



## **FACTUAL HISTORY**

On September 23, 1998 appellant, then a 30-year-old letter carrier, filed an occupational disease claim, alleging that his work duties caused bilateral carpal tunnel syndrome. OWCP accepted the claimed condition and he underwent bilateral carpal tunnel releases. The claim was later expanded to include bilateral lateral epicondylitis.

By decision dated December 31, 2002, OWCP found that his appellant's employment, effective March 7, 2002, fairly and reasonably represented his wage-earning capacity with zero loss. On December 23, 2003 appellant filed a schedule award claim, that was denied by OWCP on August 22, 2005 and affirmed by an OWCP hearing representative on January 25, 2006.

In a June 27, 2007 report, Dr. Robert A. Smith, a Board-certified orthopedic surgeon and OWCP referral physician, advised that, in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),<sup>2</sup> appellant had a five percent impairment of each upper extremity due to his bilateral carpal tunnel syndrome. An OWCP medical adviser agreed with this conclusion. By decision dated September 20, 2007, appellant was granted a schedule award for a five percent impairment of the right upper extremity and five percent impairment on the left. On March 28, 2008 an OWCP hearing representative affirmed the September 20, 2007 schedule award decision.

On September 12, 2008 appellant filed an additional schedule award claim. On October 15, 2008 OWCP asked that he provide an impairment rating within 30 days. Appellant did not respond, and by decision dated November 18, 2008, OWCP denied his claim for an additional schedule award.

On May 17, 2010 appellant filed a third schedule award claim. By letter dated May 20, 2010, OWCP informed him that impairment evaluations were to be completed in accordance with the sixth edition of the A.M.A., *Guides*,<sup>3</sup> and asked that his physician provide an appropriate report and attached appropriate worksheets for the physician to complete. In treatment notes and form reports dated October 23, 2008 to April 15, 2010, Dr. Trudy Hall, an attending Board-certified physiatrist, provided examination findings including paresthesias and numbness, decreased grip strength and negative Tinel's and Phalen's signs. She provided physical restrictions and diagnosed chronic bilateral carpal tunnel syndrome and chronic, intermittent tendinitis.<sup>4</sup> The physical findings described on April 15, 2010 included tenderness along the left lateral epicondyle area and decreased sensation bilaterally along the first to third digits. In reports dated from January 15, 2009 to April 22, 2010, Dr. C. Ufomadu, a Board-certified internist, diagnosed bilateral carpal tunnel syndrome and provided physical restrictions.

By decision dated July 20, 2010, OWCP denied appellant's claim for an additional schedule award on the grounds that he had not provided the requested medical information. On

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<sup>2</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

<sup>4</sup> Appellant also submitted treatment notes from Elizabeth Allen, a physician's assistant who is an associate of Dr. Hall.

August 23, 2010 appellant requested reconsideration and submitted a worksheet dated August 9, 2010 in which Dr. Hall advised that under Table 16-10 appellant had a grade 3 sensory impairment and that under Table 16-11 he had a grade 4 motor impairment, with a maximum upper extremity impairment under Table 16-15. Dr. Hall found that the sensory impairment yielded 18 percent upper extremity impairment and the motor impairment yielded 3 percent upper extremity impairment, for a combined upper employment injury of 20 percent of each upper extremity. In an August 19, 2010 treatment note, she provided physical examination findings and diagnosed chronic carpal tunnel syndrome with hand and wrist pain, and neuropathic symptoms.

In a September 21, 2010 report, Dr. Christopher P. Brigham, an OWCP medical adviser who is Board-certified in family and occupational medicine, noted his review of the medical record including Dr. Hall's April 15 and August 9, 2010 reports. He noted that Dr. Hall had utilized the fifth, not the sixth, edition of the A.M.A., *Guides*. Dr. Brigham noted the accepted conditions indicated that appellant had a ratable impairment for bilateral carpal tunnel syndrome and symptomatic left epicondylitis. He advised that, in accordance with section 15.4f and Table 15-23, for the right hand appellant had a grade modifier of 1 for test findings, based on a positive preoperative electrodiagnostic study on August 6, 1998; a grade 2 modifier for history based on Dr. Hall's report of significant intermittent symptoms; and a grade 2 modifier for physical findings, based on documentation of sensory deficits. OWCP's medical adviser then totaled the modifiers and found an average of 1.6, which he rounded up to 2, which resulted in a default rating of a five percent right upper extremity impairment.

