



On November 18, 1999 Dr. David Weiss, a family practitioner and osteopath, provided findings on physical examination. He found that appellant had a 26 percent combined impairment of the right upper extremity including, 4 percent each for right sensory nerve root deficit at C7 and C8, based on Table 13 at page 51 and Table 11 at page 48 of the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>1</sup> and a 20 percent impairment for median nerve root entrapment at the right wrist, based on Table 16 at page 57. Dr. Weiss also found a 20 percent impairment of the left upper extremity due to median nerve root entrapment.

On July 21, 2003 Dr. R. Meador, a district medical adviser, indicated that the impairment rating of Dr. Weiss did not conform to the A.M.A., *Guides* because he had included nonwork-related right cervical nerve root abnormalities in addition to impairment due to appellant's accepted bilateral carpal tunnel syndrome.

On October 22, 2003 Dr. Thomas P. Rooney, a Board-certified orthopedic surgeon and an Office referral physician, provided findings on physical examination and indicated that appellant had a one percent impairment of each upper extremity for sensory deficit. He selected a 20 percent impairment for a Grade 4 sensory deficit (20 percent multiplied by 5 percent for the median nerve equals 1 percent), according to Table 16-10 at page 482 of the A.M.A., *Guides*.<sup>2</sup>

By decision dated April 5, 2004, the Office granted appellant a schedule award for 6.24 weeks for the period October 22 to December 4, 2003 based on a one percent impairment of each upper extremity.<sup>3</sup>

Appellant requested a hearing. In a November 5, 2004 decision, the Office found a conflict in the medical opinion evidence between Dr. Weiss and Dr. Rooney as to the degree of appellant's bilateral carpal tunnel syndrome impairment. The Office referred appellant to Dr. Joe W. Crow, a Board-certified orthopedic surgeon and an impartial medical specialist.

In a March 10, 2005 impairment rating, Dr. Crow provided findings on physical examination and diagnosed bilateral carpal tunnel syndrome, bilateral ruptured biceps tendons, a healed fifth metacarpal fracture, cervical spondylolisthesis, degenerative disc disease and status post C6-7 fusion. He noted that an electromyogram and nerve conduction studies revealed right-sided radiculopathy in addition to bilateral carpal tunnel syndrome. Dr. Crow noted that appellant had a history of a neck injury and underwent a C6-7 cervical fusion in 1979 while he was serving in the Army. He stated that he had a five percent impairment of each upper

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<sup>1</sup> A.M.A., *Guides* (4<sup>th</sup> ed. 1995). The fourth edition was applicable at the time of Dr. Weiss' impairment rating.

<sup>2</sup> Dr. Rooney indicated that the maximum impairment for a median nerve was five percent. However, he provided no table or page citation to the A.M.A., *Guides* and it is not clear where he obtained this figure.

<sup>3</sup> The Federal Employees' Compensation Act provides for 312 weeks of compensation for 100 percent loss or loss of use, of an arm. 5 U.S.C. § 8107(c)(1). Multiplying 312 weeks by one percent equals 3.12 weeks of compensation for each upper extremity, a total of 6.24 weeks.

extremity for sensory deficit, based on Table 16-10 at page 482, Table 16-12b (median nerve) at page 486 and Table 16-15 at page 492<sup>4</sup> and the text at page 495 (carpal tunnel syndrome) of the fifth edition of the A.M.A., *Guides*.

On April 12, 2005 Dr. Ronald Blum, an Office medical adviser, stated that appellant had a five percent impairment of each upper extremity for sensory deficit, based on Table 16-10 at page 482 and Table 16-15 at page 492 of the A.M.A., *Guides*. He noted that appellant had previously received a schedule award based on a one percent impairment of each arm.

By decision dated April 29, 2005, the Office granted appellant an additional schedule award for 24.96 weeks for the period March 10 to August 31, 2005 based on a four percent additional impairment of each upper extremity.

Appellant requested a hearing that was held on February 18, 2006.

By decision dated April 3, 2006, the Office affirmed the April 29, 2005 decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>5</sup> and its implementing regulation<sup>6</sup> set 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 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>7</sup> has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>8</sup>

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 [of Labor] shall appoint a third physician who shall make an examination.”<sup>9</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of

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<sup>4</sup> Dr. Crow apparently selected 12 percent for a Grade 4 sensory deficit from Table 16-10 at page 482 and multiplied this by the 39 percent maximum for the median nerve below the midforearm in Table 16-15 at page 492 (12 percent multiplied by 39 percent equals 4.68 percent which he apparently rounded to five percent).

