

FACTUAL HISTORY

On August 9, 2007 appellant, then a 43-year-old medical technician filed a traumatic injury claim alleging that on that date she sustained hyperflexion of the right wrist in the performance of duty. OWCP accepted her claim for right carpal tunnel syndrome and right radiocarpal wrist sprain. On September 27, 2007 appellant underwent an authorized right caphoid ligament repair with thermal shrinkage. She received compensation benefits.

On March 18, 2008 appellant filed a claim for a schedule award. In a March 18, 2008 report, Dr. Andrew Seltzer, a treating osteopath and Board-certified hand surgeon, noted that appellant was being evaluated for her right wrist. He determined that she had satisfactory palmar and dorsiflexion, mild limitation of the radial and ulnar deviation, some tenderness to palpation over the scapholunate region and no swelling of the wrist. Dr. Seltzer also found normal motion of the fingers, thumb, elbow and shoulder and advised that appellant had reached maximum medical improvement. He opined that she had one percent whole body impairment due to mild degenerative changes of the wrist. Dr. Seltzer recommended full duty with the exception of scanning as it aggravated her wrist.

In a letter dated August 1, 2008, the Office requested that appellant provide an impairment rating from her treating physician utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

OWCP received an August 12, 2008 report from Dr. Seltzer, who reported the measurements for appellant's right wrist range of motion. Dr. Seltzer listed radial deviation of 25 degrees, ulnar deviation of 37 degrees, dorsiflexion and palmar flexion of 70 degrees. He opined that appellant had an impairment of one percent of the right upper extremity.

In a report dated March, 18, 2008, OWCP's medical adviser noted that appellant underwent surgical repair of a partial tear of the scapholunate ligament on September 27, 2007. He explained that she was at maximum medical improvement on March 18, 2008 and had normal range of motion of the wrist. OWCP's medical adviser determined that appellant had no impairment of the arm. He referred to Figure 16-28 and Figure 31 and determined that 70 degrees of dorsiflexion and palmar flexion, 25 degrees of radial deviation and 30 degrees of ulnar deviation resulted in a zero percent impairment.²

In an April 30, 2009 memorandum, OWCP determined that its medical adviser's opinion constituted the weight of the medical evidence as his report was the only report that comported with the A.M.A., *Guides*. It noted that Dr. Seltzer did not utilize the A.M.A., *Guides* correctly.

By decision dated April 30, 2009, OWCP denied appellant's claim for a schedule award. It found that she did not submit sufficient medical evidence to support impairment to her right upper extremity.

On April 16, 2010 appellant requested reconsideration. In an April 15, 2010 report, Dr. Seltzer noted her history and examination findings since he began treating her on

² A.M.A., *Guides* 467, 469.

August 27, 2007. Initially, examination of the right wrist revealed no effusion. Appellant had tenderness to palpation of the scapholunate region dorsally and pain with passive radial and ulnar deviation. The ulnar aspect of the wrist was nontender and appellant had good mobility of the fingers and thumb. Dr. Seltzer noted that appellant had mild carpal tunnel syndrome and superficial ganglion cyst on the right. He opined that “it is my opinion that these are not related to her workers’ compensation injury and therefore does not need a combined impairment rating.” Dr. Seltzer referred to the A.M.A., *Guides* and opined that appellant had an eight percent whole person impairment. He referred to his previous rating, and noted that, since that rating, appellant had reinjured her wrist and it had become more painful and unstable. Dr. Seltzer advised that appellant did not wish any further surgical intervention. A checklist accompanied his report; he provided a *QuickDash* score of 41 with a grade modifier of 2. Dr. Seltzer also provided range of motion findings, which were normal. He indicated that he rated impairment for the diagnosis of moderate right wrist instability in Table 15-3.

