

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

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**L.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Stirling, NJ, Employer**

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**Docket No. 11-29  
Issued: August 17, 2011**

*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 4, 2010 appellant, through her attorney, filed a timely appeal of a June 16, 2010 Office of Workers' Compensation Programs' (OWCP) schedule award decision. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the schedule award case.

**ISSUE**

The issue is whether appellant has more than five percent impairment of her right upper extremity for which she has received a schedule award.

On appeal counsel argued that the impartial medical examiner failed to provide an explanation supporting his impairment rating.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## FACTUAL HISTORY

On September 28, 1983 appellant, then a 50-year-old postal clerk, filed an occupational disease alleging that on June 11, 1983 she became aware of her condition of carpal tunnel syndrome. She first attributed this condition to her work on September 13, 1983. Dr. Veena Sawhney, a physician Board-certified in physical medicine and rehabilitation, conducted electrodiagnostic studies on September 8, 1983 and found moderately severe compromise of the right median nerve across the wrist and diagnosed right carpal tunnel syndrome. Dr. E. Rachlin, a Board-certified orthopedic surgeon, performed a right carpal tunnel surgical release on August 1, 1984.

By decision dated November 5, 1984, OWCP denied appellant's claim finding that she had not established a causal relationship between her condition and employment duties. The Branch of Hearings and Review vacated the November 5, 1984 decision on April 29, 1985 and remanded the case for additional development of the medical evidence. OWCP accepted appellant's claim for right carpal tunnel syndrome on May 10, 1985.

Dr. David Weiss, a Board-certified orthopedic surgeon, examined appellant on July 30, 1999 and noted her history of injury and medical history. He examined appellant's right hand and found thenar atrophy with full range of motion of the fingers and thumb. Dr. Weiss stated that sensory examination failed to reveal any perceived dermatomal abnormalities. He found that right hand grip strength was 24 kilograms (kg) while left hand was 34 kg, noting that appellant was right hand dominant. Dr. Weiss noted that appellant reported intermittent tingling in her right hand which woke her from sleep. He applied the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and found 10 percent impairment of the right upper extremity.<sup>2</sup>

OWCP's medical adviser reviewed this report on November 17, 2003 and stated that appellant's schedule award should be assessed under the fifth edition of the A.M.A., *Guides*. He opined that, under the appropriate edition of the A.M.A., *Guides*, appellant had five percent impairment for grade 3 motor impairment.

OWCP found a conflict of medical opinion between Dr. Weiss and the medical adviser referred appellant, a statement of accepted facts and list of questions for an impartial medical opinion evaluation with Dr. George P. Glenn, a Board-certified orthopedic surgeon. In his February 10, 2004 report, Dr. Glenn reviewed the statement of accepted facts and appellant's medical history. He found that appellant had no numbness in the right hand, but did experience weakness. Dr. Glenn found no thenar muscle atrophy and adequate strength. He noted that appellant had no evidence of sensory deficit with preserved two-point discrimination. Dr. Glenn stated that appellant's abductor muscle strength approached but did not equal normal. He utilized Table 16-11 and found that appellant had a grade 4 impairment ranging from 1 to 25

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<sup>2</sup> A.M.A., *Guides* 57, Table 16 (4<sup>th</sup> ed. 1999).

percent<sup>3</sup> or 2.5 percent impairment<sup>4</sup> under the fifth edition of the A.M.A., *Guides*<sup>5</sup> due to motor deficit involving the right thumb abductor. Dr. Glenn stated that appellant had reached maximum medical improvement.

A new medical adviser reviewed the record on December 21, 2005 and stated that Dr. Glenn's report was sufficient to establish motor loss. He noted that the original medical adviser gave two impairment ratings, and suggested that the larger, five percent, should be used.

By decision dated July 27, 2007, OWCP granted appellant a schedule award for five percent impairment of the right upper extremity.

Counsel requested an oral hearing on August 7, 2007. The Branch of Hearings and Review considered OWCP's July 27, 2007 decision and found it not in posture. The hearing representative remanded the case for additional development of the medical evidence finding that Dr. Glenn's report was not sufficiently detailed to constitute the weight of the medical evidence and required a supplemental opinion addressing appellant's permanent impairment.

Dr. Glenn completed a supplemental report on April 8, 2008 and recommended additional electrodiagnostic testing. On August 28, 2008 he reviewed the studies and stated that there was evidence of a borderline median neuropathy bilaterally equating to the minimal evidence of a residual alteration in the median nerve conduction studies and electromyogram. Dr. Glenn found that appellant had residual weakness in the abductor muscle strength. He stated that, utilizing Table 16-11 of the A.M.A., *Guides*, appellant had a grade 4 motor deficit with a range of 1 to 25 percent. Dr. Glenn stated that obviously this is a minimal more strength deficit equated to five percent. He stated that in accordance with Table 16-15 the maximum upper extremity impairment for medical nerve motor deficit was 10 percent. Dr. Glenn concluded that appellant had five percent impairment of the right upper extremity.

The medical adviser, Dr. Andrew A. Merola, reviewed this report on September 21, 2008 and listed Dr. Glenn's findings. In a supplemental report dated October 8, 2008, Dr. Merola stated that appellant had 10 percent impairment of the right upper extremity. On October 19, 2008 he stated that Dr. Glenn properly concluded that appellant had five percent impairment of the right upper extremity.

