

right shoulder adhesive capsulitis.¹ On April 3, 2004 appellant returned to limited-duty work at the employing establishment.

On October 29, 2004 appellant filed a claim for a schedule award. An August 11, 2005 medical report of Dr. Zia A. Zakai, a Board-certified orthopedic surgeon, found that appellant had a 15 percent impairment of the right upper extremity due to chronic tenosynovitis of the wrist joint based on Chapter 16.4 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001).

On August 29, 2005 Dr. Arnold T. Berman, an Office medical adviser, reviewed the medical record. He stated that Dr. Zakai failed to provide any basis for his impairment rating as he found no atrophy or reduced sensation. Dr. Berman noted that Dr. Zakai found loss of active and passive range of motion but, on physical examination, reported normal range of motion. He further noted that Dr. Zakai's impairment rating was not based on any specific ranges of motion or other specific calculations. Dr. Berman stated that his reference to Chapter 16.4 of the A.M.A., *Guides* was merely to a general discussion on the evaluation of abnormal motion. He opined that Dr. Zakai's impairment rating could not be accepted. Based on appellant's pain in the wrist area and difficulty with function, Dr. Berman determined that she had a three percent impairment of the right upper extremity. He concluded that a schedule award for a three percent impairment of the right upper extremity should be granted. Dr. Berman found that appellant reached maximum medical improvement on August 1, 2005, the date she was examined by Dr. Zakai.

By decision dated January 17, 2006, the Office granted appellant a schedule award for a three percent impairment of the right upper extremity based on Dr. Berman's August 29, 2005 opinion. The period of the award was from August 1 to October 5, 2005. In an undated letter received by the Office on February 3, 2006, appellant requested an oral hearing before an Office hearing representative.

An August 31, 2006 report of Dr. Donald I. Saltzman, a Board-certified orthopedic surgeon, provided the history of appellant's accepted employment-related conditions and noted her complaints of pain in the right wrist and shoulder. On physical examination, he reported full range of motion of the right shoulder. Dr. Saltzman also reported full, active and passive range of motion of the fingers. He noted appellant's complaint of numbness and tingling in the thumb, index and middle finger, sometimes more than others. Dr. Saltzman stated that the Phalen's sign was questionably positive on the right but the Tinel's sign was negative at the wrist and elbow. Imaging of the thoracic and lumbar spines demonstrated full range of motion. Dr. Saltzman opined that appellant had possible carpal tunnel syndrome and tendinitis in the right and left wrist and right shoulder. He determined that she had no impairment of the shoulder because no weakness was present. Dr. Saltzman reported full range of motion but noted that appellant continued to complain of pain. He stated that Table 16-19 of the A.M.A., *Guides* applied to this area as appellant had some mild, visibly apparent soft tissue thickening. Dr. Saltzman combined this table with Table 16-18 on page 499 of the A.M.A., *Guides* to determine that appellant had a 10 percent impairment which he multiplied by a 60 percent impairment for the glenohumeral

¹ By letter dated December 6, 2006, the Office expanded the acceptance of appellant's claim to include a severe recurrent episode of major depressive disorder without mention of psychotic disorder.

joint, which yielded a 6 percent impairment of the right upper extremity for tendinitis in the shoulder. He stated that this finding was purely based on appellant's subjective complaints. Dr. Saltzman determined that she had a three percent impairment of the left hand. He further determined that she had a Grade 4 deficit for pain and sensation which constituted a five percent impairment of the right upper extremity. Dr. Saltzman concluded that appellant sustained a 3 percent impairment of the left upper extremity and an 11 percent impairment of the right upper extremity.

By letter dated September 27, 2006, appellant, through counsel, requested a review of the written record instead of an oral hearing before an Office hearing representative.

In a decision dated December 4, 2006, a hearing representative set aside the January 17, 2006 decision and remanded the case for further development. She found that Dr. Saltzman's August 31, 2006 report required development of the evidence as to whether appellant had more than a three percent impairment of the right upper extremity. The hearing representative directed the Office to refer the case to an Office medical adviser to determine whether she had any additional employment-related permanent impairment of the right upper extremity.

