

on July 6, 1998. On November 24, 1999 appellant filed an occupational disease claim, accepted for bilateral carpal tunnel syndrome under File No. 100493576. She underwent a left-sided carpal tunnel syndrome release on January 21, 2000, a cervical epidural injection on October 26, 2000 and a right-sided carpal tunnel syndrome release on November 10, 2000. Appellant retired on November 30, 2003. On June 18, 2004 the Office doubled her claims.

By letters dated June 21 and 22, 2004, the Office requested that appellant's treating physician, Dr. John McClellan, a Board-certified orthopedic surgeon, provide an opinion as to whether appellant had reached maximum medical improvement, objective findings on examination, and subjective complaints, his diagnosis and his opinion with regard to whether appellant had any impairment to the upper extremities. Dr. McClellan was asked to utilize the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*).

In a January 13, 2005 report, Dr. McClellan reviewed a history of injury and treatment. He conducted a physical examination and advised that range of motion for both the right and left shoulder was extension of 45 degrees, internal and external rotation of 75 degrees and forward flexion and abduction of 165 degrees. Dr. McClellan determined that appellant's wrists had normal range of motion and no swelling and that her wrist pain resolved as of October 18, 2004. However, he noted that appellant had pain related to de Quervain's and stenosing tenosynovitis. Dr. McClellan indicated that appellant had degenerative disc disease. He completed the upper extremity evaluation record and noted that appellant reached maximum medical improvement in January 2003 for the left side and in June 2003 on the right.

Dr. McClellan's report and the case record were referred to an Office medical adviser. In a report dated February 18, 2005, the Office medical adviser noted that appellant's claim was accepted for bilateral carpal tunnel syndrome, left cervical radiculopathy, herniated disc at C6-7 and bilateral rotator cuff tears. He also reviewed appellant's history of injury and treatment, which included a left carpal tunnel release on January 21, 2000 and a right-sided carpal tunnel release on November 10, 2000, a left shoulder acromioplasty on January 29, 2002 and a right shoulder acromioplasty and cuff repair on June 6, 2002. The Office medical adviser indicated that appellant had current complaints of significant bilateral shoulder pain rating a 9/10 and over the superior trapezius and bilateral wrist pain. He advised that appellant's symptoms were worse with lifting, motion and rotation and she had a 50 percent improvement from surgery. The Office medical adviser noted that, in the absence of chronic regional pain syndrome, impairment could not be awarded for range of motion loss in conjunction with compression neuropathies. For the left shoulder, he noted findings for range of motion that included flexion of 165 degrees and noted that this would equate to one percent.¹ For extension, the Office medical adviser advised that appellant had 45 degrees,² abduction of 165 degrees which was zero percent,³ internal rotation of 75 degrees which was zero percent and 75 degrees which was zero percent.⁴

¹ A.M.A., *Guides* 476, Figure 16-40.

² *Id.*

³ *Id.* at 477, Figure 16-43.

⁴ *Id.* at 479, Figure 16-46.

The Office medical adviser determined that appellant had a one percent impairment due to loss of range of motion. Regarding the right shoulder, he advised that appellant had flexion of 165 degrees, which was one percent and extension of 45 degrees which was zero percent.⁵ The Office medical adviser also noted that abduction of 165 degrees was equal to zero percent.⁶ For internal and external rotation he found 75 degrees and determined that it was zero percent.⁷ The Office medical adviser added the ratings and determined that appellant was entitled to an impairment of one percent for the right shoulder due to loss of range of motion. He rated 3 percent impairment due to Grade 3 pain which was equal to 40 percent in the distribution of the suprascapular nerve to the bilateral shoulder.⁸ The Office medical adviser indicated that appellant's wrist pain was improved as of October 18, 2004. He referred to the Combined Values Chart⁹ and opined that appellant was entitled to an award of four percent to both upper extremities. The Office medical adviser opined that the date of maximum medical improvement was October 18, 2004, which was the date of improvement of the bilateral wrist pain.

On April 20, 2005 the Office granted schedule awards for four percent loss of use of both upper extremities. The awards covered a period of 24.96 weeks from October 18, 2004 to April 10, 2005.

By letter dated May 18, 2005, appellant requested a hearing. On September 28, 2005 a hearing was scheduled for November 17, 2005 by telephone.

In a decision dated December 5, 2005, the Office found that appellant did not appear for the telephonic hearing and did not contact the Office either prior to or after the hearing to provide an explanation. Appellant was found to have abandoned her request for a hearing.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹⁰ 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.¹¹ 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 for all claimants under the law, good administrative practice requires the use of

⁵ *Id.* at 476, Figure 16-40.

⁶ *Id.* at 477, Figure 16-43.

⁷ *Id.* at 479, Figure 16-46.

⁸ *Id.* at 482, Table 16-10 and *Id.* at 492, Table 16-15.

⁹ *Id.* at 604.

