

activity. On September 20, 1996 OWCP accepted the claim for bilateral wrist ganglion cysts. It has also accepted bilateral carpal tunnel syndrome.

With respect to permanent impairment, appellant submitted an April 16, 2003 report from Dr. Nicholas Diamond, an osteopath, who provided results on examination and opined that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a 49 percent right arm permanent impairment and a 35 percent left arm permanent impairment.

Appellant was referred for second opinion examinations by Dr. James Charles, a Board-certified neurologist, and Dr. David Rubinfeld, a Board-certified orthopedic surgeon. In a report dated June 22, 2008, Dr. Rubinfeld reported that appellant had positive Tinel's signs bilaterally, with small ganglion cysts bilaterally. He stated that electromyogram (EMG) results were incomplete and that appellant did not have any permanent impairment under the fifth edition of the A.M.A., *Guides*. In a report dated August 12, 2008, Dr. Charles reported that an EMG and nerve conduction velocity (NCV) revealed normal right median motor distal latency and that appellant did not have carpal tunnel syndrome. By report dated August 20, 2008, Dr. Rubinfeld reviewed the report from Dr. Charles and stated that his prior diagnosis of possible carpal tunnel syndrome should be removed.

In a report dated September 14, 2008, an OWCP medical adviser reviewed Dr. Rubinfeld's June 22, 2008 report and agreed that appellant had no permanent impairment. In a report dated April 4, 2009, an OWCP medical adviser reviewed the reports of Drs. Rubinfeld and Charles and found that appellant did not have a ratable permanent impairment.

OWCP referred appellant for a second opinion examination as to the nature and extent of any permanent impairment under the sixth edition of the A.M.A., *Guides*. In a report dated January 11, 2010, Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, reviewed a history of treatment and results on examination. He found no ratable permanent impairment under the sixth edition of the A.M.A., *Guides* of either upper extremity.

On March 2, 2010 appellant submitted a report from Dr. Diamond dated January 29, 2010. Dr. Diamond used the examination results from April 16, 2003 to rate appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*. He opined that appellant had a five percent impairment to each arm based on entrapment neuropathy.

On March 10, 2010 Dr. Morley Slutsky, an OWCP medical adviser, reviewed the medical records. He opined that there would not be any impairment based on the ganglion cysts, but as to carpal tunnel syndrome he would have to be provided with EMG/NCV tests as well as a functional capacity questionnaire from appellant. In a report dated May 17, 2010, Dr. Henry J. Magliato, a medical adviser, reviewed Dr. Diamond's January 29, 2010 report. He opined that appellant had a five percent permanent impairment to each arm.

OWCP determined that a conflict in medical opinion arose between Dr. Diamond and Dr. Lakin. Dr. Michael Seidenstein, a Board-certified orthopedic surgeon, was selected as the referee physician and was asked to address any permanent impairment under the A.M.A., *Guides*. In a report dated November 16, 2010, he reviewed the medical evidence, including an

undated EMG report but appellant had stated a more recent EMG had been performed. Dr. Seidenstein stated that based on the EMG that Dr. Charles performed and results on physical examination, there was no evidence of bilateral carpal tunnel syndrome. If there were additional EMG tests, Dr. Seidenstein requested they be forwarded for his review. Dr. Seidenstein found appellant did have a xanthoma/ganglion on the volar ulnar aspect of the right wrist.

Appellant was again referred to Dr. Lakin. In a report dated March 16, 2012, Dr. Larkin reviewed a history of treatment and provided results on examination. He stated that appellant had no clinical findings of bilateral carpal tunnel syndrome or carpal tunnel syndrome in either wrist. Dr. Lakin opined that appellant had a zero percent permanent impairment for entrapment neuropathy under the A.M.A., *Guides* at Table 15-23. In a report dated May 14, 2012, he again reviewed the physical examination results. Dr. Lakin referred to the wrist regional grid at Table 15-3 and found appellant had no permanent impairment. He explained that there was no impairment for a diagnosis of a nonspecific wrist pain with no objective findings. In a report dated May 16, 2012, an OWCP medical adviser opined that appellant had no ratable permanent impairment.

