



## **FACTUAL HISTORY**

OWCP accepted that on or before August 29, 2007 appellant, then a 43-year-old clerk, sustained bilateral carpal tunnel syndrome in the performance of duty.

Dr. Allen Berkowitz, an attending Board-certified orthopedic surgeon, performed a right median nerve release on July 17, 2008 and a left median nerve release on October 20, 2008. OWCP authorized both procedures and paid appropriate wage-loss compensation from July 17, 2008 through January 2009. Dr. Berkowitz submitted progress notes from July 29, 2008 through February 10, 2009 finding that her preoperative complaints of pain and numbness in both hands and wrists had resolved. He released appellant to full duty on February 11, 2009.

On February 11, 2009 appellant claimed a schedule award. She submitted an April 20, 2009 report from Dr. Berkowitz in which he stated that appellant had normal findings. On examination of both hands and wrists, Dr. Berkowitz found well-healed surgical scars, normal sensation in the thumbs and all fingers, full range of wrist motion and no thenar atrophy. He opined that according to the sixth edition of the American Medical Association, *Guides to Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*), there was “no impairment or disability following the bilateral carpal tunnel release.” Dr. Berkowitz released appellant from treatment. In an April 28, 2009 report, OWCP’s medical adviser concurred with his rating as all symptoms had resolved with no impairment of sensation or motion in either hand or wrist.

Counsel referred appellant to Dr. Arthur Becan, an orthopedic surgeon, for an impairment rating. In an October 23, 2009 report, Dr. Becan provided a history of injury and treatment. He related appellant’s account of bilateral wrist pain and difficulties with activities of daily living. Dr. Becan administered a *QuickDASH* questionnaire demonstrating a 77 percent disability score for the left upper extremity and 70 percent on the right. On examination of the right wrist, he found palmar flexion limited to 60 degrees and ulnar deviation limited to 30 degrees. On the left, Dr. Becan observed mildly positive Tinels’ and Phalen’s signs, dorsiflexion and palmar flexion limited to 60 degrees and ulnar deviation limited to 30 degrees. He also noted mild decreased sensation over the median nerve root distribution bilaterally, five kilograms (kg) grip strength and two kg pinch key strength bilaterally. Dr. Becan diagnosed bilateral carpal tunnel syndrome, bilateral de Quervain’s tenosynovitis and repetitive occupational trauma disorder. He relied on Table 15-23<sup>2</sup> of the sixth edition of the A.M.A., *Guides* to evaluate appellant’s right wrist, finding a grade modifier for Functional History (GMFH) of two, a grade modifier for Clinical Studies (GMCS) of two, a grade modifier for Physical Examination findings (GMPE) of three due to decreased pinch strength. Dr. Becan determined that these grade modifiers equaled eight percent impairment of the right upper extremity. For the left wrist, he found a class 1 Diagnosis Based impairment (CDX) for de Quervain’s tenosynovitis, equaling one percent impairment according to Table 15-3.<sup>3</sup> Dr. Becan found a GMFH of three for the *QuickDASH*

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<sup>2</sup> Table 15-23, page 449 of the sixth edition of the A.M.A., *Guides* is entitled “Entrapment/Compression Neuropathy Impairment”

<sup>3</sup> Table 15-3, pages 395-397 of the sixth edition of the A.M.A., *Guides* is entitled “Wrist Regional Grid: Upper Extremity Impairments”

score of 77 according to Table 15-7<sup>4</sup> and a GMPE of two according to Table 15-2.<sup>5</sup> He then calculated a net adjustment of two, resulting in two percent impairment of the left upper extremity. Dr. Becan noted that appellant had reached maximum medical improvement as of October 23, 2009.

OWCP referred the medical record to OWCP's medical adviser for a schedule award calculation. In a January 5, 2010 report, he reviewed the medical record and concurred with Dr. Berkowitz's opinion. OWCP's medical adviser noted that he could not explain how or why Dr. Becan observed abnormal findings six months after Dr. Berkowitz, the treating surgeon, reported an entirely normal examination. He explained that Dr. Berkowitz's opinion as the original treating surgeon was entitled to considerable weight.

By decision dated March 2, 2010, OWCP denied appellant's schedule award claim on the grounds that the medical evidence did not establish a ratable permanent impairment of either upper extremity. It accorded the weight of the medical evidence to Dr. Berkowitz.

