

**United States Department of Labor
Employees' Compensation Appeals Board**

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P.M., Appellant)	
)	
and)	Docket No. 10-688
)	Issued: October 13, 2010
DEPARTMENT OF THE ARMY, SIERRA)	
ARMY DEPOT, Herlong, CA, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 13, 2010 appellant filed a timely appeal from a September 15, 2009 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than a two percent impairment of the right upper extremity and a two percent impairment for his left upper extremity, for which he received schedule awards. On appeal, he asserts that he is entitled to a greater award, based on the opinion of his attending orthopedic surgeon.

FACTUAL HISTORY

Appellant, a 58-year-old powered support systems mechanic, has an accepted occupational disease claim for bilateral carpal tunnel syndrome. On May 29 and June 19, 2008 Dr. George Barakat, an orthopedic surgeon, performed carpal tunnel releases on the right and left respectively. On July 1, 2009 appellant filed a schedule award claim. By letter dated July 7, 2009, the Office asked Dr. Barakat to provide an impairment rating in accordance with the sixth

edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*) (6th ed. 2008).¹

In an August 13, 2009 report, Dr. Barakat noted appellant's complaint of bilateral hand weakness with tingling to the fingertips and occasional pain with heavy lifting and pushing-type activities. He provided physical examination findings of good range of motion of both wrists with residual weakness of grip strength and subjective tingling of the index and middle fingers. Dr. Barakat advised that, under the fifth edition of the A.M.A., *Guides*, appellant had a five percent whole person impairment for each upper extremity.²

By report dated September 5, 2009, Dr. Arthur S. Harris, an Office medical adviser who is Board-certified in orthopedic surgery, noted that Dr. Barakat found good range of motion without obvious neurologic deficits and provided an impairment rating in accordance with the fifth edition of the A.M.A., *Guides*. He advised that maximum medical improvement was reached on August 13, 2009, the date of Dr. Barakat's examination. Dr. Harris rated impairment with reference to the sixth edition of the A.M.A., *Guides*. Under Table 15-23, with a grade modifier of one, appellant had a two percent impairment of each upper extremity, as a result of having a satisfactory result following bilateral carpal tunnel release surgeries.

By decision dated September 15, 2009, appellant was granted schedule awards for a two percent permanent impairment of the right and left upper extremities. The awards ran from August 14 to November 9, 2009.

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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶ For decisions issued after May 1, 2009, the sixth edition will be used.⁷

Under the sixth edition of the A.M.A., *Guides*, impairments of the upper extremities are covered by Chapter 15. Entrapment neuropathy, such as carpal tunnel syndrome, is addressed at

¹ A.M.A., *Guides* (6th ed. 2008).

² Dr. Barakat advised that he used Table 16-10 and Table 16-15 of the fifth edition of the A.M.A., *Guides* to determine appellant's impairment rating.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

section 15-4f.⁸ Having established the diagnosis of carpal tunnel syndrome, the next step in the rating process is to consult Table 15-23, entitled *Entrapment/Compression Neuropathy Impairment*.⁹ The table provides a series of grade modifiers from zero to four and a range of corresponding upper extremity impairments from zero to nine percent. Grade modifiers are assigned based on a combination of factors including test findings, history and physical findings.¹⁰

The Office's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*. The Office medical adviser is to provide rationale for the percentage of impairment specified.¹¹

ANALYSIS

The Board finds this case is not in posture for decision. It is well established that, when the examining physician does not provide an estimate of impairment conforming to the proper edition of the A.M.A., *Guides*, the Office may rely on the impairment rating provided by a medical adviser.¹² In this case, Dr. Barakat, an attending orthopedic surgeon, advised in an August 13, 2009 report that, in accordance with the fifth edition of the A.M.A., *Guides*, appellant had a five percent impairment of the whole person for each upper extremity. He did not review appellant's impairment in accordance with the appropriate edition of the A.M.A., *Guides*. The sixth edition is to be used in rating impairment for schedule award decisions issued after May 1, 2009.¹³ The Office properly referred the medical record to Dr. Harris, an Office medical adviser, for review. The Act does not provide for schedule awards for permanent impairment of the whole person.¹⁴

The only medical evidence of record discussing the sixth edition of the A.M.A., *Guides* and the relevant table for determining impairments due to entrapment neuropathy is the September 5, 2009 report of Dr. Harris. Dr. Harris reviewed Dr. Barakat's physical findings and found that, in accordance with Table 15-23 of the sixth edition, appellant had a grade modifier of 1.¹⁵ He concluded that appellant had a two percent impairment of each upper extremity.

⁸ A.M.A., *Guides*, *supra* note 1 at 432.

⁹ *Id.* at 448-49.

¹⁰ Additional grade modifications are permitted using the *QuickDASH* (Disabilities of the Arm, Shoulder and Hand) functional assessment tool.

¹¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹² See *J.Q.*, 59 ECAB ____ (Docket No. 06-2152, issued March 5, 2008).

¹³ *Supra* note 7.

¹⁴ *N.D.*, 59 ECAB ____ (Docket No. 07-1981, issued February 1, 2008).

¹⁵ A.M.A., *Guides*, *supra* note 1 at 449.

The A.M.A., *Guides* explain that, to rate focal nerve compromise under Table 15-23, the appropriate grade modifier for test findings, history and physical findings is to be determined.¹⁶ Dr. Harris did not indicate his findings in regard to test findings, history and physical findings, merely advising that appellant had a grade modifier of 1 for a two percent impairment of each upper extremity. He did not adequately explain his conclusion to support a two percent impairment of each upper extremity. The Board will remand the case to the Office for clarification of the Office medical adviser's rating of two percent impairment to each upper extremity, in accordance with the sixth edition of the A.M.A., *Guides*. After such development deemed necessary, the Office shall issue an appropriate decision.

CONCLUSION

The Board finds this case is not in posture for decision as to the extent of appellant's bilateral upper extremity impairments.

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2009 decision of the Office of Workers' Compensation Programs be vacated and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: October 13, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹⁶ *Id.* at 448.