

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**S.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Los Angeles, CA, Employer**

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**Docket No. 11-1679  
Issued: September 12, 2012**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 12, 2011 appellant filed a timely appeal of a March 2, 2011 schedule award decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

**ISSUE**

The issue is whether appellant has more than 23 percent impairment of each upper extremity, for which she received schedule awards.

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<sup>1</sup> The Board notes that appellant's appeal request form indicated that she was appealing a February 21, 2011 OWCP decision. The record does not contain an adverse decision issued by OWCP on that date.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## FACTUAL HISTORY

This case has previously been before the Board with respect to the denial of appellant's claim for a recurrence of disability.<sup>3</sup> In a November 18, 2008 decision, the Board affirmed OWCP's July 16, 2007 and January 23, 2008 decisions, which found that she did not sustain a recurrence of disability commencing May 17, 1994 causally related to her accepted employment-related injury. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.<sup>4</sup> The facts relevant to the present appeal are hereafter set forth.

By decision dated August 14, 1996, OWCP granted appellant schedule awards for 20 percent impairment to each upper extremity.

In a November 14, 2003 decision, OWCP granted appellant a schedule award for an additional three percent impairment of each upper extremity.

On October 30, 2009 appellant filed a claim for an additional schedule award.

In a report dated September 29, 2009, Dr. Jacob E. Tauber, an attending Board-certified orthopedic surgeon, noted that appellant had recurrent carpal tunnel syndrome for which she underwent surgery with some diminution in symptoms. Appellant had residual pain and weakness of grip strength with sensation that was functional. Dr. Tauber determined that appellant had a class 1 moderate motor deficit which represented eight percent impairment under Table 15-21 on page 438 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

On December 2, 2009 Dr. Ellen L. Pichey, Board-certified in both family and occupational medicine and an OWCP medical adviser, reviewed the medical record. She advised that appellant had reached maximum medical improvement on September 29, 2009 when examined by Dr. Tauber. Dr. Pichey found that, under Table 15-23 on page 449 of the sixth edition of the A.M.A., *Guides*, her condition for each arm fell under grade modifier 1 for test findings, grade modifier 3 each for history and physical findings. The average grade modifier was 2.33 or 2. Dr. Pichey used the moderate or grade 2 functional scale modifier to determine that appellant had five percent upper extremity impairment. She stated that, while Dr. Tauber picked an eight percent impairment value from Table 15-21 on page 438 for motor deficit and grip strength loss, the section addressing the use of this table stated that Table 15-23 on page 449 should be used for carpal tunnel syndrome. Dr. Pichey noted that Dr. Tauber did not follow the steps to prove the modification factors. It also appeared that Dr. Tauber did not review the comments on page 433 which stated that reliable physical findings were neurological

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<sup>3</sup> Docket No. 08-1028 (issued November 18, 2008).

<sup>4</sup> On January 21, 1986 appellant, then a 43-year-old clerk, filed an occupational disease claim alleging that on January 17, 1986 she first became aware of her carpal tunnel syndrome and realized that her condition was caused by her repetitive work duties. On November 21, 1988 OWCP accepted her claim for aggravation of bilateral carpal tunnel syndrome. It authorized right carpal tunnel release which appellant underwent on August 11, 1986 and left carpal tunnel release which she underwent on May 8, 2009. On April 12, 2002 OWCP accepted that appellant sustained a recurrence of total disability in January 1998 causally related to the accepted employment injury.

weakness and not weakness due to pain produced by strength testing, which may be seen with the use of dynamometer strength testing.

By letter dated March 12, 2010, OWCP advised appellant's attorney that the medical adviser was not aware that appellant had previously received schedule awards totaling 23 percent impairment of each upper extremity prior to the submission of her December 2, 2009 opinion. It further advised that the medical record would be forwarded to the medical adviser for further review.

On March 22, 2010 OWCP requested that the medical adviser review the case record, including appellant's prior schedule awards and state whether her five percent impairment rating remained the same.

On May 10, 2010 Dr. Pichey reiterated her finding that appellant reached maximum medical improvement on September 29, 2009. She had five percent impairment of each upper extremity under Table 15-23 on page 449 of the sixth edition of the A.M.A., *Guides*. Dr. Pichey stated that Dr. Tauber improperly applied the A.M.A., *Guides* to rate eight percent upper extremity impairment of each arm.

In a July 1, 2010 decision, OWCP denied appellant's claim for an additional schedule award based on the medical adviser's May 10, 2010 opinion.

On December 4, 2010 appellant requested reconsideration.

Dr. Tauber submitted an August 31, 2010 functional capacity evaluation (FCE) performed by a Dr. Enierga, who assessed appellant's permanent upper extremity impairment.<sup>5</sup> He stated that Dr. Enierga's impairment evaluation was performed under the sixth edition of the A.M.A., *Guides*. Dr. Enierga reported diminished range of motion of the right and left wrists under Table 16-28 and Table 16-31 on pages 467 and 469, respectively, of the A.M.A., *Guides*. Appellant had residual carpal tunnel syndrome. She had grade 3 sensory deficit under Table 16-10 on page 482. Appellant also had a grade 3 motor deficit under Table 16-11 on page 484. Dr. Enierga determined that appellant had 10 percent impairment of the right upper extremity and 11 percent impairment of the left upper extremity. Appellant had seven percent impairment for carpal tunnel syndrome. Dr. Enierga determined that appellant had an eight percent impairment of the whole person under Table 16-3 on page 439. Utilizing Table 15-23, he multiplied the 7 percent impairment for entrapment/compression neuropathy by 0.6 to calculate a 4.2 or 4 percent whole person impairment which represented eight percent whole person due to appellant's bilateral carpal tunnel syndrome.

