



laminectomy surgery on October 11, 2007. After development of the evidence, OWCP accepted the claim for aggravation of cervical degenerative disc disease.

Appellant returned to work in a part-time position. She was referred for a second opinion examination by Dr. Robert Draper, a Board-certified orthopedic surgeon. In a report dated September 26, 2011, Dr. Draper reviewed the history and set forth results on examination. He noted that motor function examination revealed +5 for the arm muscles tested. Dr. Draper indicated that appellant is capable of performing light-duty work with varying restrictions, due to his accepted injury. In a report dated March 8, 2012, attending osteopath, Dr. Raymond Bruno, noted that she had a mild-to-moderately decreased range of cervical motion upper extremity motor strength testing was 5/5.

In a report dated July 27, 2012, Dr. Emmanuel Jacob, a Board-certified physiatrist, listed a history and results on examination. He stated that right hand grip was 4/5 and left hand 5/5 and did not discuss muscle strength testing. Sensation was described as diminished along the C8-T1 dermatome. With respect to a permanent impairment, Dr. Jacob stated that he applied Table 15-20 under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (sixth edition) and found a three percent impairment for sensory deficit and nine percent for motor deficit. He indicated that the grade modifier for functional history was two and for clinical studies one, resulting in a 14 percent arm impairment.

In a report dated October 18, 2012, Dr. Jacob provided a recalculation of the arm impairment. For the right arm, he stated that there was a 17 percent impairment under Table 15-20, based on 13 percent for motor deficit and 4 percent sensory deficit. As to the left arm, Dr. Jacob found a four percent impairment based on sensory deficit under Table 15-20.

The case was referred for review by an OWCP medical adviser. By report dated November 6, 2012, Dr. Arnold T. Berman, a Board-certified orthopedic surgeon, stated that Dr. Jacobs had applied an incorrect table in rating impairment. He noted that Table 15-20 was for a brachial plexus injury, which was not applicable in this case. Dr. Berman found that there was no documented evidence of motor deficit. He opined that, under the applicable method for determining a peripheral nerve impairment under *The Guides Newsletter*, appellant had a four percent impairment to each arm based on sensory deficit. The date of maximum medical improvement was reported as July 27, 2012.

By decision dated December 7, 2012, OWCP issued schedule awards for a four percent impairment to each arm. The period of the awards was 24.96 weeks commencing December 1, 2012.

### **LEGAL PRECEDENT**

Section 8107 of FECA 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>2</sup> Neither FECA nor the

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<sup>2</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).

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>3</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.<sup>4</sup>

For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP's procedures indicate that *The Guides Newsletter* "Rating Spinal Nerve Extremity Impairment Using the Sixth Edition" (July/August 2009) is to be applied.<sup>5</sup>

### ANALYSIS

OWCP accepted an aggravation of cervical degenerative disc disease. Under FECA, there is no provision for a schedule award for impairment to the back, spine or to the body as a whole.<sup>6</sup> Appellant submitted reports from Dr. Jacobs with respect to a permanent impairment to the upper extremities resulting from the employment injury. Dr. Jacobs identified Table 15-20, a table for brachial plexus impairments. In July 27 and October 18, 2012 reports, however, he did not diagnose or discuss a brachial plexus injury or provide any support for the use of Table 15-20. As noted, the accepted condition in this case is aggravation of cervical degenerative disc disease. As there is no evidence of a brachial plexus injury, a report utilizing Table 15-20 is of diminished probative value in determining the degree of impairment.<sup>7</sup>

The Board also notes that, in applying Table 15-20, Dr. Jacobs referred to a motor deficit. Under the A.M.A., *Guides* motor deficits are based on muscle strength testing, which depend on the examinee's cooperation and are subject to his or her conscious or unconscious control.<sup>8</sup> To be valid, results should be concordant with other pathologic signs and medical evidence and if measurements are made by one examiner, they should be consistent on different occasions.<sup>9</sup> Dr. Jacobs did not describe the manual muscle testing conducted or a description of the results, other than a brief indication of "4/5" for right hand grip strength. The Board notes that neither Dr. Draper, the second opinion physician nor Dr. Bruno, an attending osteopath, reported a motor deficit. The opinion from Dr. Jacob as to the degree of permanent impairment under the A.M.A., *Guides* is of diminished probative value.

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<sup>3</sup> A. George Lampo, 45 ECAB 441 (1994).

<sup>4</sup> FECA Bulletin No. 09-03 (March 15, 2009).

<sup>5</sup> See G.N., Docket No. 10-850 (issued November 12, 2010); see also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

<sup>6</sup> See James E. Jenkins, 39 ECAB 860 (1988); 5 U.S.C. § 8101(20).

<sup>7</sup> See C.D., Docket No. 12-249 (issued June 12, 2012).

<sup>8</sup> A.M.A. *Guides* 425.

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

The November 6, 2012 report of Br. Berman noted that upper extremity impairments from spinal nerve impairments are calculated using *The Guides Newsletter*.<sup>10</sup> The medical adviser applied Proposed Table 1 for the C5, C6, C7 and C8 nerve roots, finding one percent impairment for a grade C (default) impairment based on mild sensory deficit.

The Board notes that the medical adviser provided no discussion with respect to grade modifiers for functional history and clinical studies under Table 15-7 and Table 15-9. *The Guides Newsletter* indicates that the grade C value should be adjusted in accord with the well-established methodology provided in the sixth edition.<sup>11</sup> Dr. Jacobs had found a grade modifier of two for functional history and one for clinical studies, which would result in a grade D impairment.<sup>12</sup> Dr. Berman did not discuss this aspect of the medical evidence.

The case will accordingly be remanded to OWCP for clarification with respect to the impairment rating. After such further development as OWCP deems necessary, it should issue an appropriate decision.

On appeal, appellant's representative argues that Dr. Jacobs' opinion should be accepted by OWCP. For the reasons noted, Dr. Jacobs' opinion is of diminished probative value. Appellant can submit new medical evidence with respect to the extent of permanent impairment to OWCP.

### **CONCLUSION**

The Board finds the case is not in posture for decision of the extent of permanent impairment to appellant's arms.

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<sup>10</sup> *Supra* note 5.

<sup>11</sup> See *The Guides Newsletter* "Rating Spinal Nerve Extremity Impairment Using the Sixth Edition" (July/August 2009).

<sup>12</sup> The adjustment formula is discussed at A.M.A., *Guides* 411. Under the table used in *The Guides Newsletter*, a grade D impairment for the C6 nerve is two percent.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 7, 2012 decision of the Office of Workers' Compensation Programs set aside and the case remanded for further action consistent with this decision of the Board.

Issued: June 21, 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