

her claim for bilateral carpal tunnel syndrome and paid compensation for periods of disability.¹ Appellant later claimed entitlement to a schedule award due to her accepted conditions.

In a November 25, 2008 report, Dr. Arthur Becan, an attending Board-certified orthopedic surgeon, provided a history of appellant's work-related injuries. He noted that examination of the right wrist revealed palmar tenderness and that there was no tenderness noted over the dorsal aspect of the wrist or over the extensor carpi ulnaris. The Tinel's sign and one-minute Phalen's sign were positive. Dr. Becan stated that carpal compression, ulnar abutment and Finkelstein tests were negative. Range of motion revealed dorsiflexion of 0-75/75 degrees, palmar flexion of 0-75/75 degrees, radial deviation of 0-20/20 degrees and ulnar deviation of 0-35/35 degrees. He indicated that dorsiflexion caused palmar wrist pain.

Examination of the left wrist revealed palmar tenderness, but there was no tenderness noted over the dorsal aspect of the wrist or over the extensor carpi ulnaris. Dr. Becan stated that the Tinel's sign and one-minute Phalen's sign were positive. Carpal compression, ulnar abutment and Finkelstein tests were negative. He indicated that range of motion revealed dorsiflexion of 0-65/75 degrees with palmar wrist pain, palmar flexion of 0-70/75 degrees, radial deviation of 0-20/20 degrees and ulnar deviation of 0-30/35 degrees. Dr. Becan noted that Semmes-Weinstein Monofilament Testing revealed a diminished light touch sensibility at 3.6 milligrams over the ulnar nerve distribution and 4.6 milligrams over the median nerve distribution in both the right and left hand. Grip strength testing performed *via* Jamar Hand Dynamometer at Level III revealed 22 kilograms of force strength in the right hand versus 11 kilograms of force strength in the left hand.

Dr. Becan then applied the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) to his findings, including Table 15-23 (Entrapment/Compression Neuropathy Impairment) on page 449. With respect to the right arm, Dr. Becan stated that for Test Findings appellant had a Grade Modifier 1 based on electrodiagnostic studies that confirmed conduction delays (sensory and/or motor); that for History she had a Grade Modifier 2 for significant intermittent symptoms; and that for Physical Findings she had a Grade Modifier 2 for decreased sensation. The values of the Grade Modifiers were added resulting in a total of five. Dividing this value of 5 by the 3 categories provided an average of 1.66 which rounded up to 2. Dr. Becan indicated that, for the right arm, appellant fell under Grade 2 which offered a default impairment rating of five percent for the right arm. Appellant's Functional Score for the right arm (dictated by the *QuickDASH* score of 50) was consistent with the default rating and no additional impairment was assigned. The final rating for the right-sided carpal tunnel was five percent of the right arm.

With respect to the left arm, Dr. Becan provided similar ratings for Test Findings, History and Physical Findings to determine that appellant fell under Grade 2 which offered a default impairment rating of five percent for the left arm. Appellant's Functional Score for the left arm

¹ On July 21, 2006 appellant had filed an occupational disease claim for injury to her left thumb. The Office accepted that appellant sustained left trigger thumb and mild arthritis of the first metacarpophalangeal and interphalangeal joints of the left thumb. A left trigger thumb release was performed on July 23, 2007. In a November 5, 2009 decision, the Office granted appellant a schedule award for an eight percent permanent impairment of her left thumb.

(dictated by the *QuickDASH* score of 59) was consistent with the default rating and no additional impairment was assigned. The final rating for the left-sided carpal tunnel was five percent of the left arm. The date of maximum medical improvement was determined to be November 25, 2008.²

In an April 29, 2009 letter, the Office advised appellant that her impairment would be evaluated under the standards of the sixth edition of the A.M.A., *Guides*. In a May 7, 2009 letter, counsel asserted that it was unjust to require appellant's impairment to be evaluated under the standards of the sixth edition of the A.M.A., *Guides*.

In a November 26, 2009 report, Dr. Daniel D. Zimmerman, a Board-certified internist who served as an Office medical adviser, stated that Dr. Becan provided a five percent impairment rating for each arm due to carpal tunnel syndrome and a two percent impairment rating for the left thumb. Dr. Zimmerman indicated that these impairment ratings, derived under the sixth edition of the A.M.A., *Guides*, were "acceptable." He stated that the rating for the left thumb had to be converted to an arm rating and then combined with the five percent left arm rating using the Combined Values Chart on pages 604 through 606. However, using Table 15-11 on page 420 the two percent rating of the left thumb equaled a zero percent rating of the left arm.

In a December 2, 2009 decision, the Office granted appellant a schedule award for a five percent permanent impairment of her right arm and a five percent permanent impairment of her left arm. The award ran for 31.2 weeks from November 25, 2008 to July 1, 2009. The award was based on the November 25, 2008 report of Dr. Becan (using the standards of the sixth edition of the A.M.A., *Guides*) and the November 26, 2009 report of Dr. Zimmerman.³

On December 8, 2009 counsel requested a review of the written record, noting that he felt the Office should have used the fifth edition of the A.M.A., *Guides* to compute appellant's award given the time the claim was filed, the date of the evaluation report, and the fact that the sixth edition was dramatically less favorable to claimants than the fifth edition.

² With respect to the left trigger thumb, Dr. Becan indicated that according to Table 15-30 (Thumb Range Motion) on page 468 of the sixth edition of the A.M.A., *Guides*, appellant's metacarpophalangeal flexion of 5 to 65 degrees warranted a two percent permanent impairment of the left thumb. In another report dated November 25, 2008, Dr. Becan found that, under the standards of the fifth edition of the A.M.A., *Guides* (5th ed. 2001), appellant had a 45 percent impairment of her right arm and a 38 percent impairment of her left arm.

