

including repetitive pushing, pulling and lifting.¹ On June 6, 2005 appellant filed a second claim for a schedule award.

In a June 7, 2001 report, Dr. David Weiss, an orthopedic surgeon, provided findings on physical examination. He found that appellant had a seven percent impairment of her left upper extremity based on constrictive tenosynovitis of the left ring finger and Tables 16-18 and 16-29 at pages 499 and 507, respectively, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) fifth edition.² On October 15, 2002 Dr. M.F. Quinlan, a district medical director, found that appellant had a seven percent impairment of her left ring finger, based on the physical findings in the report of Dr. Weiss.

On March 5, 2003 the Office granted appellant a schedule award from May 25 to June 6, 2001, or 1.75 weeks, for a seven percent impairment of her left ring finger.³ By decisions dated March 3, 2004 and February 9, 2005, it denied appellant's claim for an additional schedule award for her left hand.

On May 10, 2005 appellant requested reconsideration and submitted a February 8, 2005 report in which Dr. Weiss stated that appellant had intermittent left hand pain, weakness and stiffness. Dr. Weiss provided findings on physical examination. He found that appellant had a 5 percent range of motion impairment of her left upper extremity, including 11 percent for decreased flexion (70 degrees) of the left middle finger metacarpophalangeal (MP or MCP) joint, based on Figure 16-25 at page 464 of the fifth edition of the A.M.A., *Guides*, and 21 percent for decreased flexion (30 degrees) of the left middle finger distal interphalangeal (DIP) joint, based on Figure 16-21 at page 461, for a combined digit impairment of 30 percent, which constituted a 5 percent impairment of the upper extremity. Dr. Weiss combined the five percent impairment for range of motion deficit with three percent for pain, based on Table 18-1 at page 574, and determined that appellant had eight percent upper extremity impairment.

By decision dated August 18, 2005, the Office affirmed the February 9, 2005 decision denying appellant's claim for greater than a seven percent impairment of her left ring finger. The Office noted, however, that the medical evidence supported the impairment of two digits, her left ring finger and left middle finger. It indicated that a separate schedule award would be issued regarding impairment of her left upper extremity due to the impairment of two digits.

Dr. Arnold Berman, an Office medical adviser, found that, based on the reports of Dr. Weiss, appellant had a five percent impairment of the hand which constituted a five percent impairment of the upper extremity, based on Table 16-2 at page 439 of the A.M.A., *Guides*. He stated that there was no basis for Dr. Weiss' finding of impairment due to pain.

¹ The Office associated the file for the 2000 employment injury (File No. 030252134) with the file for the 2002 employment injury (File No. 032013724) under the master file, File No. 032013724.

² Dr. Weiss did not take into consideration the fact that, under the Federal Employees' Compensation Act, if only one digit (thumb or a finger) is impaired, the impairment percentage does not extend to a larger unit, the hand or the upper extremity. 5 U.S.C. § 8107(c)(17), (20).

³ The Act provides for 25 weeks of compensation for 100 percent loss or loss of use of the third (ring) finger. 5 U.S.C. § 8107(c)(10). Multiplying 25 weeks by seven percent equals 1.75 weeks of compensation.

By decision dated August 19, 2005, the Office granted appellant a schedule award from February 7 to May 14, 2005 or 15.60 weeks, for a five percent impairment of her left upper extremity⁴ In an August 19, 2005 file memorandum, a claims examiner noted that appellant had previously received compensation for 12.25 days for her seven percent impairment of her left ring finger (1.75 weeks multiplied by 7 days in a week). Consequently, appellant was entitled to 109.20 days of compensation for her five percent left upper extremity impairment (15.60 weeks multiplied by 7 days). The Office deducted the 12.25 days previously paid, leaving a balance of 96.95 days of compensation, rounded to 97 days.

On August 29, 2005 appellant requested a hearing that was held on December 20, 2005. By decision dated March 8, 2006, an Office hearing representative found a conflict in the medical opinion evidence between Dr. Weiss and Dr. Berman as to appellant's left upper extremity impairment and remanded the case for an evaluation by an impartial medical specialist.

The Office referred appellant, together with a statement of accepted facts, a list of questions and the case file, to Dr. Richard I. Zamarin, a Board-certified orthopedic surgeon, for an impairment rating of her left upper extremity. In a December 12, 2006 report, Dr. Zamarin stated that appellant's left wrist ached occasionally. He provided findings on physical examination as follows:

“Range of motion of her fingers revealed that her [MP] joints have full extension and 90 degrees of flexion.... The proximal interphalangeal [PIP] joint extension is 0 degrees in all fingers and 100 degrees of flexion in the second and third [index and middle fingers], 94 degrees in the fourth [ring finger], and 100 degrees in the fifth [little finger]. The [DIP] joint range of motion is 0 degrees of extension in the second through fifth digits, and 54 degrees of flexion in the second and third, 46 degrees of flexion in the fourth, and 64 degrees of flexion in the fifth.... These measurements were taken using a goniometer.

“Examination of the left wrist revealed a ganglion overlying the first dorsal compartment. [Appellant] had minimal tenderness over the first dorsal compartment and she had a minimally positive Finkelstein's test. [She] had full flexion, extension, pronation, and supination of her left wrist and forearm. [Appellant] was neurovascularly intact distally.

“[Appellant's] grip strength was equal bilaterally to manual testing.”

