

finger as a result of repetitive use of his hands. He first became aware of his condition on March 6, 2006 and realized it resulted from his employment on March 6, 2007. OWCP accepted his claim for bilateral carpal tunnel syndrome. Appellant worked light duty.

In a September 19, 2008 report, Dr. Melvin M. Grossman, a Board-certified psychiatrist and neurologist, opined that appellant had 10 percent impairment of the upper extremities for his median neuropathy and carpal tunnel syndrome and 20 percent impairment for degenerative disc disease and disc herniation for a total of 30 percent impairment of the whole person.

In an October 31, 2008 report, an OWCP medical adviser reported that appellant's physician incorrectly assigned 10 percent whole person impairment for bilateral carpal tunnel syndrome and explained that FECA did not consider whole person impairment. Utilizing the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), page 495, he determined that appellant had five percent impairment of each upper extremity.

On January 29, 2009 OWCP granted appellant a schedule award for five percent permanent impairment of each upper extremity. The award ran from September 19, 2008 to April 25, 2009. The date of maximum medical improvement was September 19, 2008.

On July 27, 2010 appellant stopped work again because there was no light-duty work available. OWCP paid wage-loss compensation. On January 19, 2011 appellant was placed on the periodic rolls. On January 31, 2013 appellant retired from federal service.

On February 19, 2013 appellant filed a claim for an increased schedule award. In a March 6, 2013 report, Dr. Grossman stated that appellant's carpal tunnel syndrome remained static and unchanged. He noted that surgery may improve the use of appellant's upper extremities but because of appellant's diabetic polyneuropathy it was unlikely that any surgery would be helpful. Utilizing the sixth edition of the A.M.A., *Guides*, page 492, Dr. Grossman noted objective abnormalities of median motor and sensory neuropathy in the upper extremities. He reported combined sensory deficit of 45 percent impairment for both motor and sensory deficits based on sensory diminishment in both upper extremities and median nerve below the forearm involving the thumb and index fingers. Dr. Grossman also opined that appellant had 30 percent impairment of the whole person and 15 percent for each upper extremity, which included the arms and hands. He reported that, since OWCP did not request whole person impairment, he concluded that appellant's impairment would be 30 percent of each upper extremity.

On March 27, 2013 Dr. Howard P. Hogshead, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed the medical record. He noted that a September 14, 2011 electrodiagnostic study revealed slowing of sensory nerve conduction but no electromyography motor nerve involvement. Dr. Hogshead noted that Dr. Grossman erroneously referenced the sixth edition of the A.M.A., *Guides*, page 492, and should have referred to Table 15-23, page 449. He contended that Dr. Grossman failed to explain how appellant's preexisting diabetic neuropathy was not related to the bilateral median sensory neuropathy. Dr. Hogshead concluded that appellant was not due any additional impairment other than the five percent previously awarded.

In a decision dated May 14, 2013, OWCP found that the medical evidence was insufficient to establish that appellant was entitled to an increased schedule award in the impairment already compensated.

In a letter dated January 6, 2014 and received on January 7, 2014, appellant's representative requested reconsideration.

On March 14, 2014 Dr. James W. Dyer, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed the record and noted that appellant was previously awarded five percent impairment for each upper extremity. He related that appellant had bilateral carpal tunnel syndrome as verified by prolonged nerve conduction velocity (NCV) median nerve motor wrist with weakness and pinch strength of both hands. Dr. Dyer reported a *QuickDASH* score of 63 percent right upper extremity and 84 percent left upper extremity. Utilizing the sixth edition of the A.M.A., *Guides*, Table 15-23, page 449, he reported a grade modifier total of six for an average of two, which provided a default of five percent impairment of the upper extremities. Dr. Dyer explained that, due to the elevated *QuickDASH* score and increased motor weakness of both hands, the highest upper extremity impairment for grade modifier 2 was six percent. Thus, he concluded that appellant should be awarded an additional one percent impairment for each upper extremity.

By decision dated March 19, 2014, OWCP vacated the May 14, 2013 denial decision and found that the medical evidence demonstrated that he sustained a greater impairment of the bilateral upper extremities.

On March 24 and April 7, 2014 OWCP issued a schedule award for an additional one percent impairment of each upper extremity. The award ran from July 16 to August 28, 2013. OWCP noted a date of maximum medical improvement of July 16, 2013.² It explained that the previous award of five percent was subtracted from the six percent rating which left a remaining impairment of one percent for each arm.

In an appeal request form received on May 20, 2014, appellant requested a review of the written record. He provided a July 16, 2013 report by Dr. Nicholas Diamond, an osteopath who specializes in physical medicine and rehabilitation, who opined that appellant had six percent impairment of the right upper extremity and six percent impairment of the left upper extremity under the sixth edition of the A.M.A., *Guides*.³

In a decision dated May 22, 2014, OWCP denied appellant's request for review of the written record as it was not made within 30 days of the last decision. It exercised its discretion

² OWCP further reported that because appellant currently had a remaining overpayment balance of \$1,505.03, this amount would be deducted from his schedule award for a net payment of \$2,953.45.

