



## **FACTUAL HISTORY**

OWCP accepted that on or before August 13, 2004 appellant, then a 48-year-old letter carrier, sustained enesopathy of the wrist and carpus, bilateral carpal tunnel syndrome and generalized osteoarthritis of the left thumb due to repetitive hand and wrist motions while casing and delivering mail.

Appellant was first followed by Dr. Tony K. Soble, an attending Board-certified family practitioner, who noted bilaterally positive Tinel's and Phalen's signs and bilateral thumb weakness on September 9, 2004. Dr. Evan Sorokin, an attending Board-certified plastic surgeon, obtained July 1, 2006 x-rays showing osteophytes in the margins of the carpometacarpal joint of the left thumb.

Dr. John M. Bednar, an attending Board-certified orthopedic surgeon, specializing in the surgery of the hand, treated appellant beginning on July 14, 2006. He diagnosed degenerative joint disease of the carpometacarpal joint of the left thumb and bilateral carpal tunnel syndrome with a neuropraxic left radial sensory lesion by electromyography and nerve conduction velocity studies. On November 1, 2006 Dr. Bednar performed a left median nerve release, soft tissue arthroplasty of the left thumb and tendon transfer of the left wrist. He released appellant to full duty with no restrictions effective March 12, 2007. Appellant continued working light duty through September 2007 and onward.

On December 3, 2007 appellant claimed a schedule award. She submitted an August 14, 2007 report from Dr. Steven M. Allon, an orthopedic surgeon, who provided a history of injury and treatment and found that appellant had reached maximum medical improvement. Dr. Allon related her account of difficulty with activities of daily living. Appellant noted pain at 2/20 in the right hand and 3/10 on the left. On examination of both wrists Dr. Allon found tenderness to palpation, positive Tinel's and Phalen's signs and restricted motion. Regarding the left wrist, he noted surgical scars, zero strength with thumb opposition and +1 apposition strength of the thumb and fifth finger. Grip strength testing *via* Jamar hand dynamometer at Level 3 showed 34.5 kilogram (kg) on the right and 26 kg on the left. Pinch key testing showed five kg on the right and four kg on the left. Dr. Allon found monofilament testing at 4.56 millimeter (mm) on the right and 4.81 mm on the left, demonstrating diminished light touch sensation in both hands. He diagnosed cumulative and repetitive trauma disorder, degenerative arthritis of the carpometacarpal joint of the left thumb, bilateral carpal tunnel syndrome and postsurgical status. Referring to Tables 16-33 and 16-34 of the fifth edition of the A.M.A., *Guides*<sup>2</sup> Dr. Allon found a 10 percent impairment of each upper extremity for lateral pinch deficit and a 31 percent impairment of each upper extremity for grade 2 sensory deficit in the median nerve according to

---

<sup>2</sup> Table 16-33, page 509 of the fifth edition of the A.M.A., *Guides* is entitled "Average Strength of Lateral Pinch by Occupation in 100 Subjects." Table 16-34, page 509 of the fifth edition of the A.M.A., *Guides* is entitled "Upper Extremity Joint Impairment Due to Loss of Grip or Pinch Strength."

Tables 16-10 and 16-15.<sup>3</sup> Dr. Allon combined these impairments to equal a 38 percent impairment of each upper extremity.

In a September 29, 2008 letter, counsel requested a status update on appellant's schedule award claim as no action had yet been taken on Dr. Allon's impairment rating.

On October 28, 2008 OWCP referred a statement of accepted facts and the medical record to an OWCP medical adviser for calculation of a schedule award regarding the left upper extremity. In a November 1, 2008 report, the medical adviser concurred with Dr. Allon's assessment of a 38 percent impairment of each upper extremity due to lateral pinch strength deficit and median nerve sensory deficit.

In a March 11, 2009 letter, counsel requested a status update regarding the schedule award claim.

In a September 29, 2009 letter, OWCP advised appellant to submit an impairment rating from her attending physician using the sixth edition of the A.M.A., *Guides* in effect as of May 1, 2009. Appellant was afforded 30 days to submit this report.

In a November 5, 2009 letter, appellant submitted Dr. Allon's revised report applying the sixth edition of the A.M.A., *Guides* to his August 14, 2007 findings. Referring to Table 15-23<sup>4</sup> of the A.M.A., *Guides*, he noted a diagnosis (CDX) of entrapment neuropathy of the left median nerve. Dr. Allon found a grade modifier Clinical Studies (GMCS) of 1, a grade modifier for Functional History (GMFH) of 2 and a grade modifier Physical Examination (GMPE) of 2. He averaged these modifiers at grade 2, equaling a five percent impairment of the left upper extremity. Referring to Table 15-2,<sup>5</sup> Dr. Allon noted a class 3 diagnosis based impairment (CDX) for left thumb carpometacarpal arthroplasty. He assigned a GMFH of 2 according to Table 15-7,<sup>6</sup> a GMPE of 2 according to Table 15-8 and a GMCS of 2 according to Table 15-9.<sup>7</sup> Using the net adjustment formula of (GMFH - CDX) + (GMPE - DCX) + (GMCS - CDX), Dr. Allon found a net adjustment of negative three, equaling a 26 percent impairment of the left upper extremity. He combined the 26 and 5 percent impairments to total a 30 percent impairment of the left upper extremity. Regarding the right upper extremity, Dr. Allon found

---

<sup>3</sup> Table 16-10, page 482 of the fifth edition of the A.M.A., *Guides* is entitled "Determining Impairment of the Upper Extremity Due to Sensory Deficits or Pain Resulting from Peripheral Nerve Disorders." Table 16-15, page 492 of the fifth edition of the A.M.A., *Guides* is entitled "Maximum Upper Extremity Impairment Due to Unilateral Sensory or Motor Deficits or to Combined 100 percent Deficits of the Major Peripheral Nerves."