* * *

“Going to [p]age 461, Figure 16-21 ... the finger DIP joint range of motion of the [middle] finger is 0 to 54 degrees, which is approximately eight percent [i]mpairment in [f]lexion.

⁴ The Act provides for 312 weeks of compensation for 100 percent loss or loss of use of an upper extremity. 5 U.S.C. § 8107(c)(1). Multiplying 312 weeks by five percent equals 15.60 weeks of compensation. The Office noted that appellant previously received a schedule award for the left ring finger.

“The PIP joint of the [middle] finger flexes to 100 degrees. So, going to [p]age 463, Figure 16-23 ... this is [zero] percent Impairment.

“Then going to [p]age 464, Figure 16-25 ... her MP joint flexes to 90 degrees and, therefore, this is also a [zero] percent [i]mpairment.

“Then going to her [ring] finger, again [p]age 461, Figure 16-21, her [ring] finger flexes to the DIP to 46 degrees, which is a 12 percent [i]mpairment in [f]lexion. Going to [p]age 463, Figure 16-23, her PIP flexes to 94 degrees, which is approximately a 4 percent [i]mpairment in [f]lexion and the [MP] joint flexes to 90 degrees, and going to [p]age 464, Figure 16-25, this is a 0 percent [i]mpairment in [f]lexion.

“On [p]age 511, Step 3 states that the motion impairments of the DIP, PIP, and MP fingers are combined using a Combined Values Chart on [p]age 604. For the [middle] finger, this remains [eight] percent. For the [ring] finger, combining 12 percent with 4 percent gives a 16 percent [i]mpairment.

“One then has to convert as in Step 6, on [p]age 511, the individual digit impairments to hand impairments. Going to [p]age 438, Table 16-1 ... an 8 percent [middle] digit impairment converts to a 2 percent [h]and [i]mpairment, and a 16 percent ring finger impairment converts to a 2 percent [h]and [i]mpairment.

“On [p]age 511, Step 7 states that you then add the hand impairment values contributed by each digit. This gives a [four] percent [h]and [i]mpairment. [G]oing to Table 16-2 ... a [four] percent [h]and [i]mpairment converts to a 4 percent [u]pper [e]xtremity [i]mpairment.

“I do not believe, based upon a reasonable degree of medical certainty, that there is any basis for a pain award and I am in agreement with Dr. Berman. [Appellant] told me that she is doing normal activities, has no restrictions as a result of her symptoms, and it only bothers her if she works a long time or with weather changes, and that warm water helps it. I would therefore not award her anything for her pain.”

By decision dated December 22, 2006, the Office found that appellant had no more than a five percent left upper extremity impairment for which she received a schedule award.

On January 3, 2007 appellant requested a hearing that was held on April 2, 2007. By decision dated June 19, 2007, an Office hearing representative affirmed the December 22, 2006 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act⁵ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.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 who shall make an examination.⁷ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁸

ANALYSIS

Due to the conflict in the medical opinion evidence between Dr. Weiss and Dr. Berman as to the permanent impairment of appellant's left upper extremity, the Office properly referred appellant to Dr. Zamarin for an impartial medical examination.

The Board finds that Dr. Zamarin's evaluation of appellant's left upper extremity impairment is not sufficient to resolve the conflict in medical opinion.

Dr. Zamarin did not provide all the range of motion measurements required in the A.M.A., *Guides* for determination of wrist impairment. He stated that appellant had full flexion and extension of her wrist. However, Dr. Zamarin did not provide measurements for ulnar and radial deviation.⁹ Additionally, the record shows that the file was not routed to an Office

⁵ 5 U.S.C. § 8107.

⁶ See 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001). See also *Linda Beale*, 57 ECAB 429 (2006).

⁷ 5 U.S.C. § 8123(a).

⁸ See *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Roger Dingess*, 47 ECAB 123 (1995).

⁹ See A.M.A., *Guides* 468-69, Figures 16-29 and 16-31. The Board notes that Dr. Zamarin correctly applied appellant's physical findings on examination to the A.M.A., *Guides* concerning the range of motion deficits of her middle finger and ring finger for her accepted conditions. He correctly converted the finger impairments to a four percent impairment of the left upper extremity. Dr. Zamarin explained his finding that there was no basis for impairment due to pain or sensory deficit. He noted that appellant's left upper extremity was neurovascularly intact distally and she had minimal tenderness. Appellant was performing normal activities with no restrictions as a result of her accepted conditions. Her left upper extremity bothered her only if she worked for a long time or with changes in weather.

medical adviser following Dr. Zamarin's impairment evaluation as required by Office procedures.¹⁰

Board case precedent provides that, 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 deficiency in his original report. Only when the impartial specialist is unable to clarify or elaborate on his original report or if his supplemental report is incomplete, vague, speculative or lacking in rationale, should the Office refer the claimant to a second impartial specialist.¹¹

CONCLUSION

The Board finds that this case is not in posture for a decision. The case will be remanded for the Office to obtain a supplemental report from Dr. Zamarin. After the report is obtained, the Office should route the file to an Office medical adviser for an opinion on appellant's left upper extremity impairment.

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures provide that, after all necessary medical evidence has been obtained, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment, especially when there is more than one evaluation of the impairment present); see also *Richard R. LeMay*, 56 ECAB 341 (2005).

¹¹ See *Nancy Keenan*, 56 ECAB 687 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 19, 2007 and December 22, 2006 be set aside. The case is remanded for further development consistent with this decision of the Board.

Issued: June 20, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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