



stopped working on May 21, 2001. The Office accepted appellant's claim for bilateral wrist tendinitis.

Appellant sought treatment from Dr. Stuart L. Davidson, a Board-certified orthopedic surgeon. On September 15, 2006 Dr. Davidson opined that she was disabled as a result of her accepted injury and that her disability was permanent. He stated that appellant continued to experience pain related to severe tendinitis of her shoulders, wrists and hands, as well as arthritis and radiculopathy.

In an October 9, 2006 second opinion report, Dr. Havinder Pabla, a Board-certified orthopedic surgeon, opined that appellant's work-related tendinitis had resolved and that she was able to return to full-time employment with no restrictions related to her accepted condition. His examination revealed no atrophy of the thenar hypothenar intrinsic muscles in the wrists bilaterally. In the right wrist, there was tenderness over the dorsal surface of the radio carpal joint. Grip and pinch strength were normal. Range of motion (ROM) testing revealed: dorsiflexion -- 70 degrees; volar flexion -- 60 degrees; ulnar and radial deviations were 30 and 20 degrees respectively; pronation and supination were normal, equal and symmetrical. In the left wrist, there was no tenderness over the anatomical snuff box, distal radioulnar joint, ulnar styloid process or proximal carpal row. ROM testing revealed: dorsiflexion -- 70 degrees; volar flexion -- 70 degrees; pronation and supination -- 80 degrees; ulnar and radial deviations -- 30 and 20 degrees respectively. Phalen, Allen and Finklestein tests were negative. Tinel sign was negative. Median nerve compression test was normal. The flexor digitorum profundus and superficialis functions were intact. Dr. Pabla noted that appellant had numerous subjective complaints, but that neither his examination nor recent x-rays revealed any significant abnormality. He opined that she had no residuals from her accepted condition of tendinitis of the wrists.

The Office found a conflict in medical opinion between Dr. Davidson and Dr. Pabla as to whether appellant continued to experience residuals from her accepted work-related bilateral wrist tendinitis and, if so, whether the residuals were disabling. It referred appellant, to Dr. Edward G. Alexander, a Board-certified orthopedic surgeon, for an impartial medical examination in order to resolve the conflict. In a January 3, 2007 report, Dr. Alexander opined that her accepted condition of bilateral wrist tendinitis had fully resolved. Examination revealed full ROM of the elbows, wrists, hands and fingers. Finklestein, Phalen and Tinel tests were negative. Dr. Alexander found no evidence of neural deficits, radiculopathy or peripheral neuropathy.

By decision dated April 11, 2007, the Office terminated appellant's medical and wage-loss benefits based on Dr. Alexander's referee opinion. It found that the evidence established that she had no residuals from her accepted condition.

On April 3, 2007 appellant submitted a claim for a schedule award. She submitted numerous reports from Dr. Davidson, who continued to opine that she was disabled. On January 19, 2007 Dr. Davidson indicated that appellant's symptoms of bilateral shoulder, arm, hand and wrist pain had worsened and that she had restricted ROM in both shoulders. On February 8 and March 1, 2007 he reported continuing pain in those areas, as well as numbness and tingling in the wrists and hands and some weakness in the hands. Subsequent follow-up

reports through August 1, 2007 reflect appellant's continued complaints of upper extremity pain and Dr. Davidson's opinion that she remained disabled. None of Dr. Davidson's reports contained detailed examination findings or an opinion as to the degree of appellant's permanent impairment as a result of her accepted injury.

The Office forwarded the medical file and a statement of accepted facts to the district medical adviser for review and an opinion as to whether appellant had any permanent impairment of a scheduled member as a result of her accepted injury. In a December 31, 2007 report, the medical adviser indicated that he had reviewed the entire medical record, including reports from Drs. Davidson, Pabla and Alexander. He noted that there were no significant findings on x-ray or neurodiagnostic studies of the upper extremity. Based upon the normal examination findings of Dr. Alexander and Dr. Pabla and normal diagnostic studies, the medical adviser concluded that appellant had a zero percent impairment of her upper extremities as a result of the accepted condition of bilateral wrist tendinitis.