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>10</sup>

### ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome in the performance of duty. Dr. Weiss found that he had a 26 percent impairment of the right upper extremity due to median nerve root entrapment and abnormalities of the C7 and 8 nerve roots and a 20 percent impairment of the left upper extremity due to median nerve root entrapment based on the then applicable fourth edition of the A.M.A., *Guides*. Dr. Rooney found that appellant had a one percent impairment of each upper extremity for sensory deficit, based on Table 16-10 at page 482 of the A.M.A., *Guides*, fifth edition. Due to the conflict between Dr. Weiss and Dr. Rooney, the Office referred appellant to Dr. Crow.

The fifth edition of the A.M.A., *Guides*, regarding impairment due to carpal tunnel syndrome provides:

“If, after an *optimal recovery time* following surgical decompression,<sup>11</sup> an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present:

1. Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described [in Tables 16-10a and 16-11a].
2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal [electromyogram] testing of the thenar muscles: a residual [carpal tunnel syndrome] is still present and an impairment rating not to exceed [five percent] of the upper extremity may be justified.
3. Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating.”<sup>12</sup>

The Board has found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory deficits only.<sup>13</sup>

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<sup>10</sup> See *Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

<sup>11</sup> Appellant did not elect to undergo surgery for his carpal tunnel syndrome.

<sup>12</sup> A.M.A., *Guides* 495.

<sup>13</sup> *Kimberly M. Held*, 56 ECAB \_\_\_\_ (Docket No. 05-1050, issued August 16, 2005).

The Board finds that the impairment rating of Dr. Crow is not entitled to special weight.

Dr. Crow provided findings on physical examination and diagnosed bilateral carpal tunnel syndrome, bilateral ruptured biceps tendons, a healed fifth metacarpal fracture, cervical spondylolisthesis, degenerative disc disease and status post C6-7 cervical spine fusion. He noted that an electromyogram and nerve conduction studies revealed right-sided radiculopathy in addition to bilateral carpal tunnel syndrome. Appellant had a history of a neck injury and underwent a C6-7 cervical fusion in 1979. Dr. Crow stated that he had a five percent impairment of each upper extremity for sensory deficit, based on Table 16-10 at page 482 and Table 16-15 at page 492. As noted, he apparently selected 12 percent for a Grade 4 sensory deficit from Table 16-10 at page 482 of the A.M.A., *Guides* and multiplied 12 percent by the maximum sensory deficit for the median nerve of 39 percent from Table 16-15 at page 492 which equals 4.68 percent (rounded to 5 percent). It is well established that in determining the amount of a schedule award for a given member of the body that sustained an employment-related impairment, preexisting impairments of that scheduled member of the body are to be included.<sup>14</sup> It does not appear that Dr. Crow determined whether appellant had any impairment of his upper extremities due to his ruptured biceps tendons or fifth metacarpal fracture or whether he had any impairment of his upper extremities related to his preexisting cervical condition.<sup>15</sup> He did note that an electromyogram and nerve conduction studies revealed right-sided radiculopathy in addition to bilateral carpal tunnel syndrome. Additionally, Dr. Crow did not explain how he determined that appellant had a Grade 4 sensory deficit according to the description of Grade 4 sensory deficit in Table 16-10 or how he selected a 12 percent impairment from the Grade 4 range of 1 to 25 percent. Due to these deficiencies, Dr. Crow's opinion regarding appellant's bilateral upper extremity impairment is not entitled to special weight. When the Office obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, the Office must secure a supplemental report from the specialist to correct the defect in his original report.<sup>16</sup>

### CONCLUSION

The Board finds that the report of Dr. Crow is not entitled to special weight. Therefore, the conflict in the medical evidence has not been resolved. Upon remand of the case, the Office should ask Dr. Crow to provide a supplemental report addressing the deficiencies described above. After such further development as the Office deems necessary, it should issue an appropriate decision.

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<sup>14</sup> See *Carl J. Cleary*, 57 ECAB \_\_\_\_ (Docket No. 05-1558, issued May 10, 2006); *Dale B. Larson*, 41 ECAB 481 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b (June 1993).

<sup>15</sup> The statement of accepted facts states that appellant had a preexisting herniated disc of the cervical spine for which he underwent surgery in 1979.

<sup>16</sup> *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr.*, 39 ECAB 736 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 3, 2006 is set aside and the case is remanded for further development consistent with this decision.

Issued: February 12, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board