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ 5 U.S.C. § 8107.

uniform standards applicable to all claimants.¹² The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.¹³

ANALYSIS -- ISSUE 1

In support of her claim for a schedule award, appellant submitted a report from Dr. McClellan dated January 13, 2005. Dr. McClellan provided findings on examination; however, he did not provide an impairment rating under the A.M.A., *Guides*. His report was therefore referred to an Office medical adviser for review.

In a February 18, 2005 report, an Office medical adviser applied Figures 16-40, 16-43, and 16-46 of the A.M.A., *Guides* to Dr. McClellan's range of motion measurements. He found one percent impairment to both the right and left arms due to restricted range of motion. Regarding range of motion of the left shoulder, the Office medical adviser noted flexion of 165 degrees was impairment of one percent,¹⁴ extension of 45 degrees was zero percent,¹⁵ abduction of 165 degrees was zero percent,¹⁶ internal rotation of 75 degrees was zero percent and 75 degrees zero percent.¹⁷ He determined that appellant had one percent impairment due to loss of range of motion. Regarding the right shoulder, the Office medical adviser advised that appellant had flexion of 165 degrees, which was one percent impairment, extension of 45 degrees was zero percent,¹⁸ abduction of 165 degrees which was zero percent,¹⁹ internal rotation of 75 degrees which was zero percent, and external rotation of 75 degrees, which was zero percent.²⁰ He determined that appellant was entitled to an impairment of one percent for the right shoulder due to loss of range of motion.

In evaluating impairment for pain, the Office medical adviser opined that appellant had three percent impairment, based on Table 16-15 at page 492 and Table 16-10 at page 482. The Board notes that the 3 percent was derived by utilizing the 5 percent maximum impairment for the suprascapular nerve and multiplying it by the 60 percent maximum impairment for Grade 3.²¹

¹² *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

¹³ A.M.A., *Guides* (5th ed. 2001); 20 C.F.R. § 10.404.

¹⁴ A.M.A., *Guides* 476, Figure 16-40.

¹⁵ *Id.*

¹⁶ *Id.* at 477, Figure 16-43.

¹⁷ *Id.* at 479, Figure 16-46.

¹⁸ *Id.* at 476, Figure 16-40.

¹⁹ *Id.* at 477, Figure 16-43.

²⁰ *Id.* at 479, Figure 16-46.

²¹ The Board notes that, while the Office medical adviser put in 40 percent for his Grade 3 pain, the A.M.A., *Guides* indicate that this would actually be 60 percent.

The Office medical adviser referred to the Combined Values Chart²² and determined that the one percent for range of motion combined with the three percent for pain due to the suprascapular nerve of each arm represented four percent impairment to both upper extremities. He further advised that appellant reached maximum improvement on October 11, 2004.

The Board finds that the Office medical adviser properly reviewed Dr. McClellan's findings and accurately applied the appropriate tables and figures of the A.M.A., *Guides* to each measurement and clinical observation. There is no other medical evidence of record, based upon a correct application of the A.M.A., *Guides*, to establish that appellant has more than a four percent permanent impairment of the right upper extremity and a four percent permanent impairment of the left upper extremity.

LEGAL PRECEDENT -- ISSUE 2

A claimant who has received a final adverse decision by the Office may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.²³ Unless otherwise directed in writing by the claimant, the Office hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.²⁴ The Office has the burden of proving that it mailed to appellant and her representative a notice of a scheduled hearing.²⁵

The authority governing abandonment of hearings rests with the Office's procedure manual. Chapter 2.1601.6(e) of the procedure manual, dated January 1999, provides as follows:

“e. Abandonment of Hearing Requests.

“(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.

“Under these circumstances, H&R [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the DO [district Office]....²⁶”

²² A.M.A., *Guides* 604.

²³ 20 C.F.R. § 10.616(a).

²⁴ 20 C.F.R. § 10.617(b). Office procedure also provides that notice of a hearing should be mailed to the claimant and the claimant's authorized representative at least 30 days prior to the scheduled hearing. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(a) (January 1999).

²⁵ See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

²⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

ANALYSIS -- ISSUE 2

On appeal, appellant contends that she responded to the Office's December 5, 2005 decision and that she did not respond to the hearing which was to have been held on November 17, 2005. She requested that the Office consider her situation and provide another opportunity for a hearing. However, the record supports that appellant did not request postponement, that she failed to appear at the scheduled hearing and that she failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the conditions for abandonment specified in the Office procedure manual, the Board finds that the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.²⁷

CONCLUSION

The Board finds that appellant does not have more than a four percent permanent impairment of her right upper extremity and more than a four percent permanent impairment of her left upper extremity. The Board further finds that the Office properly determined that appellant abandoned her request for a hearing.

²⁷ See *Claudia J. Whitten*, 52 ECAB 483, 485 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 5 and April 20, 2005 are affirmed.

Issued: March 15, 2007
Washington, DC

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

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

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