In a January 15, 2008 decision, the Office denied appellant's request for a schedule award. It found that the evidence failed to demonstrate that she sustained a permanent, measurable scheduled impairment due to the accepted condition.

On February 4, 2008 appellant requested an oral hearing. On June 30, 2008 she modified her request to a review of the written record.

Appellant submitted an April 30, 2007 report from Dr. Davidson, which reflected diagnoses of adhesive capsulitis of the shoulders, bilateral tendinitis of the wrists and hands, bilateral carpal tunnel syndrome and depressive disorder. Dr. Davidson stated that she had "generalized weakness" in both hands, noting that her grip strength on the right was 30 percent less than on the left. He indicated that she was in constant, severe pain. The report provided ROM measurements for the fingers. Dr. Davidson stated that appellant had reached maximum medical improvement as of the date of his report.

Appellant submitted follow-up reports from Dr. Davidson, from September 7, 2007 through February 11, 2008, reflecting her continued complaints of bilateral hand pain. The record also contains an April 15, 2008 functional capacity evaluation (FCE) and supporting documentation. In a summary report, Carla M. Jaspers, "MS,OTR/L" stated that testing was attempted, but was terminated due to appellant's complaints of pain. Testing that was performed included an EPIC hand function sort, which was "used to quantify an individual's perception of her ability to perform work tasks. The responses on this instrument can be used to test the reliability/accuracy of a client's subjective reports of ability and limitation." Testing reflected that appellant perceived herself as meeting the physical requirements for less than sedentary-strength work according to Department of Labor standards.

In a July 21, 2008 letter, appellant's representative contended that the April 15, 2008 FCE demonstrated a measured impairment to her hands, stating that "the EPIC hand function sort was restricted." Thus, he argued that the Office's schedule award decision should be reversed.

By decision dated October 22, 2008, an Office hearing representative affirmed the January 15, 2008 decision, denying appellant's request for a schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulations 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. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001) has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.<sup>2</sup>

Not all medical conditions accepted by the Office result in permanent impairment to a scheduled member.<sup>3</sup> It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.<sup>4</sup> Office procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of maximum medical improvement), describes the impairment in sufficient detail to include, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent description of the impairment and the percentage of impairment should be computed in accordance with the A.M.A., *Guides*.<sup>5</sup> This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.<sup>6</sup>

### **ANALYSIS**

The issue is whether appellant established that she has a permanent impairment of her upper extremities due to her accepted condition of tendinitis of the wrists. The Board finds that

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<sup>1</sup> 5 U.S.C. §§ 8101-8193. See 5 U.S.C. § 8107.

<sup>2</sup> See 20 C.F.R. § 10.404; *R.D.*, 59 ECAB \_\_\_\_ (Docket No. 07-379, issued October 2, 2007).

<sup>3</sup> *Thomas P. Lavin*, 57 ECAB 353 (2006).

<sup>4</sup> *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>5</sup> *J.P.*, 60 ECAB \_\_\_\_ (Docket No. 08-832, issued November 13, 2008); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (August 2002).

<sup>6</sup> Federal (FECA) Procedure Manual, *supra* note 5. See *John H. Smith*, 41 ECAB 444, 448 (1990); *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

the medical reports submitted in support of her claim are not sufficient to establish that she sustained any permanent impairment due to her accepted condition.

Appellant's attending physician, Dr. Davidson, opined consistently that appellant experienced constant pain and numbness due to her wrist tendinitis and that she was disabled partly due to her accepted condition. However, he did not provide sufficient detail to enable an Office medical adviser or the Board, to visualize any permanent impairment.<sup>7</sup> Dr. Davidson's reports were general in nature and did not contain detailed findings on examination from which a determination could be made as to whether appellant had a permanent impairment of her upper extremities as derived under the standards of the A.M.A., *Guides*,<sup>8</sup> which are based primarily on loss of range of motion.<sup>9</sup> To this extent, it provides specific tables and figures exemplifying the types of tests and evaluations that may be performed to properly determine impairment.<sup>10</sup> However, Dr. Davidson did not include any range of motion evaluations of the wrists. Moreover, none of his reports contained an opinion supporting that appellant's accepted condition caused any permanent impairment to a scheduled member of the body.