OWCP's medical adviser then advised that, on the left, appellant also had a grade modifier of 1 for test findings, based on a positive electrodiagnostic studies; a grade 1 modifier for history for mild intermittent symptoms; and a grade 2 modifier for physical findings, based on documentation of sensory deficits. He then totaled the modifiers and found an average of 1.3, which he rounded to 1, which resulted in a default rating of a 2 percent right upper extremity impairment due to carpal tunnel syndrome.

OWCP's medical adviser then evaluated appellant's left elbow, noting that two methodologies could be used, the diagnosis-based impairment (DBI) method and the range of motion (ROM) method. He used the former method, noting that Dr. Hall did not record any deficits in left elbow motion, and found that, under the DBI method, under Table 15-4, Elbow Regional Grid, for a diagnosis of lateral epicondylitis, a class 1 impairment for a history of painful injury and residual symptoms without consistent objective findings yielded a default rating of 1 percent. OWCP's medical adviser assigned grade modifiers of 1 for functional history and physical examination, in accordance with Tables 15-7 and 15-8 respectively. He advised that there was no modifier under Table 15-9 for clinical studies as there was no report that studies had been performed. OWCP's medical adviser concluded that, under the net adjustment formula, the impairment rating remained unadjusted, for a grade C, one percent left upper extremity impairment due to lateral epicondylitis. He then combined the two percent left upper extremity impairment for carpal tunnel syndrome with the one percent left upper extremity impairment of epicondylitis, which yielded a three percent left upper extremity impairment. OWCP's medical adviser concluded that appellant currently had a five percent right upper extremity impairment and a three percent left upper extremity impairment, and since he had

previously received a schedule award for a five percent impairment of each upper extremity, he was not entitled to an increased award.

In a merit decision dated October 5, 2010, OWCP found that the weight of the medical evidence rested with the opinion of Dr. Brigham because Dr. Hall had not provided an impairment rating in accordance with the sixth edition of the A.M.A., *Guides* and concluded that appellant was not entitled to an increased schedule award.<sup>5</sup>

### **LEGAL PRECEDENT**

The schedule award provision of FECA,<sup>6</sup> and its implementing federal regulations,<sup>7</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, FECA 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, OWCP adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>8</sup> For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>9</sup> For decisions issued after May 1, 2009, the sixth edition will be used.<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, 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>12</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>13</sup>

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.<sup>14</sup> In Table 15-23, grade modifiers levels (ranging from zero to four) are described for the categories

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<sup>5</sup> Appellant also claimed a number of short-term recurrences. OWCP accepted some and denied some.

<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Id.* at § 10.404(a).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>10</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>11</sup> A.M.A., *Guides*, *supra* note 3 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

<sup>12</sup> *Id.* at 385-419.

<sup>13</sup> *Id.* at 411.

<sup>14</sup> *Id.* at 449.

test findings, history and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down by one percent based on functional scale, an assessment of impact on daily living activities.<sup>15</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.<sup>16</sup>

### ANALYSIS

The Board finds that appellant has not established that he has more than a five percent impairment of the right upper extremity and a five percent impairment on the left. The accepted conditions are bilateral carpal tunnel syndrome and bilateral lateral epicondylitis. On September 20, 2007 appellant was granted a schedule award for impairments of five percent on the right and five percent on the left.

For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is to be used in calculating schedule awards.<sup>17</sup> The relevant medical evidence includes an August 9, 2010 report in which Dr. Hall rated appellant's upper extremities in accordance with the fifth edition of the A.M.A., *Guides*. A medical opinion not based on the appropriate edition of the A.M.A., *Guides* has diminished probative value in determining the extent of a claimant's permanent impairment.<sup>18</sup> Thus, Dr. Hall's August 9, 2010 report is insufficient to establish entitlement to an increased schedule award.

