

appellant's right arm. The medical reports of record did not rate impairment in compliance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).¹ The referenced medical reports were an April 6, 2004 report from Dr. David Weiss, an attending osteopath and an undated report from an Office medical adviser. The Board remanded the case to the Office to obtain a medical opinion regarding appellant's right upper extremity impairment that conformed Office procedures and the A.M.A., *Guides*.² The facts of the previous Board decision are incorporated herein by reference.³

Following the Board's August 6, 2008 decision, the Office forwarded the record to Dr. Arnold T. Berman, an Office medical adviser Board-certified in orthopedic surgery. In a September 6, 2008 report, Dr. Berman advised that a schedule award was recommended based on decreased range of motion. He utilized Figure 16-28 of the A.M.A., *Guides* and found that supination and pronation were both normal, that radial deviation of 7 degrees yielded a 3 percent impairment and ulnar deviation of 35 degrees yielded no impairment. Dr. Berman concluded that appellant had a three percent right upper extremity impairment, with the date of maximum medical improvement January 18, 2008.

The Office referred appellant to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a January 20, 2009 report, Dr. Hanley noted the history of injury and provided findings on physical examination of the upper extremities, including normal shoulder and elbow range of motion. Regarding right wrist range of motion, he advised that under Figure 16-28 of the fifth edition of the A.M.A., *Guides*, extension of 60 degrees and flexion of 75 degrees yielded no impairment and that under Figure 16-31 ulnar deviation of 40 degrees yielded no impairment and radial deviation of 5 degrees yielded a 3 percent impairment of the right wrist. Dr. Hanley noted that there were no complaints of weakness, therefore, it was not a factor in rating impairment. As appellant did not complain of significant pain an "add-on" impairment for pain was found not to be appropriate. Dr. Hanley diagnosed history of right wrist strain and concluded that maximum medical improvement was reached on January 18, 2008. He concluded that appellant had a three percent impairment of the right upper extremity.

In a February 5, 2009 report, Dr. Morley Slutsky, an Office medical adviser Board-certified in preventive medicine, reviewed the medical record including Dr. Hanley's report. He applied Dr. Hanley's right wrist range of motion measurements to the A.M.A., *Guides* and agreed that appellant had a three percent right upper extremity impairment due to diminished

¹ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

² Docket No. 08-602 (issued April 6, 2004).

³ On March 13, 2002 appellant then a 37-year-old distribution clerk sustained an employment-related right wrist sprain. On August 20, 2004 she filed a schedule award claim and submitted an April 6, 2004 report in which Dr. David Weiss, an osteopath, opined that she had a total 23 percent right upper extremity impairment. Following review by an Office medical adviser, by decision dated February 7, 2007, appellant was granted a schedule award for a 13 percent impairment of the right upper extremity. The decision was affirmed by an Office hearing representative on August 1, 2007.

range of motion. Dr. Slutsky also agreed that she had no impairment for pain or sensory loss based on Dr. Hanley's examination.

By decision dated February 20, 2009, the Office found that appellant was not entitled to an additional schedule award. Appellant requested a hearing that was held on June 23, 2009. Counsel argued that Dr. Hanley's report should not be the weight of medical opinion because he did not provide grip strength measurements or rate pain. Alternatively a conflict in medical evidence arose between Dr. Weiss and Dr. Hanley.

In an August 18, 2009 decision, an Office hearing representative noted the Board's finding that Dr. Weiss did not adequately rate impairment under the A.M.A., *Guides*. Dr. Weiss found the opinion of Dr. Hanley, represented the weight of medical opinion and established no greater than the 13 percent impairment previously awarded.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing federal regulations,⁵ 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷ For decisions issued after May 1, 2009, the sixth edition will be used.⁸

ANALYSIS

The Board finds that appellant does not have more than 13 percent impairment as previously awarded. In the August 6, 2008 decision, the Board addressed the April 6, 2004 report of Dr. Weiss and found that it did not comport with the A.M.A., *Guides*.⁹ The impairment rating provided by Dr. Weiss was found to be of reduced probative value.

The Office referred appellant to Dr. Hanley for a second opinion evaluation. In a January 20, 2009 report, he provided findings on physical examination of the right upper extremity, including range of motion findings. Regarding the right wrist, Dr. Hanley properly found that under Figure 16-28 of the fifth edition of the A.M.A., *Guides*, extension of 60 degrees

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁸ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁹ *Supra* note 2.

and flexion of 75 degrees yielded no impairment¹⁰ and that under Figure 16-31 ulnar deviation of 40 degrees yielded no impairment.¹¹ Under Figure 16-31, radial deviation of 5 degrees yielded a 3 percent impairment of the right wrist.¹² Dr. Hanley noted that, as there were no complaints of weakness, this did not contribute to appellant's impairment. As she did not complain of any significant pain, an add-on impairment for pain was not appropriate. Dr. Hanley advised that maximum medical improvement was reached on January 18, 2008 and properly concluded that appellant had a three percent impairment of the right upper extremity.

In a February 5, 2009 report, Dr. Slutsky, an Office medical adviser, noted his review of Dr. Hanley's report and agreed with his conclusion that appellant had a three percent right upper extremity impairment due to diminished right wrist range of motion and agreed that she was not entitled to an increased schedule award for a pain impairment.

Dr. Hanley properly applied the A.M.A., *Guides* in reaching his conclusion that appellant had a three percent right upper extremity impairment. He set forth findings on examination of appellant and addressed why he excluded factors such as weakness and sensory loss (pain) from consideration. Dr. Hanley's report constitutes the weight of medical opinion and establishes no greater impairment than previously awarded.

CONCLUSION

The Board finds that appellant has not established that she has more than 13 percent right arm impairment.

¹⁰ A.M.A., *Guides*, *supra* note 1 at 467.

¹¹ *Id.* at 469.

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 10, 2010
Washington, DC

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

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

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