

caused by repetitive use of a computer during the course of her federal employment. By letter dated June 9, 2001, the Office accepted appellant's claim for left forearm tendinitis.¹

The Office accepted that appellant sustained a recurrence of disability on June 14, 2001 causally related to the accepted employment injury.

By letter dated September 24, 2003, appellant, through her attorney, requested that the Office grant her a schedule award for a 12 percent impairment of the left upper extremity based on a July 15, 2003 medical report of Dr. David Weiss, an attending Board-certified orthopedic surgeon, who described his findings, which included range of motion, for appellant's left thumb. Metacarpal phalangeal extension-flexion was 55 degrees and interphalangeal extension-flexion was 65 degrees. The Finkelstein's test was positive and resistive thumb abduction was rated a Grade 4/5 classification. Appellant had tenderness and swelling over the distal radial articulation consistent with an intersectional syndrome. No perceived dermatomal abnormalities over the median or ulnar nerve distribution of the right or left hands were found on sensory examination.

Dr. Weiss diagnosed cumulative and repetitive trauma disorder, chronic rotator cuff tendinitis and acromioclavicular arthropathy of the left shoulder, chronic left shoulder girdle strain and sprain (myofascial pain syndrome), bilateral carpal tunnel syndrome, chronic carpometacarpal joint synovitis of the left thumb and intersection syndrome of the left forearm. He noted appellant's subjective and objective disability factors and opined that her work-related injuries were the competent producing factor for his subjective and objective findings.

Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*) 484 and 492, Tables 16-11 and 16-15, respectively, Dr. Weiss determined that a Grade 4/5 classification for motor strength deficit of the left thumb abduction constituted a 9 percent impairment and that pain in the left upper extremity constituted a 3 percent impairment based on the A.M.A., *Guides* 574, Figure 18-1, totaling a 12 percent impairment of the left upper extremity. He stated that appellant reached maximum medical improvement on July 15, 2003. Dr. Weiss' findings were based on the history appellant provided, her work duties, his findings on physical examination and a review of her medical records.

On November 1, 2004 appellant filed a claim for compensation (Form CA-7). On April 27, 2005 an Office medical adviser reviewed her medical records, including Dr. Weiss' findings. The medical adviser found that appellant reached maximum medical improvement on July 15, 2003. Utilizing the A.M.A., *Guides* 492 and 487, Table 16-15 and Figure 16-47, respectively, the medical adviser determined that a Grade 4/5 classification for thumb abduction of the radial nerve below the elbow constituted a seven percent motor deficit impairment. He noted that this impairment rating differed from Dr. Weiss' impairment rating although they both used the same table. The medical adviser believed that the math used to calculate the seven percent impairment rating was correct. Noting that the maximum motor deficit impairment for

¹ By letter dated July 18, 2002, the Office advised appellant that the instant claim assigned number A2-2005177 and her prior claims assigned number A2-767247, which involved a November 15, 1999 injury that was accepted for bilateral carpal tunnel syndrome and left forearm tendinitis and A2-769692 were being combined into a master case file assigned number A2-2005177.

the radial nerve below the elbow was 35 percent, he determined that “4/5 [strength deficit] of 35 percent = 28 percent” and then subtracted 28 percent from 35 percent to find that appellant had a 7 percent impairment for weakness. Utilizing the A.M.A., *Guides* 574, Figure 18-1, the medical adviser determined that appellant had a three percent impairment for pain. He combined the 7 percent impairment for motor deficit with the 3 percent impairment for pain for a 10 percent total left upper extremity impairment.

By decision dated October 13, 2005, the Office granted appellant a schedule award for a 10 percent impairment of the left upper extremity based on the medical adviser’s opinion.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act² and its implementing regulation³ sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.⁴ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁵

Before the A.M.A., *Guides* can be utilized, a description of appellant’s impairment must be obtained from appellant’s physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁶

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, to resolve the conflict.⁷

² 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.404.

⁴ 5 U.S.C. § 8107(c)(19).

⁵ *Supra* note 3.

⁶ *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

⁷ 5 U.S.C. § 8123(a); *see Charles S. Hamilton*, 52 ECAB 110 (2000); *Robert D. Reynolds*, 49 ECAB 561 (1998).

ANALYSIS

The Office awarded appellant a schedule award for a 10 percent permanent impairment of the left upper extremity due to accepted tendinitis in the left forearm, based on the Office medical adviser's assessment of the medical evidence. The Board, however, finds that there is a conflict in the medical opinion evidence as to the extent of permanent impairment of appellant's left upper extremity.

