



accepted the claim for left wrist sprain, sprain of left shoulder and upper arm, neck sprain, back sprain, lumbar region and left hand contusion. It paid all appropriate benefits. Under claim number xxxxxx055, OWCP accepted conditions of carpal tunnel syndrome, ulnar nerve entrapment and epicondylitis. Appellant received 22 percent right upper extremity impairment and 22 percent left upper extremity impairment plus an additional 9 percent impairment to each upper extremity.

On April 28, 2009 appellant filed a claim for a schedule award. In an April 22, 2009 report, Dr. William E. Gupton, Board-certified in family medicine, noted treating her for her January 28, 2008 back injury. He stated that she had reached maximum medical improvement but continued to have work restrictions. In a September 10, 2009 letter, OWCP advised appellant of the type of medical evidence needed to establish entitlement to a schedule award.

In an October 7, 2009 report, Dr. Lida S. Dahm, a Board-certified anesthesiologist, to whom appellant was referred by OWCP after she relocated from Oklahoma to Texas, indicated that she had not reached maximum medical improvement and recommended evaluation by a different specialist. Thereafter, appellant was treated by Dr. Guillermo R. Pechero, a Board-certified orthopedic surgeon. On June 23, 2010 Dr. Pechero opined that she had reached maximum medical improvement. In a July 15, 2010 report, he noted the January 28, 2008 injury, stated that appellant had reached maximum medical improvement and opined that, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), she had “left wrist two percent, left shoulder two percent, lumbar spine zero percent and cervical spine five percent. In summary [she] had nine percent upper extremity impairment.” On August 5, 2010 appellant asked that OWCP schedule her for an impairment rating as her physician would not prepare an impairment rating.

OWCP referred appellant and provided a statement of accepted facts and the medical records, to Dr. Sofia M. Weigel, a Board-certified physiatrist, for an impairment evaluation. In an October 22, 2010 report, Dr. Weigel noted the history of injury and her review of the medical records. Her examination findings included a normal neurological examination of the bilateral upper and lower extremities, a left shoulder and left wrist/hand examination. An impression of lumbar and cervical degenerative disc disease and spondylosis was provided. Dr. Weigel opined that appellant reached maximum medical improvement on June 23, 2010, which was consistent with the medical records. Utilizing the sixth edition of the A.M.A., *Guides*, she opined that appellant had no impairment due to the cervical sprain, no impairment due to the lumbar sprain, one percent impairment for left shoulder sprain and no impairment due to the left wrist sprain. Dr. Weigel set forth her calculations under the sixth edition of the A.M.A., *Guides*. For the cervical sprain and lumbar sprain, she noted that a diagnosed injury of the spine may be considered if it resulted in permanent impairment of the extremities. For the cervical sprain, proposed Table 1, Spinal Nerve Impairment of *The Guides Newsletter* July/August 2009 was utilized. Dr. Weigel found no ratable impairment in either arm on the basis of nerve root impairment and thus Table 15.20, page 434-35 was not applicable. She further noted that the *QuickDASH* score of 95 (grade 4) was not deemed in line with the observed level of function and thus excluded it from consideration. The lumbar sprain was rated under proposed Table 2, Spinal Nerve Impairment of *The Guides Newsletter* July/August 2009. Dr. Weigel found no ratable impairment to either leg on the basis of nerve root impairment. She also stated that the AAOS Lower Limb Evaluation Score of 23 (grade 4) was not deemed in line with the observed level of function and excluded it from consideration. For the left shoulder sprain, Dr. Weigel noted a history of painful injury, residual symptoms without consistent findings. Under Table 15-5, page 401, a class 1 impairment had a default value of one percent.

Dr. Weigel found the grade modifier for Functional History (GMFH) was found nonapplicable as it differed by two or more grade; the grade modifier Physical Examination (GMPE) was 1; and grade modifier Clinical Studies (GMCS) was 1. Under the net adjustment formula,  $(GMPE - CDX) (1-1) + (GMCS - CDX) (1-1)$ , a zero net adjustment was found. Thus, the class 1, grade C impairment with zero adjustment equaled one percent impairment. For left wrist sprain, Dr. Weigel found painful injury, residual symptoms without consistent findings. Under Table 15-3, page 395, class 1 resulted in default value of one percent impairment. The grade modifier for GMFH was found nonapplicable as it differed by two or more grades; the grade modifier GMPE was 1; and grade modifier GMCS was 0. Under the net adjustment formula,  $(GMPE - CDX) (1-1) + (GMCS - CDX) (0-1)$ , a -1 net adjustment was found. This equaled class 1, grade B or no impairment.