On September 21, 2010 Dr. Brigham reviewed the evidence, including Dr. Hall's April 15 and August 9, 2010 reports. Regarding the right upper extremity, he appropriately utilized section 15.4f and Table 15-23 of the A.M.A., *Guides*.<sup>19</sup> Dr. Brigham found that appellant had a grade modifier of 1 for test findings, based on a positive preoperative electrodiagnostic study on August 6, 1998;<sup>20</sup> a grade 2 modifier for history based on Dr. Hall's report of significant intermittent symptoms; and a grade 2 modifier for physical findings, based

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<sup>15</sup> *Id.* at 448-50.

<sup>16</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

<sup>17</sup> FECA Bulletin No. 09-03, *supra* note 10.

<sup>18</sup> See *Fritz A. Klein*, 53 ECAB 642 (2002).

<sup>19</sup> A.M.A., *Guides*, *supra* note 3 at 448-50.

<sup>20</sup> Section 15.4 of the A.M.A., *Guides* provides that a preoperative electrodiagnostic test should be used in an impairment rating unless postoperative studies are done for a clinical indication of failure to improve with surgery and the postoperative study is clearly worse than the preoperative electrodiagnostic study, and only in this rare case with the postoperative study be used. *Id.* at 448. In the case at hand, the postoperative electrodiagnostic studies demonstrated an improvement.

on documentation of sensory deficits. He totaled the modifiers and found an average of 1.6, which he rounded up to 2, which resulted in a default rating of a 5 percent right upper extremity impairment. Regarding the left upper extremity, Dr. Brigham advised that appellant also had a grade modifier of 1 for test findings, based on a positive electrodiagnostic studies; a grade 1 modifier for history for mild intermittent symptoms; and a grade 2 modifier for physical findings, based on documentation of sensory deficits. He then properly totaled the modifiers and found an average of 1.3, which he rounded to 1, which resulted in a default rating of a two percent right upper extremity impairment for carpal tunnel syndrome. Dr. Brigham's evaluation of appellant's left elbow properly applied the DBI method, noting that Dr. Hall did not record ROM findings. He appropriately utilized Table 15-4, Elbow Regional Grid, for a diagnosis of lateral epicondylitis.<sup>21</sup> Dr. Brigham found a class 1 impairment for a history of painful injury and residual symptoms without consistent objective findings, which yielded a default rating of one percent, and assigned grade modifiers of 1 for functional history and physical examination, in accordance with Tables 15-7 and 15-8 respectively.<sup>22</sup> OWCP's medical adviser noted that a modifier under Table 15-9<sup>23</sup> for clinical studies was not indicated as the record did not indicate that studies had been performed. He then properly applied the net adjustment formula and found a grade C, one percent, left upper extremity impairment due to lateral epicondylitis. Dr. Brigham then combined the two percent left upper extremity impairment for carpal tunnel syndrome with the one percent left upper extremity impairment of epicondylitis, for a total three percent left upper extremity impairment.

The Board finds that the record, as characterized by Dr. Brigham's analysis of the impairment evidence, supports that appellant has no more than a five percent right upper extremity impairment and five percent impairment on the left, for which he received a schedule award. There is no other medical evidence of record addressing the extent of his permanent impairment under the appropriate edition of the A.M.A., *Guides*, which supports any greater impairment, and since he had previously received a schedule award for a five percent impairment of each upper extremity, he was not entitled to an increased award.<sup>24</sup>

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 no more than a five percent right upper extremity impairment and five percent impairment on the left.

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<sup>21</sup> *Id.* at 399.

<sup>22</sup> *Id.* at 406, 408.

<sup>23</sup> *Id.* at 410.

<sup>24</sup> The Board notes that there is no medical evidence to support an impairment rating for right lateral epicondylitis.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 5 and July 20, 2010 be affirmed.

Issued: September 29, 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