shackleton dated 2004 and 2005; however, these do not address the issue of the extent of any impairment and thus are not relevant to the issue at hand.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ 20 C.F.R. § 10.404(a).

⁶ See FECA Bulletin No. 01-5, issued January 29, 2001.

ANALYSIS

The Office accepted appellant's claim for left de Quervain's tenosynovitis and right carpal tunnel syndrome. She filed a claim for a schedule award on July 3, 2003. Her attending physician, Dr. Shackleton, provided a report dated September 9, 2003. He found tenderness of the MCP and CMC joint of the right thumb with no loss of sensation or atrophy. Dr. Shackleton determined that she had a five percent permanent impairment of the upper extremity due to decreased strength. He did not explain his findings or make reference to the specific tables and pages of the A.M.A., *Guides* in support of his conclusion. Consequently, the Office properly referred appellant for a second opinion evaluation.

In a report dated April 16, 2004, Dr. Kishner found that appellant had normal strength of the bilateral hands and wrists with no swelling, decreased motion or loss of sensation. He listed findings of a negative Phalen's and Tinel's sign of both wrists. Dr. Kishner noted findings of tenderness of the CMC joint on both sides, right worse than left and a mildly positive right Finkelstein's test. He diagnosed chronic tendinitis of the left wrist and no current evidence of carpal tunnel syndrome. Dr. Kishner concluded that appellant had no permanent impairment of the right or left wrists or hands according to the A.M.A., *Guides*. In an accompanying evaluation form, Dr. Kishner found that she had mild finger pain and discomfort that did not interfere with daily activity, no sensory loss, atrophy or weakness, and no loss of range of motion. The Board finds that the weight of the medical evidence rests with Dr. Kishner, who submitted a thorough report based upon a complete and accurate factual and medical history. He performed a complete evaluation and found no evidence of right carpal tunnel syndrome and mild residuals of left tenosynovitis that did not constitute an impairment according to the A.M.A., *Guides*. Dr. Kishner's opinion represents the weight of the medical evidence and the Office properly denied appellant's claim for a schedule award.⁷

Regarding appellant's argument that her bilateral hand and wrist condition impairs her ability to perform the activities of daily living, the Board notes that the amount payable pursuant to a schedule award does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other lifestyle activities.⁸

CONCLUSION

The Board finds that appellant has not established that she is entitled to a schedule award for a permanent impairment of the right or left upper extremities.

⁷ New evidence after appeal.

⁸ *Ruben Franco*, 54 ECAB 496 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 12, 2005 is affirmed.

Issued: July 19, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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