

FACTUAL HISTORY

On December 9, 1994 appellant, then a 24-year-old part-time flexible clerk (expediter), filed a traumatic injury claim alleging that on that date she injured her left hand while throwing a heavy piece of mail into an all purpose container. OWCP accepted the claim for left wrist sprain, left bursae and tendon and left wrist ganglion cyst. Appellant returned to work following her employment injury with restrictions for her left upper extremity. OWCP authorized excision of the ganglion cyst, which was performed on May 1, 1996 and she returned to full duty on September 3, 1996. At the time of her May 1, 1996 surgery, appellant's weekly pay rate was \$659.18.

On October 27, 2008 appellant filed a claim for a schedule award.

In a May 29, 2009 report, Dr. Robert Draper, a second opinion Board-certified orthopedic surgeon, provided findings on examination including range of motion measurements for the wrist, fingers and thumb. He determined that appellant had a class 1 impairment for her right ganglion cyst according to Table 15-3 on page 395 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). Dr. Draper applied grade modifiers for Functional History (GMFH) of one and physical examination of one, to find a grade B or two percent impairment of the left arm. He noted a two percent left upper extremity impairment with maximum medical improvement reached on May 1, 1997, which was one year following the ganglion cyst excision surgery.

On November 14, 2009 Dr. Arnold T. Berman, a district medical adviser and Board-certified orthopedic surgeon, reviewed Dr. Draper's report and concurred with the rating of two percent for appellant's left upper extremity.

By decision dated December 9, 2009, OWCP granted appellant a schedule award for a two percent impairment of the left upper extremity. The period of the award was for 6.24 weeks and ran from May 29 to July 11, 2009. The pay rate was calculated at 75 percent of a week pay of \$659.18, which was appellant's pay rate as of May 1, 1996.

On October 18, 2010 appellant's attorney requested reconsideration and submitted evidence in support of her request.

In a February 13, 2010 report, Dr. Daisy A. Rodriguez, an examining Board-certified internist, provided findings on examination including range of motion findings for the wrist. She provided an impairment rating of two percent for the left upper extremity. Dr. Rodriguez referred to Table 15-3 on page 397; Table 15-7 on page 406; Table 15-8 on page 408; Table 15-9 on page 410; Table 15-32 on page 473; and Table 15-35 and Table 15-36 on page 477. She rated appellant's range of motion of the left wrist as a three percent impairment based on 50 degrees of extension, with no grade adjustment and a one percent impairment based on 15 degrees of radial deviation. Dr. Rodriguez combined these values resulting in a total five percent left upper extremity impairment. She noted there was no grade adjustment for 50 degrees extension. Dr. Rodriguez advised that the *QuickDASH* functional assessment tool represented a grade 2 modifier (grade modifier for GMFH), which was one higher than the range of motion impairment. This resulted in a total five percent left upper extremity impairment.

On December 23, 2010 report, Dr. Christopher R. Brigham, an OWCP medical consultant Board-certified in occupational medicine, reviewed Dr. Rodriguez's report and disagreed with her rating. He advised that range of motion could be used according to Table 16-3, Wrist Regional Grid on page 395. Dr. Brigham explained that loss of range of motion was used to calculate appellant's impairment rating rather than the diagnosis-based method as this resulted in a greater impairment rating. He concurred with Dr. Rodriguez's determination of a three percent impairment for 50 degrees extension, but disagreed with her determination of a two percent impairment for 15 degrees radial deviation using Table 15-32, page 473. In support of his opinion that no impairment for 15 degrees radial deviation was appropriate, Dr. Brigham related that the sixth edition of the A.M.A., *Guides* at 461 states that "joint range of motion measurements are round[ed] to the nearest whole number ending in 0." Thus, the 15 degrees found for the wrist radial deviation would be rounded up to 20 degrees, which equals a zero percent impairment.

By decision dated January 13, 2011, OWCP found that appellant was entitled to an additional one percent impairment of the left upper extremity or a total of three percent impairment. The additional one percent impairment was paid on January 14, 2011 at a weekly pay rate of \$659.18.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA² and its implementing regulations³ 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 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.⁴ Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁵

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 percentage of impairment using the A.M.A., *Guides*.⁶

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

⁶ *Tommy R. Martin*, 56 ECAB 273 (2005).

ANALYSIS -- ISSUE I

Appellant's claim was accepted for left wrist sprain, bursae and tendon and left wrist ganglion cyst. On October 27, 2008 she filed a claim for a schedule award. The Board finds that medical evidence of record establishes no more than a three percent impairment to appellant's left upper extremity.

