

Board noted, appellant had undergone a right carpal tunnel release.² The history of the case as contained in the Board's prior decision is incorporated herein by reference.

In a report dated September 3, 2008, Dr. William Mason, an orthopedic surgeon, opined that appellant's carpal tunnel syndrome was causally related to her federal employment. He noted that appellant's symptoms had improved with the July 12, 2006 surgery, but she continued to have problems. Dr. Mason noted an electromyogram dated August 28, 2006 showed carpal tunnel syndrome.

On January 15, 2009 the Office accepted the claim for bilateral carpal tunnel syndrome. It referred the medical evidence to an Office medical adviser for an opinion as to any permanent impairment. In a report dated February 5, 2009, the Office medical adviser noted appellant's right carpal tunnel release, with no surgery planned for the left. He also noted appellant had undergone a cervical discectomy and fusion in August 2006 and May 2008. The medical adviser identified scenario number 2 at page 495 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.). He found that she had a five percent impairment for the right arm and a three percent impairment for the left, with the date of maximum medical improvement as September 3, 2008.

By decision dated March 2, 2009, the Office graded schedule awards for a five percent right arm and three percent left arm permanent impairment. The period of the awards totaled was 24.96 weeks from September 3, 2008.

On March 18, 2009 appellant requested a review of the written record. She submitted a March 3, 2009 report from Dr. Mason, who reiterated that she continued to have problems with her hands. Dr. Mason noted appellant had not had left hand surgery, but it could be necessary in the future.

By decision dated July 24, 2009, an Office hearing representative affirmed the March 2, 2009 Office decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulations⁴ 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

² The procedure was performed on July 12, 2006.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

uniform standards applicable to all claimants.⁵ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶

The fifth edition of the A.M.A., *Guides*, regarding carpal tunnel syndrome, provides:

“If, after *optimal recovery time* following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present --

1. Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described earlier.
2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG [electromyogram] testing of the thenar muscles: a residual CTS [carpal tunnel syndrome] is still present and an impairment rating not to exceed five percent of the upper extremity may be justified.
3. Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating.”⁷ (Emphasis in the original.)

ANALYSIS

The Office medical adviser applied the second scenario, as noted. He reviewed the medical evidence and found that appellant still had residual CTS following right wrist surgery on July 12, 2006. In accord with the A.M.A., *Guides*, which provides for an arm impairment not to exceed five percent, the Office medical adviser found appellant had a five percent right arm impairment. No other probative medical evidence regarding a right arm permanent impairment was provided. The Board finds that the opinion of the Office medical adviser represents the weight of the medical evidence.

As to the left arm, the medical adviser also applied the second scenario at page 495 of the A.M.A., *Guides*, without additional explanation. As the Board discussed in *M.O.*,⁸ this method is intended for an arm impairment “following surgical decompression.” The evidence in this case establishes that appellant did not undergo surgery for a left wrist surgical decompression.

⁵ See *Ronald R. Kraynak*, 53 ECAB 130 (2001); *August M. Buffa*, 12 ECAB 324 (1961).

⁶ *Supra* note 4.

⁷ A.M.A., *Guides* 495.

⁸ 60 ECAB ___ (Docket No. 08-2001, issued March 12, 2009).

Therefore, impairment for the left arm should be based on sensory or motor deficits with application of the appropriate tables from section 16.5 of the A.M.A., *Guides*.⁹

The case will be remanded for additional development and a rationalized medical opinion regarding permanent impairment to the left arm. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the medical evidence establishes a five percent right arm permanent impairment. The case will be remanded for further development as to the left arm.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 24 and March 2, 2009 are affirmed with respect to the right arm impairment and set aside and remanded as to the left arm impairment for further action consistent with this decision of the Board.

Issued: May 12, 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

⁹ *See id.*