

FACTUAL HISTORY

This case has previously been before the Board. In a September 16, 2009 decision, the Board set aside an April 30, 2008 OWCP hearing representative's decision affirming the denial of an additional schedule award.² The Board found the impairment rating by Dr. Ellen Pichey, an OWCP medical adviser, failed to comport with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). The Board found the medical evidence was insufficient to allow it to fully visualize the extent of appellant's impairment due to her accepted conditions. OWCP was instructed to further develop the medical evidence as to the extent and nature of the permanent impairment to her right arm. The facts and the circumstances surrounding the prior appeal are hereby incorporated by reference.³

On remand, OWCP referred appellant to Dr. Aubrey A. Swartz, a second opinion Board-certified orthopedic surgeon, for an impairment evaluation under the sixth edition of the A.M.A., *Guides* (6th ed. 2009). On January 29, 2010 Dr. Swartz measured range of motion for the right shoulder of 50 degrees flexion, 110 degrees abduction, 35 degrees adduction, 70 degrees internal rotation, 90 degrees external rotation and 50 degrees extension. Applying Table 15-34, page 475, he determined that 50 degrees extension yielded no impairment, 50 degrees flexion yielded a nine percent impairment, 110 degrees abduction yielded a three percent impairment, 35 degrees adduction yielded a one percent impairment, 90 degrees external rotation yielded no impairment and 70 degrees internal rotation yielded a two percent impairment. Dr. Swartz added the impairments due to loss of range of motion to find 15 percent right arm impairment. Using Table 15-35, page 477, he determined that a 15 percent right shoulder impairment was equivalent to a grade 2 modifier. Using Table 15-7, page 406, the functional history adjustment was also equivalent to a grade 2 modifier. Dr. Swartz noted that there was no change of grade modifier according to Table 15-36, page 477 regarding range of motion and appellant's *QuickDash* score of 58 also suggested grade 2 modifier. Using Table 15-32, page 473, he determined that appellant had a 21 percent right upper extremity impairment for her -10 to +10 degrees of flexion and a 9 percent right upper extremity impairment for her 0 to 10 degrees radial deviation.

Dr. Swartz determined that appellant had a two percent impairment using Table 15-23, page 449 for her carpal tunnel syndrome. He found a grade modifier of one for her test findings, a grade modifier of one for her history due to mild intermittent symptoms, a grade modifier of two for her physical examination findings due to decreased sensation and a *QuickDash* score of 58. Combining the grade modifier results in a total of 4, which is divided by 3 resulting in 1.33 or 1 for a grade modifier. A grade one modifier would result in a default of two percent impairment. Referring to Table 15-32, page 473, Dr. Schwartz reported that appellant was ankylosed between 0 and 10 degrees resulting in nine percent impairment. Adding 21 percent to

² Docket No. 08-1939 (issued September 16, 2009).

³ On April 3, 2001 appellant, then a 49-year-old distribution clerk, filed a traumatic injury claim alleging that on that date she injured her right wrist while throwing flat mail onto a conveyer belt. OWCP accepted the claim for peripheral enthesopathies, right wrist carpal tunnel syndrome, soft tissue disorder and arthrodesis and authorized right carpal tunnel release surgery, which was performed on April 19, 2002. Appellant returned to work with restrictions on March 21, 2003. On August 16, 2005 OWCP placed appellant on the periodic rolls for temporary total disability effective August 7, 2005. Appellant returned to modified full-time duty on August 14, 2006.

9 percent resulted in 30 percent upper extremity impairment for the right wrist, the equivalent of a grade 3 modifier, pursuant to Table 15-35, p. 477. Using the Combined Values Chart on page 604, combining the 15 percent impairment of the right shoulder with the 2 percent impairment for the carpal tunnel syndrome results in a 17 percent impairment which is combined with the 30 percent impairment for the fusion of the right wrist resulting in a total 42 percent right upper extremity impairment.

On April 16, 2010 Dr. Ellen Pichey, OWCP's medical adviser, reviewed Dr. Swartz's impairment rating and found a 41 percent right upper extremity impairment. She concurred with Dr. Swartz's impairment determinations for appellant's right shoulder and right wrist, but disagreed with his carpal tunnel assessment. Dr. Pichey explained that she used the diagnosis-based estimate for right wrist fusion, which had the same values as the range of motion methods.

By decision dated May 21, 2010, OWCP denied appellant's request for an additional schedule award for her right upper extremity, finding that the medical evidence did not establish greater impairment.

LEGAL PRECEDENT

Under section 8107 of FECA⁴ and section 10.404 of the implementing federal regulations,⁵ schedule awards are payable for permanent impairment of specified body members, functions or organs. FECA, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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.⁶

ANALYSIS

The Board notes that before appellant's most recent claim for an increased schedule award, she had received compensation for a 59 percent impairment of her right upper extremity. The question is whether the latest impairment rating from Dr. Swartz, a second opinion Board-certified orthopedic surgeon, shows that she has a greater right upper extremity impairment. The Board finds that the medical evidence does not establish greater impairment.

Dr. Swartz applying Table 15-34, page 475, properly determined that 50 degrees extension yielded no impairment, 50 degrees flexion yielded a nine percent impairment, 110 degrees abduction yielded a three percent impairment, 35 degrees adduction yielded a one percent impairment, 90 degrees external rotation yielded no impairment and 70 degrees internal rotation yielded a two percent impairment. He properly added the impairments due to loss of

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404

⁶ *D.J.*, 59 ECAB 620 (2008); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

range of motion to find 15 percent right shoulder impairment. Using Table 15-35, page 477, Dr. Swartz determined consistent with the A.M.A., *Guides* that a 15 percent right shoulder impairment was equivalent to a grade 2 modifier. He noted there was no change of grade modifier according to Table 15-36, page 477 and her *QuickDash* of 58. Using Table 15-32, page 473, Dr. Swartz properly determined appellant had a 21 percent right upper extremity impairment for her -10 to +10 degrees of flexion and a 9 percent right upper extremity impairment for her 0 to 10 degrees radial deviation, resulting in a total 30 percent right upper extremity impairment for her right wrist. He determined that appellant had a two percent impairment using Table 15-23, page 449 for her carpal tunnel syndrome. Dr. Swartz found a grade modifier of one for her test findings, a grade modifier of one for her history due to mild intermittent symptoms, a grade modifier of two for her physical examination findings due to decreased sensation and a *QuickDash* of 58. Combining the grade modifier results in a total of 4, which, when divided by 3 resulted in 1.33 or 1 for a grade modifier. A grade one modifier would result in a two percent impairment. Using the Combined Values Chart on page 604, combining the 15 percent impairment for the shoulder with the 2 percent impairment for the carpal tunnel syndrome properly resulted in a 17 percent impairment which is combined with the 30 percent impairment for the right wrist resulting in a total 42 percent right upper extremity impairment, which is far less than would be necessary to show that appellant should receive more compensation.

Dr. Pichey properly reviewed Dr. Swartz's report and concurred with his findings regarding the right wrist and shoulder, but disagreed with the inclusion of a carpal tunnel impairment. She found appellant was entitled to a 41 percent right upper extremity impairment. The medical evidence does not establish more than 59 percent impairment for which appellant has received a schedule award.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant is not entitled to an increased schedule award for her right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 21, 2010 is affirmed.

Issued: September 6, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board