On December 24, 2006 Dr. Berman reviewed Dr. Saltzman's August 31, 2006 report. He stated that his impairment rating for the left upper extremity could not be considered since appellant's claim had not been accepted for a left upper extremity condition. As to the right upper extremity, Dr. Berman noted that Dr. Saltzman utilized Table 16-18 on page 499 of the A.M.A., *Guides*,² based on mild visibly apparent soft tissue thickening of the right shoulder while on physical examination, he reported full range of motion, no instability with mild pain on extremes of motion and a little fullness present in the posterior aspect of the shoulder where appellant experienced pain. He further noted his calculation of a six percent impairment to the right upper extremity based on Table 16-18 on page 499 and Table 16-19 on page 500 of the A.M.A., *Guides*. Dr. Berman stated that Dr. Saltzman's physical examination did not present any objective evidence to warrant an increase of appellant's schedule award. He recommended a second opinion medical examination to verify Dr. Saltzman's physical examination findings and to determine whether there was a basis for utilizing the A.M.A., *Guides*. While Dr. Saltzman recommended a five percent schedule award for appellant's carpal tunnel syndrome, an electromyogram (EMG) performed in 2003 and 2006 did not show any evidence of this condition. Dr. Berman stated that appellant's subjective complaints of numbness in the thumb, index and middle fingers as noted by Dr. Saltzman constituted a statement of history and did not represent an abnormal examination. He noted Dr. Saltzman's finding of a questionably positive Phalen's sign on the right and a negative Tinel's sign on the left. Dr. Berman opined that there did not appear to be any basis for granting appellant a schedule award for carpal tunnel syndrome, citing page 495 of the A.M.A., *Guides*. Based on the foregoing reasons, he concluded that appellant was not entitled to a schedule award for more than a three percent impairment of the right upper extremity.

² Dr. Berman inadvertently stated that Dr. Saltzman used Table 18-18 of the A.M.A., *Guides* rather than Table 16-18 as he referenced the proper title of Table 16-18 in his report.

By decision dated January 3, 2007, the Office found that appellant was not entitled to an increased schedule award for her right upper extremity based on Dr. Berman's December 24, 2006 report.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulations⁴ set 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.⁵ 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.⁶

The standards for evaluation of the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.⁷ Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedure for determining impairments of the upper extremities due to pain, discomfort, loss of sensation or loss of strength.⁸

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the protocols of the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment. In such cases, the Office may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.⁹

ANALYSIS

The Office accepted that appellant sustained right wrist tendinitis, bilateral carpal tunnel syndrome and right shoulder adhesive capsulitis due to her federal employment. On January 17, 2006 she received a schedule award for a three percent impairment of the right upper extremity. By decision dated January 3, 2007, the Office found that appellant was not entitled to an

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

⁴ 20 C.F.R. § 10.404.

⁵ 5 U.S.C. § 8107(c)(19).

⁶ *See supra* note 4.

⁷ *See Paul A. Toms*, 28 ECAB 403 (1987).

⁸ A.M.A., *Guides* 433-521, Chapter 16, The Upper Extremities (5th ed. 2001).

⁹ *See John L. McClanic*, 48 ECAB 552 (1997); *see also Paul R. Evans*, 44 ECAB 646, 651 (1993).

additional schedule award. The issue is whether the medical evidence establishes that appellant sustained an increased impairment of the right upper extremity. The Board finds that the case is not in posture for decision.