On February 21, 2011 Dr. Pichey reviewed the August 30, 2010 FCE results. She stated that the impairment rating was based on the fifth edition of the A.M.A., *Guides*, despite the contention that it was based on the sixth edition. Dr. Pichey related that applying the sixth edition of the A.M.A., *Guides* to Dr. Enierga's data as a standalone rating for loss of range of motion at the wrist, would result in eight percent impairment for each upper extremity. She

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<sup>5</sup> The Board notes that Dr. Enierga's professional qualifications are not contained in the case record.

stated that, since appellant had been previously found to have 23 percent impairment of each extremity for the same condition, she had no additional impairment.

In a March 2, 2011 decision, OWCP denied modification of the July 1, 2010 decision, finding that the medical evidence did not establish that appellant had more than 23 percent impairment of each upper extremity for which she had received schedule awards.

### **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, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>8</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>9</sup> For decisions issued after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>10</sup> For decisions issued after May 1, 2009, the sixth edition will be used.<sup>11</sup>

The A.M.A., *Guides* provide a specific rating process for entrapment neuropathies such as carpal tunnel.<sup>12</sup> This rating process requires that the diagnosis of a focal neuropathy syndrome be documented by sensory or motor nerve conduction studies or electromyogram. The A.M.A., *Guides* do not allow additional impairment values for decreased grip strength, loss of motion or pain.<sup>13</sup> Table 15-23 provides a compilation of the grade modifiers for test findings, history, physical findings which are averaged and rounded to the nearest whole number. This table also provides the range of impairment values as well as the function scale modifier which determines the impairment value within the impairment scale.<sup>14</sup>

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<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Ausbon N. Johnson*, 50 ECAB 304 (1999).

<sup>9</sup> *Supra* note 7.

<sup>10</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>11</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>12</sup> A.M.A., *Guides* 432-50.

<sup>13</sup> *Id.* at 433.

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

## ANALYSIS

OWCP accepted that appellant sustained an aggravation of bilateral carpal tunnel syndrome due to her repetitive work duties. Appellant underwent right carpal tunnel release on August 11, 1986 and left carpal tunnel release on May 8, 2009, which were authorized by OWCP. On August 14, 1996 she received schedule awards for 20 percent impairment of each upper extremity. On November 14, 2003 appellant received an additional 3 percent impairment of each upper extremity, totaling 23 percent impairment. In decisions dated July 1, 2010 and March 2, 2011, OWCP denied her claim for an additional schedule award. The Board finds that appellant did not meet her burden of proof to establish that she sustained greater impairment than that previously awarded.<sup>15</sup>

Appellant submitted Dr. Tauber's September 29, 2009 impairment evaluation showing that she only had eight percent impairment of each upper extremity based on the sixth edition of the A.M.A., *Guides*. This impairment rating is less than the total 23 percent impairment rating for each upper extremity appellant previously received. Dr. Tauber's impairment rating was based on loss of grip strength and weakness of each upper extremity under Table 15-21 on page 438 of the A.M.A., *Guides*. The Board notes that the A.M.A., *Guides* prohibit rating nerve entrapments under Table 15-21<sup>16</sup> and specifically exclude grip strength testing in determining permanent impairment in compression neuropathies such as, carpal tunnel syndrome.<sup>17</sup> Dr. Enierga's August 31, 2010 eight percent whole person impairment rating which was adopted by Dr. Tauber is less than the total 23 percent impairment rating appellant previously received. Further, the Board has long held that a schedule award is not payable for an impairment of the whole person.<sup>18</sup> The Board notes that Dr. Enierga's impairment evaluation, adopted by Dr. Tauber, was performed under the fifth and sixth editions of the A.M.A., *Guides*. Dr. Enierga used the fifth edition to determine bilateral upper extremity impairment due to loss of range of motion and sensory and motor deficits. Dr. Enierga used the sixth edition to calculate appellant's whole person impairment. Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*. As Dr. Enierga conducted an impairment evaluation after May 1, 2009, the sixth edition of the A.M.A., *Guides* should have been utilized to determine the extent of appellant's bilateral upper extremity impairment. A medical opinion not based on the appropriate edition of the A.M.A., *Guides* is of diminished probative value in determining the extent of a claimant's permanent impairment.<sup>19</sup> For these reasons, the Board finds that the opinions of Dr. Tauber and Dr. Enierga do not establish greater impairment of either upper extremity.

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<sup>15</sup> An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim. *Amelia S. Jefferson*, 57 ECAB 183, 187 (2005).

<sup>16</sup> Section 15.4e, including Table 15-21, is not used for nerve entrapments since nerve entrapments are not isolated traumatic events. A.M.A., *Guides* 429.

<sup>17</sup> *Supra* note 13.

<sup>18</sup> *Phyllis F. Cundiff*, 52 ECAB 439 (2001).

<sup>19</sup> *Shalanya Ellison*, 56 ECAB 150 (2004).

Dr. Pichey, an OWCP medical adviser, properly applied the tables of the sixth edition of the A.M.A., *Guides* to determine that appellant had eight percent impairment of each upper extremity. Her impairment rating was also less than the schedule awards already received by appellant. Dr. Pichey advised that although Dr. Enierga's August 31, 2010 eight percent impairment rating was based on the fifth rather the sixth edition of the A.M.A., *Guides*, appellant had an eight percent impairment of each upper extremity under the sixth edition due to loss of range of motion of the bilateral wrist. The Board finds that the medical evidence does not establish that appellant has any greater impairment than that for which she already received schedule awards. The Board finds that OWCP properly denied an additional 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 failed to establish that she has more than 23 percent impairment of each upper extremity, for which she received schedule awards.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 2, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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