

additional schedule award.² The Board noted that Dr. Colin W. Fennell, a Board-certified orthopedic surgeon and OWCP referral physician, determined that appellant had a 24 percent permanent impairment of the right hand due to loss of motion of the fingers. He found no impairment due to carpal tunnel syndrome. An OWCP medical adviser, however, opined that the loss of finger motion resulted from nonemployment-related arthritis. He also stated that appellant could receive an impairment rating for carpal tunnel syndrome if diagnostic studies were positive but noted that any impairment due to carpal tunnel syndrome could be less than that previously awarded. The Board remanded the case for Dr. Fennell to address whether appellant's loss of finger motion of the right hand was employment related and to evaluate any impairment due to carpal tunnel syndrome based on diagnostic studies. The facts and circumstances as set forth in the prior decision are hereby incorporated by reference.

By letter dated March 5, 2013, OWCP requested that Dr. Fennell discuss whether appellant's November 30, 1990 work injury caused loss of motion in his right hand. It further instructed him to evaluate any impairment due to carpal tunnel syndrome based on diagnostic studies.

On March 21, 2013 appellant's attorney questioned why OWCP had not informed Dr. Fennell that an impairment due to preexisting or employment-related arthritis should be included in the impairment rating. In an April 19, 2013 response, OWCP advised counsel that the Board had not instructed it to include information about preexisting conditions.

In a supplemental report dated April 22, 2013, Dr. Fennell stated, "[Appellant's] loss of range of motion of his wrists does not result from the November 30, 1990 employment injury. The loss of range of motion is secondary to the scapholunate advanced collapse of both wrists which in this circumstance is nonwork related." Dr. Fennell found no impairment due to carpal tunnel syndrome based on the lack of sensory or motor loss.

By decision dated May 22, 2013, OWCP denied appellant's claim for an increased schedule award. It determined that Dr. Fennell opined that appellant had no loss of wrist motion due to his accepted work injury or impairment due to his carpal tunnel syndrome.

On appeal appellant's attorney contends that OWCP failed to follow the Board's instructions on remand and noted that preexisting conditions are to be included in calculating impairment ratings. He further contends that Dr. Fennell's report was not reasoned and failed to utilize diagnostic studies in considering any impairment due to carpal tunnel syndrome.

² Docket No. 12-1390 (issued February 13, 2013). OWCP had accepted that on November 30, 1990 appellant, then a 47-year-old maintenance technician, sustained right finger sprain and instability of the metacarpal joints of four fingers of the right hand under file number xxxxxx547. It further accepted his 1997 occupational disease claim for bilateral carpal tunnel syndrome, assigned file number xxxxxx554. Appellant retired on August 1, 1998. He received a schedule award for a one percent permanent impairment of the right hand. On July 20, 1998 OWCP granted appellant a schedule award for an additional 11 percent permanent right hand impairment.

LEGAL PRECEDENT

The schedule award provision of FECA,³ and its implementing federal regulations,⁴ 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 for all claimants, OWCP has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

Proceedings under OWCP are not adversarial in nature, nor is OWCP a disinterested arbiter.⁷ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁸ Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.⁹

ANALYSIS

On prior appeal, the Board remanded the case for OWCP to obtain a supplemental report from Dr. Fennell addressing whether appellant's loss of motion of the fingers of the right hand was employment related and whether he had an impairment due to carpal tunnel syndrome based on diagnostic studies. In a report dated April 22, 2013, Dr. Fennell advised that the loss of range of motion of appellant's wrists was not due to his November 30, 1990 employment injury. The issue, however, is the cause of the loss of motion of appellant's right fingers.

The Board has held that, once OWCP starts to procure a medical opinion, it must do a complete job. OWCP has the responsibility to obtain from its referral physician an evaluation that will resolve the issues in the case.¹⁰ Dr. Fennell's opinion is insufficient to establish whether appellant has more than a 12 percent impairment of the right hand. He did not address the relevant issue of range of motion of the fingers. Dr. Fennell further found no impairment due to carpal tunnel syndrome based on normal sensory and motor strength but did not adequately

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁷ *See Vanessa Young*, 55 ECAB 575 (2004).

⁸ *See Richard E. Simpson*, 55 ECAB 490 (2004); *Phillip L. Barnes*, 55 ECAB 426 (2004).

⁹ *Melvin James*, 55 ECAB 406 (2004).

¹⁰ *See A.R.*, Docket No. 11-692 (issued November 18, 2011); *Richard F. Williams*, 55 ECAB 343 (2004).

address whether diagnostic studies revealed any impairment or review any diagnostic testing to determine whether it documented carpal tunnel syndrome. The case will be remanded for OWCP to refer appellant to an appropriate specialist to secure a reasoned medical opinion regarding the extent of any right hand or upper extremity impairment. OWCP should advise the referral physician that preexisting impairments are included in determining an impairment rating.¹¹ Following such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: November 4, 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

¹¹ See *R.P.*, 59 ECAB 127 (2007).