



award.<sup>1</sup> The Board remanded the case for the Office to develop the issue of whether appellant sustained a permanent impairment of the upper extremities due to her accepted bilateral carpal tunnel syndrome and bilateral enthesopathy of the wrists and carpus. The findings of fact and conclusions of law from the prior decision are incorporated by reference.

On November 29, 2005 Dr. Mehdi N. Adham, a Board-certified surgeon, diagnosed bilateral recurrent carpal tunnel syndrome, worse on the right, and cubital tunnel syndrome. On examination he found a positive Tinel's sign and Phalen's test. Dr. Adham recommended a recurrent right carpal tunnel release and a cubital tunnel release.

On February 16, 2006 the Office referred appellant to Dr. John Hughes, an osteopath, for an impairment evaluation. Based on his findings, in a decision dated April 25, 2006, the Office granted appellant a schedule award for a five percent permanent impairment of each upper extremity.

On June 29, 2006 Dr. Adham performed a right cubital canal release and a right recurrent carpal tunnel release with neurolysis of the median nerve. On March 7, 2007 he performed a left cubital canal release and a recurrent left carpal tunnel release.

In a progress report dated May 17, 2007, Dr. Adham discussed appellant's complaints of burning in the right long finger. He found that she had good sensation and range of motion of the left hand. Dr. Adham recommended that appellant continue with her current work restrictions. He noted that she had received a schedule award for a five percent permanent impairment of the right and left hands pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

On September 17, 2007 an Office medical adviser reviewed Dr. Adham's May 17, 2007 report. He opined that it did not support that appellant sustained an increased impairment of the upper extremities. The Office medical adviser concluded that the record contained no medical evidence showing that she was entitled to a greater schedule award.

By decision dated October 5, 2007, the Office denied appellant's claim for an increased schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act,<sup>2</sup> and its implementing federal regulations,<sup>3</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

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<sup>1</sup> Docket No. 05-1753 (issued January 3, 2006). On August 15, 2002 appellant, then a 47-year-old education technician, filed an occupational disease claim alleging that she sustained bilateral carpal tunnel syndrome due to her work duties. The Office accepted the claim for bilateral enthesopathy of the wrists and carpus and bilateral carpal tunnel syndrome. Appellant underwent right and left carpal tunnel releases on January 23 and July 24, 2003.

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

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 for all claimants, the Office has adopted the A.M.A., *Guides* (5<sup>th</sup> ed. 2001) as the uniform standard applicable to all claimants.<sup>4</sup> 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.<sup>5</sup>

A claim for an increased schedule award may be based on new employment exposure; however, additional occupational exposure is not a prerequisite. Absent additional employment exposure, an increased schedule award may also be based on medical evidence demonstrating that the progression of an employment-related condition has resulted in a greater permanent impairment than previously calculated.<sup>6</sup>

### ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome and bilateral enthesopathy of the wrists and carpus due to factors of her federal employment. She underwent a right carpal tunnel release on January 23, 2003 and a left carpal tunnel release on July 24, 2003. By decision dated April 25, 2006, the Office granted appellant a schedule award for a five percent permanent impairment of each upper extremity.

On June 29, 2006 Dr. Adham performed a right cubital canal release and a right recurrent carpal tunnel release with neurolysis of the median nerve. On March 7, 2007 he performed a recurrent left carpal tunnel release and cubital canal release. In a progress report dated May 17, 2007, Dr. Adham determined that appellant had good sensation and range of motion of the left hand and a burning sensation in the right long finger. He noted that she had received a schedule award for a five percent permanent impairment of each hand. Dr. Adham did not find that appellant had any impairment greater than that previously awarded. An Office medical adviser reviewed Dr. Adham's report and determined that it did not establish that appellant had an additional impairment to the upper extremities.

Where a claimant has previously received a schedule award and subsequently claims an additional schedule award due to a worsening of his or her condition, the claimant bears the burden of proof to establish a greater impairment causally related to the employment injury.<sup>7</sup> The medical evidence must also support that she has reached maximum medical improvement.<sup>8</sup> Appellant has not provided any medical evidence to establish either that she has more than a five percent permanent impairment of each upper extremity or that she reached maximum medical

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<sup>4</sup> 20 C.F.R. § 10.404(a).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>6</sup> *Linda T. Brown*, 51 ECAB 115 (1999).

<sup>7</sup> *Edward W. Spohr*, 54 ECAB 806 (2003).

<sup>8</sup> A schedule award is not payable until a claimant has reached maximum medical improvement. The determination of maximum medical improvement is factual in nature and depends primarily on the medical evidence. See *Peter C. Belkind*, 56 ECAB 580 (1994).

improvement following her surgeries for recurrent carpal tunnel syndrome. The Office therefore properly denied her claim for an increased schedule award.

On appeal, appellant disagreed with Dr. Adham's assessment of her permanent impairment as she was not yet one year post surgery. She requested a second opinion examination on the extent of her permanent impairment. Appellant also described her difficulties performing the activities of daily living. As discussed, however, she has the burden of proof to provide an opinion consistent with the A.M.A., *Guides* supporting a greater degree of permanent impairment than that previously awarded.<sup>9</sup> The record contains no medical evidence showing that appellant has more than a five percent permanent impairment of each upper extremity and thus she has not met her burden of proof.

### **CONCLUSION**

The Board finds that appellant has no more than a five percent permanent impairment of each upper extremity for which she previously received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 5, 2007 is affirmed.

Issued: May 20, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup> See *Edward W. Spohr, supra* note 7.