The record contains an April 15, 2008 FCE, which was conducted by Ms. Jaspers, "MS,OTR/L." Appellant's representative contends that the FCE demonstrated a measured impairment to appellant's hands, stating that "the EPIC hand function sort was restricted." However, the April 15, 2008 FCE is insufficient to establish appellant's entitlement to a schedule award. As there is no evidence that the report was signed by an individual that qualifies as a physician under the Act, the Board finds that it does not constitute probative medical evidence.<sup>11</sup> Moreover, the EPIC hand function sort, on which appellant's representative relies, was not used to evaluate appellant's permanent impairment, but rather was "used to quantify an individual's perception of her ability to perform work tasks." The Board also notes that testing was terminated due to appellant's complaints of pain, and the evaluation was not completed. For all of these reasons, the April 15, 2008 FCE lacks probative value.

On appeal, appellant's representative also contends that the Office erred by ignoring the evidence, which he alleged was encompassed in the FCE, that her wrist condition had not

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<sup>7</sup> See *A.L.*, 60 ECAB \_\_\_ (Docket No. 08-1730, issued March 16, 2009) (an impairment description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations). See also *Joseph D. Lee*, 42 ECAB 172 (1990).

<sup>8</sup> The Board notes that Dr. Davidson's April 30, 2007 report provided ROM measurements for the fingers; however, he provided no measurements for the wrists; nor did he provide any explanation as to how diminished ROM in the fingers was causally related to her accepted wrist condition.

<sup>9</sup> See *Tammy L. Meehan*, 53 ECAB 229 (2001); *August M. Buffa*, 12 ECAB 324 (1961).

<sup>10</sup> See, e.g., A.M.A., *Guides* 516-17, page 436-37.

<sup>11</sup> A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law." See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

resolved. The representative's argument is without merit. The Office hearing representative considered the April 15, 2008 FCE, but determined that it was of diminished probative value as the testing was prematurely terminated. Moreover, restrictions noted in the EPIC hand function sort did not objectively measure impairment in the use of appellant's hands, as argued by her representative; rather, they subjectively described her limitations. Finally, the hearing representative's decision was based on its finding that the evidence did not contain a medical opinion that appellant had a permanent partial impairment of either upper extremity.

While appellant has not submitted any probative medical evidence supporting her schedule award request, reports from Dr. Pabla and Dr. Alexander dated October 9, 2006 and January 3, 2007 provided detailed findings on examination, including ROM measurements. Dr. Pabla noted that appellant had numerous subjective complaints, but that neither his examination nor recent x-rays revealed any significant abnormality. He opined that appellant had no residuals from her accepted condition of tendinitis of the wrists. Dr. Alexander's examination revealed full ROM of the elbows, wrists, hands and fingers. Finklestein, Phalen and Tinel's tests were negative. He found no evidence of neural deficits, radiculopathy, or peripheral neuropathy and opined that appellant's accepted condition of bilateral wrist tendinitis had fully resolved. Based upon the normal examination findings of Dr. Alexander and Dr. Pabla and normal diagnostic studies, the medical adviser concluded that appellant had a zero percent impairment of her upper extremities as a result of the accepted condition of bilateral wrist tendinitis.

Appellant has the burden of proof to establish that she sustained a permanent impairment to a scheduled member. As the medical evidence of record lacks the detail necessary to provide the basis for a schedule award under the A.M.A., *Guides* and is devoid of a rationalized medical opinion on the issue of permanent impairment, the Board finds that it does not support entitlement to a schedule award.

### CONCLUSION

The Board finds that appellant is not entitled to a schedule award for permanent impairment to her upper extremities due to her accepted condition of tendinitis of the bilateral wrists.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' October 22 and January 15, 2008 decisions are affirmed.

Issued: September 14, 2009  
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