On August 31, 2006 Dr. Saltzman, appellant's attending physician, reported full range of motion of the right shoulder, fingers and thoracic and lumbar spines on physical and objective examination. He noted appellant's complaint of numbness and tingling in the thumb, index and middle finger. Dr. Saltzman stated that the Phalen's sign was questionably positive on the right but the Tinel's sign was negative at the wrist and elbow. He opined that appellant had "possible" carpal tunnel syndrome and tendinitis in the right and left wrist and right shoulder. Dr. Saltzman determined that she had no impairment of the shoulder because no weakness was present. He found that appellant had some mild, visibly apparent soft tissue thickening which constituted a 10 percent impairment. Dr. Saltzman determined that she had a 60 percent impairment for the glenohumeral joint. He multiplied the two impairment ratings to calculate a six percent impairment of the right upper extremity for tendinitis in appellant's right shoulder. Dr. Saltzman stated that this impairment rating was purely based on appellant's subjective complaints. He determined that she had a three percent impairment of the left hand. Dr. Saltzman further determined that appellant had a Grade 4 deficit for pain and sensation which constituted a five percent impairment of the right upper extremity. He concluded that she sustained a 3 percent impairment of the left upper extremity and an 11 percent impairment of the right upper extremity. Dr. Saltzman did not provide a definitive diagnosis as to whether appellant sustained carpal tunnel syndrome. As noted, the Office accepted her claim for bilateral carpal tunnel syndrome. Further, Dr. Saltzman did not explain how he determined the extent of appellant's impairment as there were no objective findings of loss of range of motion in the right shoulder and fingers and thoracic and lumbar spines. For these reasons, the Board finds that his August 31, 2006 findings are of diminished probative value.

Dr. Berman, the Office medical adviser, noted that Dr. Saltzman utilized Table 16-18 on page 499 of the A.M.A., *Guides*, based on mild visibly apparent soft tissue thickening of the right shoulder while on physical examination, Dr. Saltzman reported full range of motion, no instability with mild pain on extremes of motion and a little fullness present in the posterior aspect of the shoulder where appellant experienced pain. He further noted Dr. Saltzman's calculation of a six percent impairment to the right upper extremity based on Table 16-18 on page 499 and Table 16-19 on page 500 of the A.M.A., *Guides*. Dr. Berman, however, stated that his physical examination did not present any objective evidence and did not warrant an increase of appellant's schedule award. He recommended a second opinion medical examination to verify his physical examination findings and to determine whether there was a basis for utilizing the A.M.A., *Guides*. Dr. Berman indicated that, while Dr. Saltzman recommended a schedule award for a five percent impairment for appellant's carpal tunnel syndrome, an EMG performed in 2003 and 2006 did not show any evidence of this condition. He stated that appellant's subjective complaints of numbness in the thumb, index and middle fingers as noted by Dr. Saltzman constituted a statement of history and did not represent an abnormal examination. Dr. Berman noted Dr. Saltzman's finding of a questionably positive Phalen's sign on the right and a negative Tinel's sign on the left. He opined that there did not appear to be any basis for granting appellant a schedule award for carpal tunnel syndrome, citing page 495 of the A.M.A., *Guides*. Based on the foregoing reasons, Dr. Berman concluded that appellant was not entitled to a schedule award for more than a three percent impairment of the right upper extremity.

The Board notes that the schedule award granted in this case was originally based on Dr. Berman's finding that appellant's pain constituted a three percent impairment. According to section 18.3b, page 571 of the A.M.A., *Guides*, examiners, should not use Chapter 18 to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ rating systems found in the other chapters.¹⁰ Office procedures provide that Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain.¹¹ Dr. Berman did not explain why appellant's sensory pain could not be rated under Chapter 16 of the A.M.A., *Guides*. He did not adequately support the rating of three percent for appellant's pain. As noted, Dr. Berman recommended that appellant undergo a second opinion medical examination to verify Dr. Saltzman's findings and to determine the proper application of the A.M.A., *Guides*. The Board will set aside the Office's January 3, 2007 decision and remand the case to the Office. Upon remand, the Office should refer appellant to a second opinion medical examination to determine the impairment to her right upper extremity impairment utilizing the proper tables and figures of the A.M.A. *Guides*. Following this and any other development deemed necessary, the Office shall issue an appropriate decision regarding appellant's entitlement to a schedule award.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether appellant has more than a three percent impairment of the right upper extremity.

¹⁰ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003); *Philip A. Norulak*, 55 ECAB 690 (2004).

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: March 4, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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