

representative, affirming the termination of appellant's wage-loss and medical benefits.¹ The Board found that the weight of the medical opinion evidence rested with Dr. William Simon, the impartial medical examiner, who found that appellant had no residuals related to his accepted carpal tunnel syndrome. The history of the case as set forth in the Board's prior decision is hereby incorporated by reference.

On January 24, 2002 appellant filed a schedule award claim for permanent impairment of his upper extremities.² In a January 3, 1999 report, Dr. Ronald Potash, a Board-certified surgeon, provided impairment ratings for appellant's upper extremities. He noted that appellant complained of bilateral palm pain, bilateral forearm radicular pain and bilateral tingling of the first, second and third digits. The left upper extremity had greater pain than the right for all symptoms. Appellant reported that his symptoms woke him at night and were exacerbated by changes in weather. On physical examination, Dr. Potash found that the range of motion in both wrists was reduced by 15 degrees for dorsi-flexion and by five degrees for ulnar deviation and that the Tinel's signs were positive. Both of appellant's hands had a 10-degree loss of metacarpal phalangeal extension-flexion in the fingers and a five-degree reduction of interphalangeal extension-flexion in the thumb. His lower arm circumference was smaller on the right than on the left. There was no diminishment of grip strength, sensory perception, or reflexes in either arm or hand. Dr. Potash opined that the injury sustained over the course of employment was the competent producing factor for appellant's subjective and objective findings. Using Table 16, page 57, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4th ed.), he found a 10 percent impairment to each upper extremity for the entrapment of the median nerve at the wrists.

By decision dated May 2, 2002, the Office determined that the report of Dr. Simon, which was given the weight of the medical evidence by the Board, established that appellant had no residual impairment related to his employment injury and that his symptoms were caused by a nonemployment-related condition. The Office also noted that Dr. Potash's rating was based on the fourth edition of the A.M.A., *Guides*, and that the fifth edition did not contain the tables he used to determine his rating.

On May 30, 2002 appellant again requested a schedule award determination and argued that this issue was separate from that decided by the Board. On November 29, 2002 the Office notified appellant's congressman that appellant was not entitled to a schedule award as the medical evidence established that he had no residuals of the accepted condition of bilateral carpal tunnel syndrome.

¹ Docket No. 01-204 (issued December 20, 2001). On September 18, 1997 appellant, then a 31-year-old crane operator, filed an occupational disease claim for carpal tunnel syndrome, which was accepted by the Office for surgery on November 25, 1997. The Office denied appellant's claim for compensation and terminated appellant's benefits effective December 2, 1999 based on the report of the impartial medical examiner, Dr. Simon, who found that appellant's wrist symptoms were related to double crush syndrome, which is caused by compression of the nerve roots in the cervical spine. By decision dated July 11, 2000 and finalized July 17, 2000, an Office hearing representative affirmed that decision.

² The Board notes that appellant, through his representative, attempted to file a request for a schedule award in 1999. However, the record contains no Form CA-7 requesting a schedule award during that time.

On September 8, 2004 appellant requested a decision on the issue of his entitlement to a schedule award. On September 27, 2005 appellant forwarded this correspondence to his congressman, who requested that the Office respond.

By decision dated March 14, 2006, the Office denied appellant's claim for a schedule award on the grounds that the evidence was not sufficient to establish that he sustained permanent impairment as a result of his employment injury. On March 16, 2006 appellant requested an oral hearing, which was held on July 31, 2006. At the hearing, appellant said that the carpal tunnel releases authorized by the Office provided temporary relief, but that his symptoms returned during physical therapy. He noted that he was in an automobile accident in March 1998, which aggravated his upper extremity symptoms, but that his symptoms had since returned to their preaccident condition. Appellant was involved in automobile accidents in 2001 and 2003 that did not affect his upper extremities. He testified that his current symptoms included pain, numbness, lack of responsiveness in his fingers and thumbs and reduced grip strength. Appellant and his representative challenged Dr. Simon's report and contended that Dr. Potash's was more representative of his permanent impairment.

By decision dated October 23, 2006, the Office hearing representative affirmed the March 14, 2006 decision. She found that Dr. Potash's report, which postdated Dr. Simon's, did not contain adequate rationale explaining how appellant's condition was employment related and was insufficient to overcome the weight of the medical evidence. The Office hearing representative found that the medical evidence established that appellant had recovered from the effects of the work-related injury.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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 should 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* as the uniform standards 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

ANALYSIS

The Office accepted that appellant sustained carpal tunnel syndrome in the performance of his federal duties. It terminated his compensation benefits when the special weight of the medical evidence, as represented by the impartial medical examiner, Dr. Simon, established that

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ 20 C.F.R. § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

he had no continuing residuals related to his employment injury. The Board affirmed the termination. Thus the issue to be determined is whether appellant has submitted evidence sufficient to establish any permanent impairment of his upper extremities.

The Board finds that the medical evidence submitted by appellant is insufficient to establish that he has any permanent impairment causally related to his employment injury. Dr. Potash reported that appellant experienced subjective complaints of pain in his palms, radicular pain in his forearms and tingling in the first, second and third digits of each hand. He noted that the left upper extremity was more symptomatic than the right. On physical examination, Dr. Potash found that the range of motion in both of appellant's wrists was reduced by 15 degrees for dorsiflexion and by five degrees for ulnar deviation and that the Tinel's signs were positive. He found that both of appellant's hands had a 10-degree loss of metacarpal phalangeal extension-flexion in the fingers and a five-degree reduction in interphalangeal extension-flexion in the thumb. Dr. Potash reported no diminishment of grip strength, sensory perception, or reflexes in either arm or hand. The Board finds that, although Dr. Potash's opinion contains objective evidence of impairment, his rationale for finding a causal relationship is inadequate: he stated merely that appellant's employment injury was "the competent producing factor" for the subjective and objective findings. The Board has held that a medical opinion that is not fortified by medical rationale is of diminished probative value.⁷ Without more explanation of how Dr. Potash came to his opinion, it is of diminished probative value and insufficient to overcome the special weight of Dr. Simon's opinion or to create a conflict.

Appellant contends on appeal that Dr. Simon acknowledged that he continued to have symptoms of carpal tunnel syndrome and that these symptoms were impacted by his cervical condition. This reading of Dr. Simon's report confuses the distinction that he drew between carpal tunnel syndrome caused by appellant's employment and "carpal tunnel-like syndrome" caused by appellant's nonemployment-related cervical degeneration. Dr. Simon found no employment-related residuals resulting from the accepted condition of carpal tunnel syndrome. The Board finds that appellant has not established that Dr. Simon impairment was caused by or related to his accepted employment injury.

CONCLUSION

The Board finds that appellant has not established that he has a permanent impairment causally related to his employment injury.

⁷ *Brenda L. DuBuque*, 55 ECAB 212 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 23, 2006 is affirmed.

Issued: September 21, 2007
Washington, DC

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

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