

FACTUAL HISTORY

This case has previously been before the Board. In a January 3, 2008 decision,¹ the Board affirmed a February 22, 2007 Office decision finding that appellant had not established a recurrence of disability on or about November 14, 2006 causally related to her employment-related tenosynovitis of the right thumb. By decision dated December 12, 2008,² the Board reviewed the Office's schedule awards based on a three percent impairment of appellant's left upper extremity and a one percent impairment of her right thumb. The Board found that the report of Dr. Herbert Stein, the Board-certified orthopedic surgeon to whom the Office referred appellant to resolve a conflict in medical opinion between Dr. Gregory L. Rodriguez, appellant's attending physician and Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon and second opinion physician, regarding the extent and degree of impairment was of diminished probative value.³ Dr. Stein did not properly apply the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The Board remanded the case for further development of the medical evidence. The facts and the history as set forth in the prior decisions are incorporated by reference.

On March 9, 2009 the Office referred appellant to Dr. William H. Simon, a Board-certified orthopedic surgeon, to resolve the conflict between Dr. Rodriguez and Dr. Hanley. In a report dated April 18, 2009, Dr. Simon reviewed the medical record, examined appellant and applied the A.M.A., *Guides* (5th ed. 2001) to rate impairment. He found that measurements of the left upper extremity were within the normal range and did not warrant any impairment rating. Dr. Simon also found that appellant had full range of motion in her shoulders and elbows. Her reflexes were normal about the biceps, triceps and brachial radius areas. Dr. Simon reported that appellant's left wrist had 20 degrees of radial deviation and 30 degrees of ulnar deviation resulted in no impairment pursuant to A.M.A., *Guides*, 469 Figure 16-31, and 60 degrees of palmar flexion also resulted in no impairment pursuant to the A.M.A., *Guides*, 467, Figure 16-28. He advised that appellant's range of motion in her right thumb was also in the normal range. Referring to the charts in the A.M.A., *Guides*, referencing motion of the thumb, Dr. Simon found that appellant had 80 degrees active flexion in the interphalangeal (IP) joint which equaled zero degrees impairment pursuant to A.M.A., *Guides* 456 Figure 16-12. Appellant had a normal range of motion of 60 degrees of flexion in the metacarpal phalangeal (MP) joint pursuant to A.M.A., *Guides* 457 Figure 16-15. Dr. Simon concluded that these normal ranges of motion warranted no impairment rating. Based upon his review of the records and his examination of appellant, she did not sustain permanent impairment beyond that, which she already had been awarded, or three percent of her left wrist and one percent of her right thumb.

¹ Docket No. 07-1706 (issued January 3, 2008). The Office later expanded the claim to include left wrist tendinitis.

² Docket No. 08-1183 (issued December 12, 2008).

³ Dr. Rodriguez found 52 percent impairment of the right arm and 34 percent impairment of the left arm. Dr. Hanley found that appellant had no impairment to either upper extremity.

On April 30, 2009 the Office medical adviser reviewed the medical evidence and concluded that appellant did not have an increase in impairment over the three percent left arm and one percent right thumb impairments previously granted. The Office medical adviser noted that Dr. Simon found that appellant had full motion with no atrophy, reflex or sensory abnormalities, as well as full strength. Accordingly, no additional impairment rating was merited.

By decision dated June 4, 2009, the Office denied appellant's claim for an increased schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act⁴ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁵ The Act, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁶ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷

Section 8123(a) of the Act provides in part: If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁸ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁹

ANALYSIS

The Board previously remanded the case to the Office to develop the medical evidence on the nature and extent of appellant's permanent impairment and to resolve the conflict in opinion between Dr. Rodriguez and Dr. Hanley.

On remand, the Office referred appellant to Dr. Simon to resolve the conflict with regard to appellant's impairment rating. In evaluating the impairment to appellant's left upper

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Id.* at § 8107.

⁶ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁷ 20 C.F.R. §10.404.

⁸ 5 U.S.C. § 8123(a).

⁹ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

extremity, Dr. Simon noted that appellant had full range of motion of her shoulders and elbow. With regard to range of motion in her left wrist, he noted that appellant had 20 degrees of radial deviation. Applying the A.M.A., *Guides*, Dr. Simon properly determined that this amounted to a zero percent impairment.¹⁰ He further properly determined that 30 degrees of ulnar deviation yielded no impairment under the A.M.A., *Guides*.¹¹ Dr. Simon also noted that appellant had 60 degrees of dorsiflexion and 60 degrees of palmer flexion in her left wrist, and this also indicated a zero percent impairment under the A.M.A., *Guides*.¹² Accordingly, the Board finds that appellant was not entitled to a schedule award greater than the three percent impairment to her left upper extremity previously awarded. With regard to her right thumb, the Board finds that Dr. Simon also properly applied the A.M.A., *Guides* and determined that appellant had no further impairment other than the one percent she previously received. Dr. Simon noted that appellant had active flexion in her IP joint of 80 degrees which yielded no impairment under the A.M.A., *Guides*.¹³ He also found normal range of motion in the MP joint of 60 degrees.¹⁴ The Board finds that Dr. Simon, the impartial specialist, properly applied the A.M.A., *Guides* to his examination of appellant. Dr. Simon found that she did not have any permanent impairment greater than that for which she had previously been compensated. The opinion of Dr. Simon as the impartial medical specialist is entitled to special weight.¹⁵

Appellant's attorney contends that the report of Dr. Rodriguez should be given greater weight. As noted, however, the Board finds that the well-reasoned opinion of Dr. Simon is entitled to special weight afforded an impartial medical examiner.¹⁶ Appellant has not met her burden to establish that she has greater impairment of either her left upper extremity or her right thumb.

CONCLUSION

The Board finds that appellant has no more than three percent impairment of her left upper extremity and one percent impairment to her right thumb, for which she received schedule awards.

¹⁰ A.M.A., *Guides* 469, Figure 16-31.

¹¹ *Id.*

¹² *Id.* at 467, Figure 16-28.

¹³ *Id.* at 456, Figure 16-12.

¹⁴ *Id.* at 457, Figure 16-15.

¹⁵ In situations where a case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical opinion, special weight is given when the report of the impartial specialist is based on a proper factual and medical background. See *Rose V. Ford*, 55 ECAB 449 (2006).

¹⁶ *T.E.*, 59 ECAB ____ (Docket No. 07-2227, issued March 19, 2008).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 4, 2009 is affirmed.

Issued: March 23, 2010
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