By decision dated August 23, 2012, OWCP determined that appellant was not entitled to a schedule award. Appellant requested a hearing before an OWCP hearing representative, which was held on December 27, 2012.

By decision dated March 15, 2013, the hearing representative affirmed the August 23, 2012 OWCP decision. The hearing representative found that the January 29, 2010 report from Dr. Diamond was not sufficient to create a conflict. The weight of the medical evidence did not establish any employment-related permanent impairment.

LEGAL PRECEDENT

Section 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.² 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.³ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁴

ANALYSIS

Appellant underwent an examination by Dr. Diamond on April 16, 2003. He rated impairment under the fifth edition of the A.M.A., *Guides*. On January 29, 2010 Dr. Diamond

² 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).

³ A. George Lampo, 45 ECAB 441 (1994).

⁴ FECA Bulletin No. 09-03 (issued March 15, 2009).

provided an opinion as to appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*, resubmitted the April 16, 2003 examination results. The Board has held that an opinion on a permanent impairment must be based on a reasonably current physical examination, and that an opinion based on examination conducted several years earlier is of diminished probative value.⁵ The January 29, 2010 rating by Dr. Weiss was not based on a current physical examination. It is of diminished probative value to the issue presented.

The Board therefore concurs with the hearing representative's determination that the January 29, 2010 report was not sufficient to create a conflict under 5 U.S.C. § 8123(a).⁶ The referral to Dr. Seidenstein was for a second opinion examination.⁷

The most recent medical examination was the March 16, 2012 examination by Dr. Lakin who provided results on examination and found that appellant did not have carpal tunnel syndrome in either arm. This is consistent with his prior findings as well as the report of Dr. Seidenstein. Dr. Lakin found no impairment under the A.M.A., *Guides* based on entrapment neuropathy. In a supplemental report dated May 14, 2012, he opined that there was no arm impairment under the wrist regional grid for a diagnosis of nonspecific wrist pain with no objective findings. The medical adviser concurred with Dr. Lakin in a May 16, 2012 report.

The Board finds that the weight of the medical evidence rests with Dr. Lakin, who provided a complete report based on a recent physical examination and found no permanent impairment under the sixth edition of the A.M.A., *Guides*.

On appeal, appellant contends that Dr. Diamond's opinion is of probative value and there is an unresolved conflict. For the reasons noted, the Board finds that Dr. Diamond relied on a physical examination almost seven years prior to rate impairment. His rating is of diminished probative value and there was no conflict in the medical evidence. Appellant notes that there was an OWCP medical adviser's report of May 17, 2010 rated permanent impairment, but this report was based on Dr. Diamond's 2003 physical examination results which render it of diminished probative value. The weight of the medical evidence of record does not establish that appellant has an employment-related permanent impairment under the A.M.A., *Guides*.

Appellant may submit new evidence or argument with a written application 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.

⁵ See *B.N.*, Docket No. 12-1394 (issued August 5, 2013) (examination dated July 2004, updated opinion provided in November 2011 report); *E.W.*, Docket No. 13-506 (issued May 13, 2013) (October 2004 examination, May 2011 opinion); *W.M.*, Docket No. 12-773 (issued March 29, 2013) (September 2006 examination, June 2010 opinion).

⁶ FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination. 5 U.S.C. § 8123(a). When a medical report is of diminished probative value it is not sufficient to create a conflict under 5 U.S.C. § 8123(a). See *W.M.*, *id.*

⁷ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

CONCLUSION

The Board finds that the evidence does not establish a ratable permanent impairment to a scheduled member or function of the body under FECA.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 15, 2013 is affirmed.

Issued: December 16, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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