



2009 OWCP decision denying an additional schedule award for the upper extremities.<sup>2</sup> As the Board noted, there were two claims for compensation: (1) an occupational disease claim filed October 18, 2002 for a left wrist condition from holding mail in her left hand; and (2) an occupational disease claim filed January 13, 2003 for a right hip condition resulting from repetitive activity as a mail processing clerk.<sup>3</sup> The 2002 claim was initially accepted for left thumb tenosynovitis and the 2003 claim for right hip tendinitis/bursitis. The claims were administratively combined.

OWCP referred appellant to Dr. Allan Brecher, a Board-certified orthopedic surgeon. In a report dated October 16, 2012, Dr. Brecher provided a history of medical treatment and results on examination. He noted that appellant had right carpal tunnel surgery on January 25, 2008. As to the right arm, Dr. Brecher diagnosed carpal tunnel syndrome. He opined that, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a five percent arm impairment. Dr. Brecher explained that, under Table 15-23, the applicable grade modifier was two for test findings, history, physical examination and functional scale. The date of MMI was found to be one year after the carpal tunnel surgery.

In a report dated October 22, 2012, Dr. Brecher advised that appellant's carpal tunnel syndrome was aggravated by work. He stated that, although the record did not contain detailed notes on the carpal tunnel syndrome, the evidence "clearly suggests that this is an overuse injury from lifting at work."

OWCP accepted a right carpal tunnel syndrome as employment related. In a letter dated November 26, 2012, it listed the accepted conditions for the combined claims: right tenosynovitis, bilateral enthesopathy of hip region, thoracic or lumbosacral neuritis or radiculitis, bilateral pain in pelvic and thigh joints, left wrist ganglion cyst, left radial styloid tenosynovitis, other left wrist tenosynovitis, right carpal tunnel syndrome and muscle weakness.

In a report dated December 3, 2012, Dr. David H. Garelick, an OWCP medical adviser, stated that he agreed with Dr. Brecher's rating of five percent right arm impairment pursuant to Table 15-23. The medical adviser found that the date of MMI was January 25, 2009, one year after carpal tunnel surgery.

By decision dated January 2, 2013, OWCP issued a schedule award for a five percent right arm permanent impairment. The period of the award was 109.20 days from December 16, 2012, which OWCP indicated was the date of the last daily rolls, payment.<sup>4</sup> The effective pay rate date was reported as April 21, 2002, with a pay rate of \$808.40 per week.

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<sup>2</sup> Docket No. 10-543 (issued September 21, 2010). Appellant had received schedule awards for the left arm totaling 16 percent. She had not received a schedule award for the right arm.

<sup>3</sup> On the claim form appellant identified standing, walking, lifting, bending, squatting and twisting. She indicated that date she became aware of the condition as December 10, 2001, the date she was aware of an employment-related condition as April 21, 2002.

<sup>4</sup> The record indicated that appellant had received compensation for wage loss through December 15, 2012.

Appellant requested a review of the written record. In a decision dated March 29, 2013, an OWCP hearing representative affirmed the schedule award decision.

### **LEGAL PRECEDENT -- ISSUE 1**

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>5</sup> Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>6</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.<sup>7</sup>

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.<sup>8</sup> In Table 15-23, grade modifiers 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.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

Dr. Brecher provided an opinion that appellant had a five percent right arm impairment based on Table 15-23. As noted, application of Table 15-23 involves assigning grade modifiers for test findings, history and physical findings. Dr. Brecher assigned grade modifier two for test findings (minor conduction block), history (significant intermittent symptoms) and physical findings (decreased sensation). These are averaged for an overall grade modifier two, which has a default arm impairment of five percent. The functional scale resulted in no adjustment. Dr. Garelick, the medical adviser, concurred in the findings of Dr. Brecher.

The Board finds that Dr. Brecher properly applied Table 15-23 and provided a rationalized medical opinion that appellant had a five percent right arm impairment based on the carpal tunnel syndrome. There is no probative evidence of a greater impairment.

The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the arm, the maximum

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<sup>5</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>6</sup> A. George Lampo, 45 ECAB 441 (1994).