In a July 15, 2003 medical report, Dr. Weiss found that appellant had metacarpal phalangeal extension-flexion of 55 degrees and interphalangeal extension-flexion of 65 degrees. He reported a positive Finkelstein's test and rated appellant's resistive thumb abduction as a Grade 4/5 classification. Appellant had tenderness and swelling over the distal radial articulation consistent with an intersectional syndrome. On sensory examination, Dr. Weiss did not find any perceived dermatomal abnormalities over the median or ulnar nerve distribution of the right or left hands.

Table 16-11, page 484 and Table 16-15, page 492, of the A.M.A., *Guides* sets forth the grading scheme and procedure for calculating impairment of the upper extremity due to peripheral nerve disorders. Impairment is calculated by multiplying the grade of the severity of the sensory or motor deficit by the respective maximum upper extremity impairment value of each nerve structure involved.⁸ In this case, the involved nerve structure is the radial nerve and the site of the neuropathy is at the left thumb below the midforearm. According to Table 16-15, page 492, the maximum upper extremity impairment due to motor deficit of the radial nerve of the thumb below the forearm is 35 percent. Dr. Weiss rated appellant's motor deficit as a Grade 4/5 classification, which he found constituted a nine percent impairment. Motor deficit under Grade 4 ranges from 1 to 25 percent and requires complete active range of motion against gravity with some resistance. Motor deficit under Grade 5 is zero percent and requires complete active range of motion against gravity with full resistance.⁹ Dr. Weiss failed to explain the basis for his finding that appellant had a nine percent impairment for motor deficit. He did not identify the percentage for a Grade 4/5 motor deficit, in accordance with the procedures set forth in Table 16-11 on page 484 of the A.M.A., *Guides*. Further, Dr. Weiss failed to identify the percentage of impairment of the left upper extremity due to motor deficit of the radial nerve of the thumb below the forearm, in accordance with Table 16-15 on page 492 of the A.M.A., *Guides*. He, therefore, improperly applied the A.M.A., *Guides* and his impairment determination is of diminished probative value.¹⁰

Utilizing Figure 18-1 of the A.M.A., *Guides* 574, Dr. Weiss determined that appellant was entitled to a three percent impairment for pain. He combined this impairment rating with the 9 percent impairment for motor deficit to find that appellant had a 12 percent impairment of the left upper extremity. As Dr. Weiss improperly applied the A.M.A., *Guides* as found above, his 12 percent impairment rating is of diminished probative value.

⁸ A.M.A., *Guides* 481.

⁹ *Id.* at 484.

¹⁰ *Carolyn E. Sellers*, 50 ECAB 393, 394 (1999).

A medical adviser reviewed Dr. Weiss' findings under the provisions of the A.M.A., *Guides* and agreed that motor deficit for thumb abduction of the radial nerve below the elbow was a Grade 4/5 classification. However, the medical adviser determined that this motor deficit classification constituted a 7 percent impairment utilizing the A.M.A., *Guides* 492 and 487, Table 16-15 and Figure 16-47. Noting that the maximum motor deficit impairment for the radial nerve below the elbow was 35 percent, the medical adviser found that "4/5 [strength deficit] of 35 percent = 28 percent" and then subtracted 28 percent from 38 percent to find a 7 percent impairment for weakness. The medical adviser did not provide the percentage for a Grade 4/5 motor deficit, in accordance with the procedures set forth in Table 16-11 on page 484 of the A.M.A., *Guides*. Further, the medical adviser misapplied the tables of the A.M.A., *Guides* in failing to multiply the grade of the severity of the motor deficit by 35 percent, the maximum upper extremity impairment value of the radial nerve below the elbow.¹¹ These errors diminish the probative value of the medical adviser's impairment rating.¹²

The medical adviser also agreed that appellant had a 3 percent impairment of the left upper extremity due to pain based on Figure 18-1 of the A.M.A., *Guides* and combined this impairment rating with the 7 percent impairment for motor deficit to find that appellant had a 10 percent impairment of the left upper extremity. As he misapplied the A.M.A., *Guides* in finding that appellant had a 7 percent impairment, the Board finds that the 10 percent impairment rating for the left upper extremity is of diminished probative value.

The Board finds a conflict between Dr. Weiss and the medical adviser with regard to the extent of permanent impairment of appellant's left upper extremity arising from her accepted employment injury. To resolve this conflict, the Office should refer appellant, a statement of accepted facts and the case record to an appropriate medical specialist for a reasoned medical opinion on the question of whether she sustained more than a 10 percent impairment of the left upper extremity, for which she received a schedule award. The Office should then issue an appropriate decision on appellant's entitlement to an additional schedule award for permanent impairment to the left upper extremity.

CONCLUSION

The Board finds that the case is not in posture for decision due to an unresolved conflict in the medical evidence.

¹¹ *Supra* note 8.

¹² *Carolyn E. Sellers, supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the October 13, 2005 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: October 3, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board