

October 24, 2008 appellant filed a claim for a schedule award as a result of her accepted condition. In a November 11, 2008 report, Dr. Bleecker opined that appellant had a 27 percent impairment of her right arm and an 18 percent impairment of her left arm under the standards of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

The Office referred the medical records, including Dr. Bleecker's November 11, 2008 report, to Dr. Arnold T. Berman, a Board-certified orthopedic surgeon, serving as an Office medical adviser. In a December 26, 2008 report, Dr. Berman discussed the examination findings and calculated that appellant had a 13 percent impairment in each arm under the fifth edition of the A.M.A., *Guides*.

In a February 24, 2009 decision, the Office granted appellant a schedule award for a 13 percent impairment in each arm. It noted that compensation for a four percent left arm impairment, granted under a separate claim for an accepted 2007 injury, would be subtracted from the award.

In a March 4, 2009 report, Dr. Bleecker stated that appellant continued to develop symptoms when using the keyboard and experienced cramping in her hands when she wrote. Even holding a piece of paper to read could produce a tremor in her hands. Appellant reported being less productive as it took her longer to do any tasks. At home, her hands became more symptomatic when she was dressing, washing herself or squeezing any object. Appellant was unable to lean on her wrists, preventing her from cleaning her bathroom and could not open jars. Nerve conduction studies in August 2007 found a significant bilateral distal median neuropathy compatible with carpal tunnel syndrome. Examination of appellant's hands found thenar atrophy bilaterally. Abductor pollicis brevis was 4/5 on the right and 4/5 on the left. Pin sensation was diminished in the median nerve distribution bilaterally. Over the thumb and index fingers of both hands appellant made frequent errors at six-millimeter two-point discrimination, but obtained two out of three correct responses when seven-millimeter two-point discrimination was used. Tinel's sign was positive on the left and Phalen's sign was positive bilaterally. There was full range of motion at the wrist and interphalangeal joints.

In an April 20, 2009 decision, an Office hearing representative found that Dr. Bleecker's March 4, 2009 report warranted further consideration and she directed the Office to refer the report to an Office medical adviser for review.

The Office requested that the Office medical adviser review Dr. Bleecker's March 4, 2009 report under the standards of the sixth edition of the A.M.A., *Guides*. In a June 19, 2009 report, Dr. Berman, again serving as an Office medical adviser, discussed his review of the medical records, including Dr. Bleecker's March 4, 2009 report and a November 2003 electromyogram (EMG) study. He made reference to Table 15-33 (Entrapment/Compression Neuropathy Impairment) on page 449 of the sixth edition of the A.M.A., *Guides*. Dr. Berman stated:

“[T]his claimant presents with atrophy and weakness and, therefore, Grade 3 modifier would be applicable. The upper extremity impairment default value is eight percent impairment. The actual calculation involves motor conduction

block, Grade 2 and constant symptoms Grade 3 and atrophy or weakness Grade 3. Three plus three plus two equals eight. Eight divided by three equals two rounded off to three, which represents a [g]rade modifier of three. The default value there is eight.

“Therefore based upon the [sixth edition of the A.M.A., *Guides*] the calculation is eight percent impairment left upper extremity. The previous calculation was 13 percent impairment to the left upper extremity and the right upper extremity. This calculation is eight percent impairment for the right upper extremity and eight percent impairment for the left upper extremity. Therefore, the calculation as applied to the [sixth edition of the A.M.A., *Guides*] is less than that applied to the [fifth edition of the A.M.A., *Guides*] utilizing Dr. Bleecker’s findings.

“Therefore, it is my recommendation that no change be made in the previous recommendation of 13 percent impairment of the right upper extremity and 13 percent impairment of the left upper extremity.”

In a June 25, 2009 decision, the Office determined that the evidence showed that appellant had an eight percent permanent impairment in each arm. It noted that as she already had been compensated for a 13 percent impairment in each arm, she was not entitled to any additional schedule award compensation.

Appellant requested a review of the written record by an Office hearing representative. She objected to the fact that the standards of the sixth edition of the A.M.A., *Guides* had been applied to her case. In an October 1, 2009 decision, the Office hearing representative affirmed the Office’s June 25, 2009 decision. Appellant found that Dr. Berman properly applied the standards of the sixth edition of the A.M.A., *Guides* to the findings of Dr. Bleecker.

LEGAL PRECEDENT

The schedule award provision of the Act¹ and its implementing regulations² 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 shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.³ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁴

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

⁴ FECA Bulletin No. 09-03 (issued March 15, 2009).

ANALYSIS

The Office accepted that appellant developed bilateral carpal tunnel syndrome due to her work duties. It granted her a schedule award for a 13 percent impairment of each arm, minus compensation for a 4 percent left arm impairment paid under a separate 2007 injury.

In April 2009, an Office hearing representative properly found that a March 4, 2009 report of Dr. Bleecker, an attending Board-certified neurologist, warranted further consideration and directed the Office to refer the report to an Office medical adviser for review. The Office correctly requested that the Office medical adviser review Dr. Bleecker's March 4, 2009 report under the standards of the sixth edition of the A.M.A., *Guides*.⁵

In a June 19, 2009 report, Dr. Berman, a Board-certified orthopedic surgeon serving as an Office medical adviser, discussed his review of the medical records and provided an opinion that appellant had an eight percent impairment of each arm under the standards of the sixth edition of the A.M.A., *Guides*. The Board finds that Dr. Berman properly applied these standards to reach his conclusion about appellant's permanent arm impairment.

Dr. Berman properly made reference to Table 15-33 (Entrapment/Compression Neuropathy Impairment) on page 449 of the sixth edition of the A.M.A., *Guides*.⁶ He chose grade modifiers from the table for the various categories, including test findings, history and physical findings, based on Dr. Bleecker's findings. Dr. Berman then correctly averaged the grade modifiers and chose the default value of eight for the grade modifier three categories to conclude that appellant had an eight percent impairment in each arm.⁷ The Board notes that there is no medical evidence of record showing that appellant has more than a 13 percent permanent impairment of each arm, for which she already received schedule awards. For these reasons, the Office properly declined to award her additional schedule award compensation.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has more than a 13 percent permanent impairment of each arm, for which she received schedule awards.

⁵ The Office's decision regarding impairment was not issued until after May 1, 2009 and, therefore, its use of the sixth edition of the A.M.A., *Guides* was appropriate. See *supra* note 4.

⁶ A.M.A., *Guides* 449, Table 15-23 (6th ed 2009).

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 1, 2009 is affirmed.

Issued: August 19, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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