

granted appellant schedule awards for 23 percent impairment of each upper extremity. An OWCP hearing representative affirmed this on March 10, 2009. On July 14, 2009 OWCP vacated its prior decisions and granted schedule awards for a 25 percent impairment of each upper extremity.

Appellant filed a claim for an increased award. Dr. Michael E. Batipps, the attending clinical Board-certified neurologist, offered an impairment rating of nine percent for each upper extremity due to combined impairments from epicondylitis, wrist tenosynovitis and carpal tunnel syndrome.

An OWCP medical consultant reviewed Dr. Batipps' impairment evaluation and determined that appellant had no more than a three percent impairment of each upper extremity.

In a May 3, 2001 decision, OWCP denied appellant's claim for an increased schedule award.

LEGAL PRECEDENT

FECA authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.² Such loss or loss of use is known as permanent impairment. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.³

The burden is upon the employee to establish by evidence that he is entitled to compensation.⁴

ANALYSIS

Appellant has the burden to establish that he is entitled to an increased schedule award. He previously received schedule awards for a 25 percent impairment of each upper extremity. To meet his burden, appellant must submit an impairment evaluation establishing more than a 25 percent impairment of either upper extremity due to his accepted employment injury.

Appellant has not submitted that evidence. Instead, he submitted an impairment evaluation from Dr. Batipps showing that he has only a nine percent impairment of each upper extremity. Dr. Batipps combined impairments from three separate diagnoses. In most cases only one diagnosis will be appropriate for rating impairment. If a patient has two significant diagnoses, for instance, rotator cuff tear and biceps tendinitis, the examiner should use the

² *Id.* at § 8107.

³ 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

⁴ *Harold Hendrix*, 1 ECAB 54 (1947).

diagnosis with the highest causally-related impairment rating for the impairment calculation.⁵ This will generally be the more specific diagnosis. Selection of the optimal diagnosis requires judgment and experience. Typically, one diagnosis will adequately characterize the impairment and its impact on activities of daily living.⁶

If a nonkey factor or grade modifier (functional history, physical examination or clinical study) was used for primary placement in the regional grids, as, for example, x-ray findings in the case of carpal instability, that same specific finding may not be used again to determine the grade modifier.⁷

Appendix 15-B, page 487 of the A.M.A., *Guides*, provides the criteria for electrodiagnostic evaluation of entrapment neuropathies. A study result may be considered abnormal for treatment purposes, but for impairment rating purposes, electrodiagnostic studies that do not meet the specified criteria are considered normal, and the individual is either placed in grade 0 by test findings, and has no impairment or is rated as applicable according to diagnosis-based impairment.⁸

Even if OWCP were to accept Dr. Batipps' rating it does not support appellant's claim for an increased award. Indeed, it tends to show that the impairment of his upper extremities is significantly less than the 25 percent for which he has received compensation. Appellant cannot meet his burden with such evidence. Accordingly, the Board will affirm OWCP's May 3, 2011 decision denying his claim for an increased schedule award.

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 met his burden to establish that he is entitled to increased schedule awards for additional impairment to his upper extremities.

⁵ A.M.A., *Guides* 387 (6th ed. 2009).

⁶ *Id.* at 389.

⁷ *Id.* at 405.

⁸ *Id.* at 449; *see id.* at 438 (Table 15-21, Peripheral Nerve Impairment due to median nerve deficit below the mid-forearm) and 425 (Table 15-14, Sensory and Motor Severity).

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2012
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