On December 20, 2010 an OWCP medical adviser reviewed the medical evidence of file, including Dr. Weigel's October 22, 2010 report. He found that appellant reached maximum medical improvement on June 23, 2010, based on Dr. Weigel's report. He also concurred with Dr. Weigel's impairment calculations. For the cervical sprain, the medical adviser utilized proposed Table 1, Spinal Nerve Impairment. He noted that Dr. Weigel found no ratable impairment in either upper extremity on the basis of nerve root impairment. The *QuickDASH* score of 95 (grade 4) was not deemed in line with the observed level of function during Dr. Weigel's examination and was excluded from consideration in accordance to page 406 of the A.M.A., *Guides*. The lumbar sprain was rated under proposed Table 2, Spinal Nerve Impairment. The medical adviser noted that Dr. Weigel, in her examination, found no ratable impairment to either lower extremity on the basis of nerve root impairment. The AAOS Lower Limb Evaluation Score of 23 (grade 4) was not deemed in line with the observed level of function during Dr. Weigel's examination and was excluded from consideration in accordance to page 406 of the A.M.A., *Guides*. For the left shoulder sprain, Dr. Weigel's examination showed painful injury without consistent findings. Under Table 15-5, page 401, a class 1 impairment had a default value of one percent. Using Dr. Weigel's estimates, the grade modifier for GMFH was found nonapplicable as it differed by two or more grade; the grade modifier GMPE was 1; and grade modifier GMCS was 1. Under the net adjustment formula,  $(GMPE - CDX) (1-1) + (GMCS - CDX) (1-1)$ , a zero net adjustment was found. The medical adviser stated that the class 1, grade C impairment with zero adjustment equaled one percent impairment. For left wrist sprain, Dr. Weigel's examination revealed painful injury without consistent findings. Under Table 15-3, page 395, class 1 resulted in a default value of one percent impairment. Using Dr. Weigel's estimates, the grade modifier for GMFH was found nonapplicable as it differed by two or more grade; the grade modifier GMPE was 1; and grade modifier GMCS was 0. Under the net adjustment formula,  $(GMPE - CDX) (1-1) + (GMCS - CDX) (0-1)$ , a -1 net adjustment was found. This equaled class 1, grade B or zero percent impairment. The medical adviser found that the combined left upper extremity impairment was one percent. As the prior awards for the left upper extremity were for conditions other than a left shoulder strain, the additional impairment of one percent was established.

By decision dated March 8, 2011, OWCP awarded an additional one percent impairment of the left upper extremity for appellant's shoulder condition. The award ran for the period June 23 to July 14, 2010 for 3.12 weeks. OWCP found that the medical evidence did not support impairment of other extremities.

On April 8, 2011 appellant requested reconsideration of her shoulder award and resubmitted evidence, including Dr. Pechero's July 15, 2010 report. She also submitted an April 27, 2009 note from Warren Clinic McAlester; an April 9, 2011 witness statement from Cheryl D. MacPherson

regarding her observations of appellant's ability; a February 20, 2008 clinic permit from appellant's supervisor; electrodiagnostic studies of February 8, 2010, magnetic resonance imaging scan studies of left shoulder dated December 11, 2009 and of the lumbar spine dated January 22, 2009; and progress notes from Dr. Pechero.

By decision dated May 16, 2011, OWCP denied modification of its March 8, 2011 decision.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>2</sup> and its implementing regulations<sup>3</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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.<sup>4</sup> 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.<sup>5</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup>

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.<sup>7</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>8</sup>

It is well established that preexisting impairments to the scheduled member are to be included when determining entitlement to a schedule award.<sup>9</sup> OWCP procedures state that any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.<sup>10</sup>

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

<sup>5</sup> *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>6</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>7</sup> A.M.A., *Guides* 494-531.

<sup>8</sup> *Id.* at 521.

<sup>9</sup> *Michael C. Milner*, 53 ECAB 446, 450 (2002); *Raymond E. Gwynn*, 35 ECAB 247 (1983).

<sup>10</sup> Federal (FECA) Procedure Manual, *supra* note 6 Chapter 2.808.7.a(2) (November 1998).

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 rationale provided for the percentage of impairment specified.<sup>11</sup>

### ANALYSIS

OWCP accepted that appellant sustained left wrist sprain, sprain of left shoulder and upper arm, neck sprain, lumbar sprain and left hand contusion as a result of the January 28, 2008 work injury. Appellant claimed a schedule award on September 28, 2009. Based on the second opinion report of Dr. Weigel and its medical adviser, appellant was rated one percent impairment of the left upper extremity based on her shoulder condition. This was in addition to prior awards totaling 31 percent for the left arm.

The Board finds that appellant has one percent impairment of the left upper extremity based on her shoulder condition. On October 22, 2010 Dr. Weigel noted the history of injury, her review of the medical records and presented her examination findings of the bilateral upper and lower extremities, left shoulder and left wrist/hand. She opined that appellant reached maximum medical improvement on June 23, 2010 based on her examination and medical records review. Dr. Weigel provided detailed examination findings and set forth her calculations under the A.M.A., *Guides*, in which she opined that appellant had zero percent impairment for the cervical sprain, zero percent impairment for the lumbar sprain, one percent impairment for the left shoulder sprain and zero percent impairment for the left wrist sprain. An OWCP medical adviser concurred with her impairment calculations.