In an April 26, 2010 report, OWCP’s medical adviser determined that appellant did not have any impairment rating to her right upper extremities under the A.M.A., *Guides*. He determined that the motor, sensory and range of motion examinations were normal. Additionally appellant’s postoperative arthrogram was normal. OWCP’s medical adviser noted that the *QuickDash* score was 41 according to Table 15-7. He noted Dr. Seltzer’s eight percent whole person impairment and advised that the findings did not support the rating. OWCP’s medical adviser noted that, regarding the *QuickDash* score, the A.M.A., *Guides* provided: “[i]f the grade for functional history differs by two or more grades from that described by the physical exam[ination] or the clinical studies, the functional history should be assumed to be unreliable ..., excluded from the grading process.” He opined that appellant had no impairment.

In a May 20, 2010 decision, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

Section 8107 of³ FECA 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.⁴ FECA, 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.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

³ 5 U.S.C. §§ 8101-8193.

⁴ *Id.* at § 8107.

⁵ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

Under the sixth edition of the A.M.A., *Guides*, impairments of the upper extremities are covered by Chapter 15, section 15-2, entitled Diagnosis-Based Impairment, provides that diagnosis-based impairment is the primary method of evaluation of the upper limb.⁷

The sixth edition requires identifying 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).⁸ The net adjustment formula is GMFH - CDX + GMPE - CDX + GMCS - CDX.⁹

ANALYSIS

OWCP accepted right carpal tunnel syndrome and right radiocarpal wrist sprain. On September 27, 2007 appellant underwent a right caphoid ligament repair with thermal shrinkage.

On April 15, 2010 Dr. Seltzer opined that appellant had eight percent whole person impairment. The Board notes that FECA does not authorize schedule awards for permanent impairment of the whole person.¹⁰ Dr. Seltzer did not address the degree of impairment to the arm. Although he stated that he used Table 15-3 to rate impairment for moderate instability of the right wrist, he did not explain how he determined any impairment under this table.¹¹ Dr. Seltzer did not adequately explain how he used the A.M.A., *Guides* to rate impairment or rate impairment to a schedule member pursuant to the A.M.A., *Guides*. His opinion is of diminished probative value.¹²

In an April 26, 2010 report, OWCP's medical adviser determined that appellant did not have any impairment rating to her right upper extremities under the A.M.A., *Guides*. He explained that she had a normal postoperative arthrogram. Additionally, appellant's findings for the motor, sensory and range of motion examinations were normal. OWCP's medical adviser also explained that Dr. Seltzer provided a *QuickDash* score which was 41 with a grade modifier of 2 and noted that the A.M.A., *Guides* provided: "[i]f the grade for functional history differs by two or more grades from that described by the physical exam[ination] or the clinical studies, the functional history should be assumed to be unreliable ..., excluded from the grading process." As it was unreliable, this score could not be used in rating any impairment.¹³ In view of other

⁷ A.M.A., *Guides* 387, section 15.2.

⁸ *Id.* at 494-531.

⁹ *Id.* at 521.

¹⁰ *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

¹¹ A.M.A., *Guides* 396-97. Table 15-3, the wrist regional grid, provides a variety of diagnoses involving the wrist to be used for rating impairment of the arm. The table does not rate whole person impairment.

¹² See *J.G.*, Docket No. 09-1128 (issued December 7, 2009) (an attending physician's report is of little probative value where the A.M.A., *Guides* are not properly followed).

¹³ See A.M.A., *Guides* 406-07.

normal findings following surgery, OWCP's medical adviser concluded that appellant had no ratable impairment.

The Board finds that OWCP's medical adviser properly considered the findings presented by Dr. Seltzer and determined that appellant had no ratable impairment under the A.M.A., *Guides*. The weight of medical evidence establishes that appellant has no impairment of the right upper extremity.

On appeal, appellant contends that her physician found ratable impairment. She also contends that her career is gone as she can no longer perform her duties. However, as noted above, Dr. Seltzer's report did not comport with the A.M.A., *Guides*. The Board has also held that factors such as limitations on daily activities do not go into the calculation of a schedule award.¹⁴ Additionally, the medical evidence does not support a permanent impairment.

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 not met her burden of proof in establishing that she is entitled to a schedule award for her right upper extremity.

¹⁴ *E.L.*, 59 ECAB 405 (2008).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 20, 2010 is affirmed.

Issued: July 14, 2011
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