



## **FACTUAL HISTORY**

This case has previously been before the Board. By decision dated April 15, 2010, the Board found the case not in posture for decision regarding appellant's right upper extremity impairment. The Board noted that appellant's attending physician, Dr. Neil Novin, a Board-certified surgeon, provided a March 19, 2009 report in which the physician found that appellant had 30 percent right arm impairment in accordance with the sixth edition of American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (hereinafter)<sup>2</sup> and that this report had not been reviewed by an Office medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*. The case was remanded for the Office to forward Dr. Novin's report to an Office medical adviser for review in accordance with the sixth edition of the A.M.A., *Guides*, to be followed by an appropriate decision.<sup>3</sup> The law and facts of the previous Board decision are incorporated herein by reference.

On May 4, 2010 the Office forwarded Dr. Novin's March 19, 2009 report to Dr. Morley Slutsky, Board-certified in occupational medicine and an Office medical adviser. In a May 6, 2010 report, Dr. Slutsky noted his review of the medical record including Dr. Novin's March 19, 2009 report. He advised that the date of maximum medical improvement was March 19, 2009. Dr. Slutsky disagreed with Dr. Novin's conclusion that appellant had a 30 percent permanent impairment of the right upper extremity. He noted that, in analyzing appellant's right upper extremity impairment under Table 15-3, Dr. Novin used a diagnosis of wrist arthrodesis (fusion). The Office medical adviser advised that appellant did not have a fusion but rather a resection of the distal ulna at the articulating portion of the radius and based his impairment rating under Table 15-3, Wrist Regional Grid, on a diagnosis of radiocarpal arthroplasty with normal motion. Dr. Slutsky also noted that Dr. Novin did not perform range of motion measurements in accordance with the A.M.A., *Guides*, which require that three measurements be made per joint motion, that are then averaged. The Office medical adviser advised that under Table 15-3, radiocarpal arthroplasty with normal motion or class 2, the default class C yielded 16 percent impairment. He stated that he agreed with Dr. Novin's conclusions regarding the grade modifier for functional history of three and clinical studies of one and noted that Dr. Novin did not document a modifier for physical examination, which he graded as one. Dr. Slutsky advised that, since the functional history grade modifier differed by two or more grades from that described by physical examination or clinical studies, the functional history should be assumed to be unreliable.<sup>4</sup> He then applied the net adjustment formula, finding a zero percent adjustment and concluded that appellant had 16 percent right upper extremity impairment.

By decision dated May 12, 2010, appellant was granted a schedule award for an additional 2 percent impairment, for a total 16 percent impairment of the right upper extremity.

---

<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

<sup>3</sup> Docket No. 09-1903 (issued April 15, 2010).

<sup>4</sup> The Board notes that Dr. Slutsky misquoted the A.M.A., *Guides* which state that "if the grade for functional history differs by 2 or more grades...." A.M.A., *Guides*, *supra* note 2 at 406. Dr. Slutsky stated that the A.M.A., *Guides* stated that if functional history differed by more than 2 or more.

## LEGAL PRECEDENT

The schedule award provision of the Act<sup>5</sup> and its implementing federal regulations,<sup>6</sup> 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.<sup>7</sup> For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>8</sup> For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.<sup>9</sup>

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 and Health (ICF).<sup>10</sup> Under the sixth edition, for upper extremity impairments 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).<sup>11</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>12</sup>

Office 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*, with the Office medical adviser providing rationale for the percentage of impairment specified.<sup>13</sup>

## ANALYSIS

The Board finds that this case is not in posture for decision as to the extent of appellant's right upper extremity impairment. The case will therefore be remanded to the Office for further development.

---

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> *Id.* at § 10.404(a).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>9</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>10</sup> A.M.A., *Guides*, *supra* note 2 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

<sup>11</sup> *Id.* at 385-419.

<sup>12</sup> *Id.* at 411.