Dr. Weigel and the medical adviser properly referenced the A.M.A., *Guides*' newsletter<sup>12</sup> to consider extremity ratings from spinal nerve impairment. For the cervical sprain, Dr. Weigel found no ratable impairment in either upper extremity on the basis of nerve root impairment. Thus, proposed Table 1, Spinal Nerve Impairment, was not applicable. He also properly excluded the *QuickDASH* score of 95 (grade 4) from consideration as it was not deemed in line with the observed level of function in accordance to page 406 of the A.M.A., *Guides*. For the lumbar sprain, Dr. Weigel found no ratable impairment to either lower extremity on the basis of nerve root impairment. Thus, proposed Table 2, Spinal Nerve Impairment, was not applicable. Dr. Weigel also properly excluded the AAOS Lower Limb Evaluation Score of 23 (grade 4) from consideration as it was not deemed in line with the observed level of function during her examination in accordance to page 406 of the A.M.A., *Guides*. Accordingly, appellant had no ratable impairment to her extremities from her cervical or lumbar sprains.

For the left shoulder sprain, Table 15-5, page 401 was properly utilized. Dr. Weigel's examination showed painful injury without consistent findings. Under Table 15-5, page 401, a class

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<sup>11</sup> *Id.* at Chapter 2.808.6(d) (August 2002).

<sup>12</sup> The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. Recognizing that certain jurisdictions, such as under FECA, mandate ratings for extremities and preclude ratings for the spine, the A.M.A., *Guides* has offered an approach to rating spinal nerve impairments consistent with sixth edition methodology. Christopher R. Brigham, M.D., Rating Spinal Nerve Extremity Impairment using the sixth edition, *The Guides Newsletter* (A.M.A., Chicago, Ill.), July/August 2009. OWCP has adopted this approach for rating impairment to the upper or lower extremities caused by a spinal injury. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010) (Exhibits 1, 4).

1 impairment had a default value of one percent. Using Dr. Weigel's estimates, the grade modifier for GMFH was found nonapplicable as it differed by two or more grades<sup>13</sup>; the grade modifier GMPE was 1; and GMCS was 1. Under the net adjustment formula,  $(GMPE - CDX)(1-1) + (GMCS - CDX)(1-1)$ , a zero net adjustment was found. Thus, the class 1, grade C impairment with zero adjustment equaled one percent impairment.

For left wrist sprain, Dr. Weigel's examination revealed painful injury without consistent findings. Under Table 15-3, page 395, for wrist pain, class 1 resulted in default value of one percent impairment. Using Dr. Weigel's estimates, the grade modifier for GMFH was found nonapplicable as it differed by two or more grades<sup>14</sup>; the grade modifier GMPE was 1; and grade modifier GMCS was 0. Under the net adjustment formula,  $(GMPE - CDX)(1-1) + (GMCS - CDX)(0-1)$ , a -1 net adjustment was found. This equaled class 1, grade B or zero percent impairment.

The medical adviser properly determined that appellant had one percent impairment of the left arm attributable to her left shoulder condition. The medical adviser additionally noted that since the prior awards to the left upper extremity of 22 and 9 percent were for conditions other than a left shoulder strain, an additional impairment of 1 percent of the left upper extremity was established.

Appellant did not provide medical evidence in conformance with the A.M.A., *Guides* to support a greater percentage of permanent impairment than that previously awarded. Dr. Pechero, in his July 15, 2010 report, opined that, under the A.M.A., *Guides*, appellant had nine percent left arm impairment due to two percent impairment of the left wrist, two percent impairment of the left shoulder and five percent impairment of cervical spine. The Board notes that his opinion is of little probative value as he did not explain how he calculated this impairment under the A.M.A., *Guides*.<sup>15</sup> For example, Dr. Pechero did not explain which tables or grids he used in the A.M.A., *Guides* and how he applied applicable grade modifiers. Other medical evidence provided by appellant did not specifically address permanent impairment pursuant to the A.M.A., *Guides*.

On appeal, appellant contends that she is entitled to an additional schedule award for the left shoulder and that she is entitled to a schedule award for her left leg. As noted, the medical evidence does not establish a greater percentage of permanent impairment for the left shoulder. The medical evidence from Dr. Weigel and OWCP's medical adviser provides no basis on which to establish work-related impairment of the left leg and on this matter was not adjudicated in the decision of OWCP presently before the Board, it is not an issue on appeal.

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.

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<sup>13</sup> The A.M.A., *Guides* provide that, if the grade modifier for functional history differs by two or more grades from either clinical studies or physical examination findings, it should be deemed unreliable and excluded. A.M.A., *Guides* 406.

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

<sup>15</sup> See *Richard A. Neidert*, 57 ECAB 474 (2006) (an attending physician's report is of little probative value where the A.M.A., *Guides* are not properly followed).

**CONCLUSION**

The Board finds that appellant has no more than one percent permanent impairment of the left upper extremity attributable to her shoulder condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 16, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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