³ For the right wrist, Dr. Diamond reported grade modifiers of 1 for testing findings, 2 for history, and 3 for physical examination due to his decreased pinch. The average of the modifiers was two and the *QuickDASH* score increased to three, which resulted in an increase of right upper extremity impairment from five percent to six percent. For the left wrist, he noted grade modifiers of 1 for test findings, 2 for history, and 2 for physical examination based on decreased sensory. The average of the modifiers was two which increased to four according to the *QuickDASH*, which resulted in an impairment of six percent.

and considered his request but found that the issue could be adequately addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA⁴ and its implementing regulations 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. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as the appropriate standards for evaluating schedule losses.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator identifies the impairment class for the Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).⁷ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁸

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.⁹

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome. On January 29, 2009 OWCP granted appellant a schedule award for five percent permanent impairment of each upper extremity under the fifth edition of the A.M.A., *Guides*. On March 24 and April 7, 2014 OWCP issued a schedule award for an additional one percent impairment of each upper extremity under the sixth edition. The Board finds that appellant failed to establish greater permanent impairment to either upper extremity.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 20 C.F.R. § 10.404 (1999); *see also* Jacqueline S. Harris, 54 ECAB 139 (2002).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (January 2010).

⁷ A.M.A., *Guides* 383-419.

⁸ *Id.* at 411.

⁹ *See* Federal (FECA) Procedure Manual, *supra* note 6 at Chapter 2.808.6(d) (August 2002).

Along with his claim for an increased schedule award, appellant submitted a March 6, 2013 report by Dr. Grossman. Utilizing the sixth edition of the A.M.A., *Guides*, page 492, Dr. Grossman noted objective abnormalities of median motor and sensory neuropathy in the upper extremities. He reported combined sensory deficit of 45 percent impairment for both motor and sensory deficits based on sensory diminishment in both upper extremities and median nerve below the forearm involving the thumb and index fingers. Dr. Grossman also opined that appellant had 30 percent impairment of the whole person and 15 percent for each upper extremity, which included the arms and hands. He reported that, since OWCP did not request whole person impairment, he concluded that appellant's impairment would be 30 percent of each upper extremity.

Although Dr. Grossman determined that appellant had 30 percent impairment of each upper extremity under the sixth edition of the A.M.A., *Guides*, he did not cite to accurate tables or figures of the A.M.A., *Guides* to support his rating of appellant's impairment. The Board notes that page 492 of the sixth edition of the A.M.A., *Guides* does not contain any tables or figures which could be used to determine the permanent impairment of appellant's upper extremities. As Dr. Grossman's March 6, 2013 report and impairment rating do not comport with the sixth edition of the A.M.A., *Guides*, the Board finds that it is of limited probative value.¹⁰

The Board notes that appellant's claim was properly routed to Dr. Dyer, an OWCP medical adviser, for an opinion concerning the nature or percentage of permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*.¹¹ In a March 14, 2014 report, he related that appellant had bilateral carpal tunnel syndrome as verified by prolonged NCV median nerve motor wrist with weakness and pinch strength of both hands. Dr. Dyer also reported a *QuickDASH* score of 63 percent right upper extremity and 84 percent left upper extremity. Referencing the sixth edition of the A.M.A., *Guides*, Table 15-23, page 449, he reported a total grade modifier of six for an average of two, which provided a default of five percent impairment of the upper extremities. Dr. Dyer explained that, due to the elevated *QuickDASH* score and increased motor weakness of both hands, the highest upper extremity impairment for a grade modifier of two was six percent. Thus, he concluded that appellant should be awarded an additional one percent impairment of each upper extremity. The Board finds that Dr. Dyer's March 14, 2014 report properly applied examination findings to the A.M.A., *Guides* and established that appellant had no more than six percent permanent impairment of each upper extremity under the sixth edition of the A.M.A., *Guides*.

On appeal, appellant alleged that the April 7, 2014 schedule award was very small. As noted, however, appellant has failed to submit any evidence by a treating physician finding greater impairment to the right or left upper extremity in accordance with the sixth edition of the A.M.A., *Guides*. Accordingly, he has not met his burden of proof to establish an increased schedule award.

¹⁰ *I.F.*, Docket No. 08-2321 (issued May 21, 2009); *Linda Beale*, 57 ECAB 429 (2006); *Tommy R. Martin*, 56 ECAB 273 (2005).

¹¹ *Supra* note 8.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary.¹² Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.¹³ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.¹⁴

Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.¹⁵ Its procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).¹⁶

ANALYSIS -- ISSUE 2

In a decision dated April 7, 2014, OWCP granted appellant an additional one percent schedule award for each upper extremity. In an appeal request form received on May 20, 2014, appellant requested a review of the written record. As his request for a review of the written record was received more than 30 days after OWCP issued its April 7, 2014 decision, he was not entitled to a review of the written record as a matter of right.

OWCP has the discretionary power to grant a hearing or review of the written record when a claimant is not entitled to a hearing or review as a matter of right.¹⁷ In its May 22, 2014 decision, it properly exercised discretion by stating that it had considered the matter in relation to the issue involved and denied appellant's request on the basis that the case could be resolved by submitting additional evidence to OWCP with a reconsideration request. The Board has held that the only limitation on OWCP's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of

¹² 5 U.S.C. § 8124(b)(1).

¹³ 20 C.F.R. §§ 10.616, 10.617.

¹⁴ *Id.* at § 10.616(a).

¹⁵ *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

¹⁶ See *R.T.*, Docket No. 08-408 (issued December 16, 2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.2(a) (October 2011).

¹⁷ See *Afegalai L. Boone*, 53 ECAB 533 (2002).

judgment or actions taken which are contrary to both logic and probable deductions from established facts.¹⁸ In this case, the evidence does not establish that OWCP committed any action in connection with its denial of appellant's request for a review of the written record which could be found to be an abuse of discretion. Accordingly, OWCP properly denied his request for a review of the written record as untimely under section 8124 of FECA.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an increased schedule award. The Board also finds that OWCP properly denied appellant's request for a review of the written record as untimely under section 8124(b)(1).

ORDER

IT IS HEREBY ORDERED THAT the May 22, April 7, and March 24, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 8, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹⁸ *Samuel R. Johnson*, 51 ECAB 612 (2000).