In support of her claim for an additional schedule award, appellant submitted a February 13, 2010 report from Dr. Rodriguez, who advised that appellant had five percent impairment for loss of range of motion of the left arm. In reaching this determination, Dr. Rodriguez utilized Table 15-32 on page 473 represented a three percent impairment for 30 to 50 degrees for left wrist extension and a two percent impairment for 15 degrees left wrist radial deviation. However, she failed to properly apply the A.M.A., *Guides* in her impairment determination for radial wrist deviation range of motion. Under 15.7a, Clinical Measurements of Motion, on page 461 instructs that joint range of motion measurements must be rounded to the nearest whole number ending in zero. Thus, Dr. Rodriguez should have rounded up the 15 degrees wrist radial deviation range of motion to 20 degrees. Using Table 15-32 on page 473, 20 degrees radial deviation represents a zero degree upper extremity impairment, not the two percent impairment she noted. As Dr. Rodriguez did not properly use the A.M.A., *Guides* to rate appellant's impairment, her opinion is of diminished probative value.⁷

Dr. Brigham reviewed the February 13, 2010 report of Dr. Rodriguez and concurred with her impairment rating for appellant's loss of range of motion for wrist extension, but disagreed with the radial deviation range of motion impairment rating. He advised that instructions in the A.M.A., *Guides* provide for range of motion measurements to be rounded to the nearest whole number. Dr. Brigham explained why there was no impairment rating for the wrist radial deviation. Based on the loss of wrist extension, appellant had a three percent impairment according to Table 15-32. Thus, additional impairment of one percent was warranted as she had previously received a schedule award for a two percent impairment.

The Board finds that Dr. Brigham properly applied the A.M.A., *Guides* to rate impairment to appellant's left upper extremity impairment as three percent under the formula of the sixth edition. The rating of Dr. Brigham is in accordance with the protocols pertaining to upper extremity impairment determinations and represents the weight of medical opinion. Appellant submitted no other medical evidence which conforms to the A.M.A., *Guides* and which supports a greater impairment than that which was granted by OWCP.

On appeal, counsel contends that the report from Dr. Brigham cannot be considered the work product of a physician as the impairment evaluation was prepared by a nonphysician and reviewed by Dr. Brigham. It is well established that a physician's signature is required on a report in order for it to be considered as medical evidence.⁸ Dr. Brigham signed the report in question and is qualified physician, as defined under FECA. The December 23, 2010 impairment evaluation constitutes probative medical opinion from a physician. Counsel also

⁷ Richard A. Neidert, 57 ECAB 474 (2006).

⁸ Vickey C. Randall, 51 ECAB 357 (2000).

contends that Dr. Brigham cannot be considered a district medical adviser as his report was prepared under the letterhead of impairment resources. The FECA Procedure Manual defines district medical advisers as consultants used by OWCP to interpret medical reports including the percentage of permanent impairment.⁹ OWCP requested review by a medical adviser. Dr. Brigham provided an impairment rating in response to the request. The FECA Procedure Manual contains no language precluding a district medical adviser from providing a report or impairment rating on his letterhead. Dr. Brigham served in this case as a district medical adviser. Counsel argued that appellant should receive a schedule award based on the rating by Dr. Rodriguez. As noted, however, Dr. Rodriguez's report did not fully conform to the A.M.A., *Guides* and it is of diminished probative value.

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

LEGAL PRECEDENT -- ISSUE 2

Section 8101(4) of FECA¹⁰ defines monthly pay for purposes of computing compensation benefits as follows: "the monthly pay at the time of injury or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater."¹¹ In an occupational disease claim, the date of injury is the date of last exposure to the employment factors which caused or aggravated the claimed condition.¹²

The word disability is used in several sections of FECA. With the exception of certain sections where the statutory context or the legislative history clearly shows that a different meaning was intended, the word as used in FECA means incapacity because of injury in employment to earn wages which the employee was receiving at the time of such injury. This meaning, for brevity, is expressed as disability for work.¹³

ANALYSIS -- ISSUE 2

OWCP paid the December 9, 2009 and January 13, 2011 schedule awards based on 75 percent of a weekly pay rate of \$659.18 which was in effect on May 1, 1996, amounting to \$494.39. The issue is whether appellant is entitled to a higher pay rate for her schedule awards.

⁹ Federal (FECA) Procedure Manual, Part 3 -- Claims, *Functions of the Medical Unit*, Chapter 3.200.4 (October 1990).

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ *Id.* at § 8101(4); *see E.C.*, 59 ECAB 397 (2008); *Dale Mackelprang*, 57 ECAB 168 (2005); *J.K.*, Docket No. 08-1148 (issued March 13, 2009).

¹² *E.G.*, 59 ECAB 599 (2008); *Patricia K. Cummings*, 53 ECAB 623, 626 (2002); *M.B.*, Docket No. 09-176 (issued September 23, 2009).

¹³ *See Charles P. Mulholland, Jr.*, 48 ECAB 604 (1997).

The record reflects that appellant sustained a recurrence of total disability on May 1, 2006 when she underwent surgery for excision of her ganglion cyst. OWCP properly used her weekly pay rate of \$659.18 at the time of this recurrence to calculate the amount of her December 9, 2009 and January 13, 2011 schedule awards as this recurrence occurred more than six months after she resumed full-time employment.¹⁴ There is no indication that appellant sustained any later recurrences of disability which would have changed his pay rate prior to October 9, 2007. OWCP properly multiplied the \$659.18 figure by the 75 percent compensation rate for employees with qualifying dependents to yield weekly compensation of \$838.31. It then properly calculated appellant's total compensation for the award by multiplying \$838.31 times the 5.76 weeks the award ran.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has more than a three percent permanent impairment of her left upper extremity, for which she received a schedule award. The Board further finds that OWCP used a proper pay rate for her schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 13, 2011 is affirmed.

Issued: February 17, 2012
Washington, DC

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

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

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

¹⁴ See 5 U.S.C. §§ 8101(4) and 8105(c) and accompanying text; *Carolyn E. Sellers*, 50 ECAB 393 (1999).