

sustained an injury in the performance of duty on June 19, 2002.¹ The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

Subsequent to the Board's decision, the Office accepted appellant's claim for right lateral epicondylitis and her claim for a recurrence of disability for the period August 8 to 12, 2002. On September 12, 2006 appellant filed a claim for a schedule award.

In a November 7, 2006 report, Dr. David B. Brown, a treating Board-certified orthopedic surgeon, concluded that she had 10 percent right upper extremity impairment. A physical examination revealed good right elbow mobility in flexion and rotation and mild right forearm lateral epicondylar discomfort.

On July 9, 2007 Dr. Barry W. Levine, a Board-certified internist and an Office medical adviser, reviewed Dr. Brown's report and found no ratable impairment.

By decision dated March 28, 2008, the Office denied appellant's claim for a schedule award.

On March 29, 2008 appellant's counsel requested a telephonic hearing.

By decision dated October 2, 2008, an Office hearing representative vacated the March 28, 2008 decision and remanded the case for referral to a second opinion physician.

On remand from the hearing representative's decision, the Office referred appellant to Dr. Balazs Somogyi, a second opinion Board-certified orthopedic surgeon, to provide an opinion on permanent impairment. On October 30, 2008 Dr. Somogyi determined that appellant had 10 percent right upper extremity impairment based on loss of grip strength using Table 16-34, page 509 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (hereinafter A.M.A., *Guides*).

In a November 3, 2008 report, Dr. David I. Krohn, an Office medical adviser and Board-certified internist, reviewed the medical evidence including Dr. Somogyi's October 15, 2008 report. He concluded that Dr. Somogyi incorrectly applied the A.M.A., *Guides* when calculating appellant's impairment based on decreased grip strength. Using Table 16-10, page 482 and Table 16-15, page 492 Dr. Krohn found a total of 3 percent right upper extremity impairment (60 percent multiplied by 5 percent).

By decision dated December 22, 2008, the Office granted appellant a schedule award for three percent right upper extremity impairment. The award was for 9.36 weeks and ran from June 19 to August 23, 2002.

On December 30, 2008 appellant's counsel requested a telephonic hearing.

¹ Docket No. 03-320 (issued April 8, 2003).

By decision dated July 21, 2009, the Office hearing representative remanded the case to the Office medical adviser for additional review under the sixth edition of the A.M.A., *Guides*.

In an August 1, 2009 report, Dr. Krohn concluded that appellant had one percent right upper extremity impairment using the sixth edition of the A.M.A., *Guides*. In reaching this determination, he used Table 15-4, page 399 and assigned Class 1 for her lateral epicondylitis with residual pain which was equal to one percent right upper extremity impairment. Using Table 15-8, page 408, Dr. Krohn found a Grade 2 modifier for moderate tenderness over palpation. Next, the Office medical adviser noted that a Grade 1 modifier was appropriate using Table 15-7, page 406 for pain symptoms with vigorous/strenuous activity. Using Table 15-9, page 410, no modifier was appropriate for any relevant findings or clinical studies. Combining the modifiers resulted in a net adjustment of zero and a total one percent right upper extremity permanent impairment.

By decision dated September 14, 2009, the Office denied appellant's request for an additional schedule award.

In a letter dated September 23, 2009, appellant's counsel requested a telephonic hearing, which was held on November 30, 2009.

By decision dated January 29, 2010, the Office hearing representative affirmed the September 14, 2009 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ 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 uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴ Effective May 1, 2009, the Office adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁵

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.* See *C.M.*, 61 ECAB ____ (Docket No. 09-1268, issued January 22, 2010); *Billy B. Scoles*, 57 ECAB 258 (2005).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claim*, Chapter 2.808.6.6a (January 2010); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

and Health (ICF).⁶ Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).⁷ The net adjustment formula is $(GMFH-CDX) + (GMPE - CDX) + (GMCS - CDX)$.⁸

ANALYSIS

The Office accepted appellant's claim for right lateral epicondylitis and a recurrence of disability for the period August 8 to 12, 2002. On December 22, 2008 it granted her a schedule award for three percent right upper extremity impairment. Appellant disagreed with the impairment rating found by the Office. The question to be resolved is whether she is entitled to greater than three percent impairment, for which she received a schedule award. The Board finds that the medical evidence of record does not establish a greater impairment than the three percent impairment appellant has already received.

The only medical report discussing the relevant tables in the sixth edition is the August 24, 2009 report of Dr. Krohn, an Office medical adviser, who applied the most recent edition of the A.M.A., *Guides* to the clinical findings of Dr. Somogyi. Dr. Krohn followed the assessment formula of the sixth edition of the A.M.A., *Guides*. He first identified the impairment class for the diagnosed condition (CDX) according to Table 15-4, one percent impairment for lateral epicondylitis of the right arm with a history of painful injury and residual symptoms. The medical adviser then found a Grade 1 modifier according to Table 15-7 for functional history (GMFH) and a Grade 2 modifier according to Table 15-8 for moderate tenderness on physical examination (GMPE). As there were no relevant clinical studies (GMCS), the net adjustment formula for this case is $(GMFH-CDX \text{ or } 1-1 = 0) + (GMPE - CDX \text{ or } 2-1 = 1) + (GMCS - CDX \text{ or } 0-1 = -1)$ which resulted in a zero percent net adjustment $(0+1+1 = 0)$. The medical adviser found a one percent permanent impairment of the right arm.

The Board finds that the Office medical adviser applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Somogyi's clinical findings. Neither Dr. Somogyi nor Dr. Brown provided an impairment rating based on the sixth edition of the A.M.A., *Guides*. Therefore, the Office properly relied on the only medical impairment rating based on the sixth edition of the A.M.A., *Guides* to find one percent permanent impairment of the right upper extremity.

CONCLUSION

The Board finds that appellant has not established that she is entitled to greater than three percent permanent impairment of the right upper extremity, for which she received a schedule award.

⁶ A.M.A., *Guides* (6th ed. 2009), at 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

⁷ A.M.A., *Guides* (6th ed. 2009), pp. 383-419.

⁸ *Id.* at 411.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 29, 2010 is affirmed.

Issued: January 25, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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