

FACTUAL HISTORY

OWCP accepted that by May 1991 appellant, then a 40-year-old ship builder, sustained bilateral carpal tunnel syndrome due to his repetitive work duties. He underwent OWCP-authorized left and right carpal tunnel release surgeries in June and September 1998, respectively. On May 6, 2004 appellant filed a claim for a schedule award due to his work injuries.

In support of his schedule award claim, appellant submitted a February 4, 2004 report of Dr. David Weiss, an attending osteopath, who reported the physical findings of his February 4, 2004 examination and determined that appellant had a 30 percent permanent impairment of his right arm and a 23 percent permanent impairment of his left arm under the standards of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2001).

In several decisions, OWCP denied appellant's schedule award claim on the grounds that he did not submit sufficient medical evidence to establish entitlement to schedule award compensation. In a December 17, 2009 decision, OWCP's hearing representative set aside the September 3, 2009 denial of appellant's schedule award claim and remanded the case to OWCP for referral of appellant to a second opinion physician for an examination and an opinion on the extent of his permanent impairment under the sixth edition of the A.M.A., *Guides*.

In a February 18, 2010 report, Dr. Robert A. Smith, a Board-certified orthopedic surgeon serving as a second opinion physician, determined that appellant had a six percent permanent impairment of his right arm and a six percent permanent impairment of his left arm under Table 15-23 on page 449 of the sixth edition of the A.M.A., *Guides*.² On February 24, 2010 OWCP's medical adviser agreed with Dr. Smith's impairment rating.

In a March 25, 2010 decision, OWCP granted appellant a schedule award for a six percent permanent impairment of his right arm and a six percent permanent impairment of his left arm. In an October 4, 2010 decision, OWCP's hearing representative affirmed OWCP's March 25, 2010 schedule award determination.

In a January 6, 2011 letter, appellant, through counsel, requested reconsideration of his schedule award claim. Counsel indicated that he was submitting a September 10, 2010 report of Dr. Weiss which he believed created a conflict in the medical opinion evidence with the February 18, 2010 report of Dr. Smith and the February 24, 2010 report of OWCP's medical adviser.

In his September 10, 2010 report, Dr. Weiss applied the standards of the sixth edition of the A.M.A., *Guides* to the findings he previously obtained upon physical examination on February 4, 2004. He determined that applying the standards of the sixth edition yielded a 17

² Dr. Smith provided figures for the various grade modifiers found on Table 15-23: test findings (one), history (two), physical findings (two) and functional history (two).

percent permanent impairment of appellant's right arm and a 5 percent permanent impairment of his left arm.³

In a February 10, 2011 decision, OWCP denied appellant's claim that he has more than a six percent permanent impairment of his right arm and a six percent permanent impairment of his left arm, for which he received a schedule award.⁴

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing regulations⁶ 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.⁷ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁸

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.⁹ In Table 15-23, grade modifier levels (ranging from 0 to 4) are described for the categories 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.¹⁰

³ Dr. Weiss indicated that the 17 percent impairment in appellant's right arm was comprised of an entrapment/compression neuropathy rating, a diagnosis-based right shoulder impingement rating and a limited right wrist motion rating. The five percent in appellant's left arm was comprised solely of an entrapment/compression neuropathy rating.

⁴ OWCP indicated that it was denying appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a). However, it fully weighed the probative value of the September 10, 2010 report of Dr. Weiss and, therefore, effectively conducted a merit review of appellant's schedule award claim.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

⁷ *Id.*

⁸ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁹ *See* A.M.A., *Guides* 449, Table 15-23.

¹⁰ A survey completed by a given claimant, known by the name Disabilities of the Arm, Shoulder and Hand (*QuickDASH*), may be used to determine the function scale score. *Id.* at 448-49.

The Board has held that the passage of time may diminish the probative value of a medical report with regards to a given claimant's current medical condition.¹¹

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome due to his repetitive work duties. On March 25, 2010 it granted him a schedule award for a six percent permanent impairment of his right arm and a six percent permanent impairment of his left arm. Appellant later claimed that he had a higher level of permanent impairment of his arms and, in a September 10, 2010 decision, OWCP denied his claim for additional schedule award compensation.¹²

Appellant had requested reconsideration of OWCP's March 25, 2010 decision and submitted a September 10, 2010 report in which Dr. Weiss, an attending osteopath, updated his February 4, 2004 report to comport with the sixth edition of the A.M.A., *Guides*. Dr. Weiss found that appellant had a 17 percent permanent impairment of his right arm and a 5 percent permanent impairment of his left arm. He did not reexamine appellant and based his physical findings on a February 4, 2004 examination. Dr. Weiss' February 4, 2004 physical examination findings constitute stale medical evidence and therefore his September 10, 2010 impairment calculation does not create a conflict in the medical opinion evidence or show that appellant has more than a six percent permanent impairment of his right arm and a six percent permanent impairment of his left arm.¹³

In a February 18, 2010 report, Dr. Smith, a Board-certified orthopedic surgeon serving as a second opinion physician, determined that appellant had a six percent permanent impairment of his right arm and a six percent permanent impairment of his left arm. On February 24, 2010 OWCP's medical adviser agreed with Dr. Smith's impairment rating. Appellant has not submitted probative medical evidence showing that he has more than a six percent permanent impairment of his right arm and a six percent permanent impairment of his left arm and OWCP properly denied his claim for a higher level of permanent impairment.

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.

¹¹ See *Keith Hanselman*, 42 ECAB 680 (1991) (two-year-old medical report was not reasonably current for wage-earning capacity determination); *Ellen G. Trimmer*, 32 ECAB 1878 (1981) (two-year-old work tolerance limitation report was outdated).

¹² As previously noted, OWCP indicated that it was denying appellant's request for merit review, but it actually conducted a merit review of his claim for additional schedule award compensation and denied that claim.

¹³ See *supra* note 11. See also *J.C.*, Docket No. 11-241 (issued September 22, 2011) (eight-and-a-half-year-old physical examination findings considered stale with respect to impairment rating evaluation).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than a six percent permanent impairment of his right arm and left arm, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2011 decision of the Office of Workers' Compensation Programs is affirmed as modified to reflect that OWCP effectively conducted a merit review of appellant's claim on February 10, 2011 and found that he did not have more than a six percent permanent impairment of his right arm and a six percent permanent impairment of his left arm.

Issued: May 11, 2012
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