³ The Office indicated that appellant was previously awarded a schedule award for an eight percent impairment of her left thumb and stated, "Since Dr. Becan's rating was two percent impairment of the left thumb, which is less than the eight percent previously awarded, no further award for the thumb will be made."

In a February 19, 2010 decision, the Office hearing representative affirmed the Office's December 2, 2009 schedule award decision noting that it was appropriate for Dr. Becan and Dr. Zimmerman to apply the standards of the sixth edition of the A.M.A., *Guides*.⁴

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing regulations⁶ 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.⁷ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁸

Under the sixth edition of the A.M.A., *Guides*, impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.⁹ In Table 15-23, grade modifiers are described for Test Findings, History and Physical Findings. A survey completed by a given claimant, known by the name *QuickDASH*, is used to further modify the grade and to choose the appropriate numerical impairment rating.¹⁰

ANALYSIS

The Office accepted appellant's claim for bilateral carpal tunnel syndrome and paid compensation for periods of disability.¹¹ Appellant later claimed entitlement to a schedule award

⁴ The Office hearing representative stated, "FECA Bulletin No. 09-03 outlined the Office's transition to the sixth edition of the [A.M.A., *Guides*]. Said bulletin notes an effective date of May 1, 2009. While [counsel] argues that the Office's delay in adjudicating the claimed schedule award which was, in his opinion, filed 'timely' to fit under the fifth edition, I note that the Bulletin provides for no such 'grandfathering in' older claims. The Office's decision (and, indeed, the [Office medical adviser's] review on which it was based) was made well after May 1, 2009 and, accordingly, the Office correctly used the newer issue of the [A.M.A., *Guides*]."

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

⁷ *Id.*

⁸ FECA Bulletin No. 09-03 (issued March 15, 2009)

⁹ See A.M.A., *Guides* 449, Table 15-23.

¹⁰ *Id.* at 448.

¹¹ The Office had previously accepted that appellant sustained left trigger thumb and mild arthritis of the first metacarpophalangeal and interphalangeal joints of the left thumb. A left trigger thumb release was performed on July 23, 2007. In a November 5, 2009 decision, the Office granted appellant a schedule award for an eight percent permanent impairment of her left thumb.

due to her accepted conditions. In a December 2, 2009 decision, the Office granted appellant a schedule award for a five percent permanent impairment of her right arm and a five percent permanent impairment of her left arm.

The Board finds that appellant did not submit sufficient medical evidence to show that she has more than a five percent permanent impairment of her right arm and a five percent permanent impairment of her left arm. The Office properly found that the November 25, 2008 report of Dr. Becan, an attending Board-certified orthopedic surgeon, and the November 26, 2009 report of Dr. Zimmerman, a Board-certified internist, who served as an Office medical adviser, showed that appellant had a five percent permanent impairment of her right arm and a five percent permanent impairment of her left arm.

On appeal counsel argued that the Office deprived appellant of due process of law and property rights by failing to adjudicate her schedule claim in a timely manner pursuant to the fifth edition of the A.M.A., *Guides*.

In *Harry D. Butler*,¹² the Board noted that Congress delegated authority to the Director regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the Director adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.¹³ On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of the Office should reflect use of the sixth edition of the A.M.A., *Guides*.¹⁴ The applicable date of the sixth edition is as of the schedule award decision reached. It is not determined by either the date of maximum medical improvement or when the claim for such award was filed.

In his November 25, 2008 report, Dr. Becan properly applied the standards of Table 15-23 (Entrapment/Compression Neuropathy Impairment) on page 449 of the sixth edition of the A.M.A., *Guides*.¹⁵ With respect to the right arm, Dr. Becan stated that for Test Findings appellant had a Grade Modifier 1 based on electrodiagnostic studies that confirmed conduction delays (sensory and/or motor); that for History she had a Grade Modifier 2 for significant intermittent symptoms; and that for Physical Findings she had a Grade Modifier 2 for decreased sensation. The values of the Grade Modifiers were added resulting in a total of five. Dividing this value of 5 by the 3 modifier categories provided an average of 1.66 which rounded up to 2. Dr. Becan correctly indicated that, for the right arm, appellant fell under Grade 2 which offered a default impairment rating of five percent for the right arm. Appellant's Functional Score for the right arm (dictated by the *QuickDASH* score of 50) was consistent with the default rating and no additional impairment was assigned. The final rating for the right-sided carpal tunnel was five percent of the right arm. Dr. Becan provided similar calculations for the left arm which properly

¹² 43 ECAB 859 (1992).

¹³ *Id.* at 866.

¹⁴ FECA Bulletin No. 09-03 (March 15, 2009). The FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award & Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).

¹⁵ See A.M.A., *Guides* 449, Table 15-23.

yielded an impairment rating for the left arm of five percent.¹⁶ In a November 26, 2009 report, Dr. Zimmerman indicated that he agreed with Dr. Becan's assessment.

For these reasons, the Office properly found that appellant does not have more than a five percent permanent impairment of her right hand and a five percent permanent impairment of her left hand.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has more than a five percent permanent impairment of her right hand and a five percent permanent impairment of her left hand, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2010 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁶ Appellant's Functional Score for the left arm (dictated by the *QuickDASH* score of 59) was consistent with the default rating and no additional impairment was assigned on this basis.