<sup>13</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

The sixth edition of the A.M.A., *Guides* provides that upper extremity impairments be classified by diagnosis which is then adjusted by grade modifiers according to the formula described above.<sup>14</sup> Appellant's accepted diagnosed conditions are right wrist sprain/strain, dislocation of the wrist, arthrosis of the distal radioulnar joint and localized primary osteoarthritis of the right forearm and hand. Table 15-3 of the sixth edition of the A.M.A., *Guides*, Wrist Regional Grid, provides classes to be used in rating wrist impairments.<sup>15</sup>

On April 15, 2010 the Board remanded the case to the Office to refer Dr. Novin's March 19, 2009 report to an Office medical adviser for review.<sup>16</sup> In the March 19, 2009 report, Dr. Novin advised that, in accordance with the sixth edition of the A.M.A., *Guides*, under Table 15-3, appellant had a grade E, class 1 impairment which warranted a grade modifier of 3 which under Table 15-7, functional history adjustment, equaled a *QuickDASH* score of 75;<sup>17</sup> that under Table 15-8, physical examination adjustment, he had a moderate problem for a grade modifier of 2.<sup>18</sup> He then followed example 15-7 for a wrist arthrodesis (fusion)<sup>19</sup> and concluded that, under Table 15-10,<sup>20</sup> appellant had a class 3, grade C impairment warranting a 30 percent permanent impairment of the right upper extremity.

A class 1, grade E impairment, as identified by Dr. Novin, would yield no more than a 13 percent impairment, depending on the diagnosis class chosen.<sup>21</sup> He also chose the impairment class, wrist arthrodesis (fusion), which is inconsistent with a class 1, grade E impairment, instead rated as a class 3 impairment.<sup>22</sup> Moreover, appellant did not undergo a wrist fusion but rather had arthrotomy of the right distal radioulnar joint with removal of loose body and repair of the triangular fibrocartilage complex on January 17, 2001 and a distal radioulnar arthroplasty on December 4, 2006.<sup>23</sup> As Dr. Novin did not explain these inconsistencies in his report, it is of diminished probative value in assessing appellant's right upper extremity impairment.

In a May 6, 2010 report, Dr. Slutsky, the Office medical adviser, disagreed with Dr. Novin's conclusion that appellant had a 30 percent permanent impairment of the right upper extremity. He noted that, in analyzing appellant's right upper extremity impairment under Table 15-3, Dr. Novin used a diagnosis of wrist arthrodesis (fusion) and advised that a better

---

<sup>14</sup> A.M.A., *Guides*, *supra* note 2 at 403.

<sup>15</sup> *Id.* at 395-97.

<sup>16</sup> *Supra* note 3.

<sup>17</sup> A.M.A., *Guides*, *supra* note 2 at 406.

<sup>18</sup> *Id.* at 408.

<sup>19</sup> *Id.* at 416.

<sup>20</sup> *Id.* at 412.

<sup>21</sup> *See* Table 15-3, *id.* at 395-97.

<sup>22</sup> *Id.* at 397.

<sup>23</sup> *Supra* note 3.

impairment class under Table 15-3 was for a diagnosis of radiocarpal arthroplasty with normal motion or class 2, with a default impairment of 16 percent. The Office medical adviser stated that he agreed with Dr. Novin's conclusions regarding the grade modifier for functional history of three and clinical studies of one and that Dr. Novin did not document a modifier for physical examination. A review of Dr. Novin's report, however, indicates that he provided an adjustment rating under Table 15-8, physical examination, finding a grade modifier of 2 and contrary to the Office medical adviser's assertion, Dr. Novin did not document a modifier for clinical studies. Thus, Dr. Slutsky's application of the net adjustment formula is in error.<sup>24</sup>

Accordingly, as there is insufficient probative medical evidence of record, the Board finds that the case is not in posture for decision and the case must be remanded to the Office for further development regarding the extent of appellant's right upper extremity impairment in accordance with the sixth edition of the A.M.A., *Guides*. After such development as deemed necessary, the Office should issue an appropriate decision on the issue of appellant's entitlement to an additional schedule award.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

---

<sup>24</sup> It appears that Dr. Slutsky mixed Dr. Novin's report and that of a Dr. Allan H. Macht.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 12, 2010 decision of the Office of Workers' Compensation Programs is vacated and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: June 3, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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