<sup>7</sup> FECA Bulletin No. 09-03 (March 15, 2009).

<sup>8</sup> A.M.A., *Guides* 448-50.

<sup>9</sup> *Id.*

number of weeks of compensation is 312 weeks. Since appellant's impairment was five percent, she is entitled to five percent of 312 weeks or 15.60 weeks of compensation.

On appeal, appellant stated that her physician advised that she had not reached MMI. She also stated that she had two claims and should be able to receive both a schedule award and wage loss concurrently, for different injuries to different parts of the body. In this regard, the Board notes that a schedule award is paid from the date of MMI.<sup>10</sup> The medical evidence reflects that the date of MMI was January 25, 2009. OWCP began the schedule award on December 16, 2012, stating that this was the date of appellant's last daily rolls payment.

The Board notes that a claimant is not entitled to concurrent wage-loss compensation and a schedule award for the same injury.<sup>11</sup> Appellant has raised the issue of whether her compensation for wage loss was for a different part of the body than the schedule award. A claimant can receive concurrent compensation for wage loss and a schedule award if they do not involve the same part of the body.<sup>12</sup> The record is unclear as to the relationship between the schedule award and the wage-loss compensation in this case. The two claims were administratively combined with several accepted conditions involving both the upper and lower extremities. The case will be remanded to OWCP for further adjudication with respect to this issue and an appropriate decision.

### **LEGAL PRECEDENT -- ISSUE 2**

Under 5 U.S.C. § 8101(2), “monthly pay” means 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 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater....” Once the proper date is determined, the pay rate for compensation purposes is calculated in accord with 5 U.S.C. § 8114.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

On appeal, appellant raised the issue as to the pay rate for compensation purposes used in the January 2, 2013 schedule award. The “effective date” of the pay rate was reported as April 21, 2002, with a pay rate of \$808.40. April 21, 2002 was the date appellant identified on her January 13, 2003 claim form as the date she became aware of her employment-related condition. OWCP does not explain how use of this date to determine pay rate is in accord with

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<sup>10</sup> See *Peter C. Belkind*, 56 ECAB 580 (2005).

<sup>11</sup> See *James A. Earle*, 51 ECAB 567 (2000).

<sup>12</sup> See *E.P.*, Docket No 10-428 (issued October 22, 2010) (appellant argued in a reconsideration request that her wage-loss compensation and schedule awards were for different parts of the body).

<sup>13</sup> See also 20 C.F.R. § 10.5(s), defining pay rate for compensation purposes as the employee's pay, as determined under 5 U.S.C. § 8114, at the time of injury, the time disability begins or the time compensable disability recurs if the recurrence begins more than six months after resumption of regular full-time employment, whichever is greater.

5 U.S.C. § 8101(2). The effective date must be a date of injury, a date disability began or a date of recurrence (if more than six months after resumption of full-time work), whichever is greater.

With respect to date of injury, it is well established that in an occupational disease or illness claim,<sup>14</sup> the date of injury is the date of last exposure to the factors contributing to the injury.<sup>15</sup> The Board has noted that in schedule award cases, if exposure to work factors contributing to the accepted condition continued after the filing of the claim, the date of the medical examination establishing permanent impairment may be used as the date of injury.<sup>16</sup> On return of the case record, OWCP should make proper findings as to the pay rate for compensation purposes. After such further development as it deems necessary, it should issue an appropriate decision.

### **CONCLUSION**

The Board finds that appellant has a five percent right arm permanent impairment. As to the pay rate for compensation purposes and the issue of concurrent benefits, the case is remanded to OWCP for further development.

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<sup>14</sup> 20 C.F.R. § 10.5(q) defines an occupational disease or illness as a condition produced by the work environment over more than one day.

<sup>15</sup> See *Henry D. Miles*, Docket No. 92-1757 (issued September 7, 1993); *Thomas V. Harper*, 32 ECAB 400 (1980).

<sup>16</sup> *R.S.*, 58 ECAB 362 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 29 and January 2, 2013 decisions of the Office of Workers' Compensation Programs are affirmed with respect to the extent of right arm impairment. The case is remanded with respect to pay rate and concurrent benefits.

Issued: December 9, 2013  
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