<sup>4</sup> Table 15-23, page 449 of the sixth edition of the A.M.A., *Guides* is entitled "Entrapment/Compression Neuropathy Impairment."

<sup>5</sup> Table 15-2, page 394 of the sixth edition of the A.M.A., *Guides* is entitled "Digit Regional Grid: Digit Impairments."

<sup>6</sup> Table 15-7, page 406 of the sixth edition of the A.M.A., *Guides* is entitled "Functional History Adjustment: Upper Extremities."

<sup>7</sup> Table 15-9, page 410 of the sixth edition of the A.M.A., *Guides* is entitled "Clinical Studies Adjustment: Upper Extremities."

five percent impairment for right median nerve entrapment, using the same calculation method as he did in assessing entrapment of the left median nerve.

In a December 14, 2009 report, an OWCP medical adviser agreed with Dr. Allon's rating of a 30 percent impairment of the left arm and a 5 percent impairment of the right arm. The medical adviser found that Dr. Allon correctly applied the appropriate portions of the sixth edition of the A.M.A., *Guides* to his clinical findings.

By decision dated July 12, 2010, OWCP issued appellant schedule awards for a 30 percent impairment of the left upper extremity and a 5 percent impairment of the right upper extremity. The period of the awards ran from August 14, 2007 to September 16, 2009.

In a July 26, 2010 letter, appellant, through counsel, requested a review of the written record. Counsel asserted that OWCP failed to issue a timely schedule award, depriving her of her due process rights and FECA benefits under the fifth edition of the A.M.A., *Guides*.

By decision dated and finalized November 9, 2010, an OWCP hearing representative affirmed the July 12, 2010 schedule award decision. The hearing representative found that OWCP was not held to any specific timeframe for issuing schedule awards.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>8</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 has concurred in such adoption.<sup>9</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*.<sup>10</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>11</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

---

<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>10</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>11</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008), page 3, section 1.3, "The ICF, Disability and Health: A Contemporary Model of Disablement."

and GMCS.<sup>12</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - DCX) + (GMCS - CDX).

### ANALYSIS

OWCP accepted that appellant sustained enesopathy of the wrist and carpus, bilateral carpal tunnel syndrome and generalized osteoarthritis of the left thumb. Appellant claimed a schedule award on December 3, 2007. In support of her claim, she submitted an August 14, 2007 report from Dr. Allon, an orthopedic surgeon. Using the fifth edition of the A.M.A., *Guides* then in effect, Dr. Allon calculated a 38 percent impairment of each upper extremity due to lateral pinch strength deficit and median nerve impairment. An OWCP medical adviser concurred with his impairment rating on November 1, 2008.

On September 29, 2009 OWCP requested that appellant submit an updated impairment rating utilizing the sixth edition of the A.M.A., *Guides*, in effect as of May 1, 2009. On November 5, 2009 appellant submitted Dr. Allon's revised report according to the sixth edition of the A.M.A., *Guides*. Dr. Allon found a 30 percent impairment of the left upper extremity due to carpometacarpal arthroplasty of the left thumb and entrapment of the left median nerve. He also found a five percent impairment of the right upper extremity due to median nerve entrapment. An OWCP medical adviser concurred with Dr. Allon's impairment rating and his application of the A.M.A., *Guides*. Therefore, OWCP issued a July 12, 2010 schedule award for a 30 percent impairment of the left upper extremity and a 5 percent impairment of the right upper extremity. It affirmed the schedule award by November 9, 2010 decision.

The Board finds that Dr. Allon applied the appropriate portions of the A.M.A., *Guides* to his clinical findings. Dr. Allon's mathematical calculations are correct. Also, there is no medical evidence of record utilizing the sixth edition of the A.M.A., *Guides* supporting a greater percentage of permanent impairment. The Board notes that counsel does not contest the correctness of the impairment rating or of OWCP medical adviser's interpretation of Dr. Allon's findings. Therefore, OWCP's November 9, 2010 schedule award determination is correct under the law and facts of this case.

On appeal, counsel asserts that OWCP unduly delayed processing appellant's schedule award claim. The Board finds that there is no evidence of record that OWCP processed her claim improperly. Counsel also asserts that this delay deprived appellant of a property right in a schedule award benefit under the fifth edition and that a protected property interest cannot be deprived without due process, citing *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Mathews v. Eldridge*, 424 U.S. 319 (1976).

In *Harry D. Butler*,<sup>13</sup> 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

---

<sup>12</sup> *Id.* at (6<sup>th</sup> ed. 2008), pp. 494-531.

<sup>13</sup> 43 ECAB 859 (1992).

claimants and the Board has concurred in the adoption.<sup>14</sup> On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of OWCP should reflect use of the sixth edition of the A.M.A., *Guides*.<sup>15</sup> 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.

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 established that she sustained more than a 30 percent impairment of the left upper extremity and a 5 percent impairment of the right upper extremity, for which she received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 9, 2010 is affirmed.

Issued: October 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

---

<sup>14</sup> *Id.* at 866.

<sup>15</sup> FECA Bulletin No. 09-03 (issued March 15, 2009). FECA Bulletin was incorporated in the *supra* note 10, *Schedule Award & Disability Claims*, Chapter 2.808.6(a) (January 2010).