By decision dated October 21, 2008, OWCP found that appellant had no more than five percent impairment of her right upper extremity. Counsel requested an oral hearing, but awarded this request to a review of the written record on March 31, 2010.

In a decision of June 16, 2010, OWCP's hearing representative found that Dr. Glenn's report was entitled to the weight of the medical evidence and established that appellant had no more than five percent impairment of her right upper extremity.

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<sup>3</sup> *Id.* at 484, Table 16-11 (5<sup>th</sup> ed. 2001).

<sup>4</sup> *Id.* at 492, Table 16-15.

<sup>5</sup> *Id.* at 5<sup>th</sup> ed. 2001.

## LEGAL PRECEDENT

The schedule award provision of FECA<sup>6</sup> and its implementing regulations<sup>7</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss or loss of use, of scheduled members or functions of the body. The FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.<sup>8</sup>

In evaluating carpal tunnel syndrome, the A.M.A., *Guides* provide that, if after an optimal recovery time following surgical decompression, an individual continues to complain of pain, paresthesias or difficulties in performing certain activities three possible scenarios can be present. The first situation is: Positive clinical finding of median nerve dysfunction and electrical conduction delay(s): The impairment due to residual carpal tunnel syndrome (CTS) is rated according to the sensory and/or motor deficits as described earlier.<sup>9</sup> In this situation, the impairment due to residual CTS is evaluated by multiplying the grade of severity of the sensory or motor deficit by the respective maximum upper extremity impairment value resulting from sensory or motor deficits of each nerve structure involved. When both sensory and motor functions are involved the impairment values derived for each are combined. In the second scenario there is normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles, a residual CTS is still present and an impairment rating not to exceed five percent of the upper extremity may be justified. The final scenario is normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies, in which case there is no objective basis for an impairment rating.<sup>10</sup>

## ANALYSIS

Appellant's claim was accepted for right carpal tunnel syndrome. She requested a schedule award and submitted a report from Dr. Weiss dated July 30, 1999 finding that she had 10 percent impairment of the right upper extremity in accordance with the fourth edition of the A.M.A., *Guides*. OWCP's medical adviser found on January 17, 2003 that appellant had five percent impairment under the fifth edition of the A.M.A., *Guides*. Due to this disagreement in

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<sup>6</sup> 5 U.S.C. §§ 8101-8193, 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> A.M.A., *Guides*, 5<sup>th</sup> ed. (2001). This edition of the A.M.A., *Guides* was applicable to decisions issued from February 1, 2001 through April 30, 2009. *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

<sup>9</sup> A.M.A., *Guides* 495.

<sup>10</sup> *Silvester DeLuca*, 53 ECAB 500 (2002). A.M.A., *Guides* 495.

the medical evidence regarding the extent of appellant's permanent impairment for schedule award purposes, there was a conflict of medical opinion evidence. When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which provides that, 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 and resolve the conflict of medical evidence.<sup>11</sup> This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>12</sup> The Board finds that OWCP properly referred appellant to Dr. Glenn to determine the extent of appellant's permanent impairment.

In his reports Dr. Glenn examined appellant and provided impairment ratings. In the supplemental report, he reviewed appellant's electrodiagnostic studies and found that she had evidence of residual alteration in the median nerve conduction studies. Based on this testing, appellant's right CTS is appropriately evaluated by determining the extent of motor impairment and multiplying this number by the maximum value of the median nerve. On physical examination he found no evidence of sensory deficit with preserved two-point discrimination. Dr. Glenn found a loss of motor strength in the right thumb abductor. He utilized Table 16-11 and found that appellant had grade 4 impairment, which is complete active range of motion against gravity with some resistance with a range of motor deficit from 1 to 25 percent.<sup>13</sup> Dr. Glenn multiplied the percentage of motor deficit by the maximum value for median nerve motor deficit of 10 percent to reach 2.5 percent impairment.<sup>14</sup>

The Board finds that Dr. Glenn's opinion is entitled to the special weight of the medical evidence and establish that appellant has no more than five percent impairment of her right upper extremity for which appellant has received a schedule award. Dr. Glenn's reports were based on an accurate history of injury, complied with the appropriate fifth edition of the A.M.A., *Guides* and included the necessary physical findings and references to the A.M.A., *Guides*, to enable the Board to recreate his reasoning and duplicate his findings.<sup>15</sup> For these reasons, the Board finds that the weight of the medical evidence establishes that appellant has no more than five percent impairment of her right upper extremity for which she has received a schedule award.

On appeal, counsel argued that the medical evidence was not sufficient to establish appellant's impairment rating. Based on Dr. Glenn's reports and the review of the medical advisers, the Board finds that the medical evidence of record clearly establishes that appellant had no more than five percent impairment of her right upper extremity.

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<sup>11</sup> 5 U.S.C. §§ 8101-8193, 8123; *B.C.*, 58 ECAB 111 (2006); *M.S.*, 58 ECAB 328 (2007).

<sup>12</sup> *R.C.*, 58 ECAB 238 (2006).

<sup>13</sup> *Supra* note 3.

<sup>14</sup> *Supra* note 4.

<sup>15</sup> Although the final schedule award decision by the hearing representative was issued after the effective date (May 1, 2009) of the use of the sixth edition of the A.M.A., *Guides*, it is appropriate as the decision simply affirms a previous award under the fifth edition. See FECA -- Bulletin No. 09-03, dated March 15, 2009.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

**CONCLUSION**

The Board finds that appellant has no more than five percent impairment of her right upper extremity for which she has received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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