In a March 9, 2010 letter, appellant requested an oral hearing, held June 24, 2010. At the hearing, she asserted that she continued to have pain, numbness and weakness in both wrists and thumbs. Appellant contended that Dr. Becan performed a more thorough examination than Dr. Berkowitz. Counsel argued that OWCP wrongfully ignored Dr. Becan's strength and neurologic test results. Appellant did not submit additional evidence prior to September 20, 2010.

By decision dated and finalized September 20, 2010, OWCP's hearing representative affirmed the March 2, 2010 decision denying appellant's schedule award claim. OWCP's hearing representative found that Dr. Berkowitz's opinion continued to carry the weight of the medical evidence. OWCP's hearing representative noted that Dr. Becan diagnosed new conditions without appropriate explanation.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>6</sup> provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. 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 sound 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. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board

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<sup>4</sup> Table 15-7, page 406 of the sixth edition of the A.M.A., *Guides* is entitled "Functional History Adjustment: Upper Extremities."

<sup>5</sup> Table 15-2, pages 391-393 of the sixth edition of the A.M.A., *Guides* is entitled "Digit Regional Grid: Digit Impairments."

<sup>6</sup> 5 U.S.C. § 8107.

has concurred in such adoption.<sup>7</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.<sup>8</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>9</sup> Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.<sup>10</sup> The net adjustment formula is GMFH - CDX + GMPE - CDX + GMCS - CDX.

### ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome. Dr. Berkowitz, an attending Board-certified orthopedic surgeon, performed a right median nerve release on July 17, 2008 and a left median nerve release on October 20, 2008. Appellant claimed a schedule award on February 11, 2009.

Dr. Berkowitz opined on April 20, 2009 that appellant had entirely normal findings on examination of both hand and wrists, with normal sensation and full range of motion. He therefore opined that she had no ratable impairment according to the A.M.A., *Guides* and released her from care. Counsel then obtained an October 23, 2009 impairment rating from Dr. Becan, an orthopedic surgeon, who found two percent impairment of the left upper extremity and eight percent impairment of the right upper extremity due to bilateral carpal tunnel syndrome, bilateral de Quervain's tenosynovitis and a repetitive trauma disorder. He did not provide medical rationale supporting a causal relationship between these conditions and the accepted bilateral carpal tunnel syndrome.<sup>11</sup> The lack of explanation is particularly significant in light of Dr. Berkowitz's April 20, 2009 opinion finding no abnormality of either hand or wrist. Additionally, Dr. Becan did not properly apply the A.M.A., *Guides* net adjustment formula to the conditions he posited. He appears to have intermingled the concepts of grade modifier designation with percentage of impairment and did not provide his calculations. As Dr. Becan misapplied the A.M.A., *Guides*, his opinion is of diminished probative value.<sup>12</sup>

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<sup>7</sup> *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>8</sup> 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).

<sup>9</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008), page 3, Section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

<sup>10</sup> *Id.* at page 494-531.

<sup>11</sup> *See Veronica Williams*, 56 ECAB 367 Docket No. 04-2120 (issued February 23, 2005) (a schedule award can be paid only for a condition related to an employment injury; the claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment).

<sup>12</sup> *S.K.*, Docket No. 10-2151 (issued July 8, 2011).

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.

On appeal, counsel asserts a conflict of medical evidence between an attending physician and OWCP's medical adviser regarding the appropriate percentage of permanent impairment. As stated, Dr. Becan misapplied the A.M.A., *Guides*, whereas OWCP's medical adviser used the appropriate tables and grading schemes to determine that appellant did not have ratable upper extremity impairment. Alternatively, counsel asserts that although Dr. Berkowitz found no ratable impairment of the upper extremities, the medical evidence "should be read in the Appellant's best light." As stated, Dr. Becan's opinion is of diminished probative value as he misapplied the A.M.A., *Guides* and provided insufficient medical rationale. Dr. Berkowitz's opinion is entitled to greater weight.

**CONCLUSION**

The Board finds that appellant has not established that she sustained a ratable impairment of either upper extremity due to accepted bilateral carpal tunnel syndrome.

**ORDER**

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

Issued: October 6, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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