



duties as a mail carrier. By decision dated February 24, 1993 OWCP accepted bilateral carpal tunnel syndrome due to the performance of his repetitive work duties. Appellant returned to full duty, but symptoms increased. Electromyography (EMG) nerve conduction studies were conducted by Dr. David Siegel, an attending Board certified orthopedic surgeon, on March 25, 1993 and found to be normal but, because of the numbness in his right hand when it was cold and the persistent pain, he requested and OWCP authorized a June 2, 1993 right carpal tunnel release surgery. Appellant returned to full duty effective December 13, 1993.

Appellant continued to have pain in the right hand and the left hand became more symptomatic. As of November 8, 1994, EMG nerve conduction studies of the left hand were found to be normal by Dr. Anthony J. Defranzo, an attending Board-certified orthopedic surgeon. Appellant filed a claim for recurrence (Form CA-2a) and by decision dated February 2, 1995 OWCP accepted a recurrence of disability. A medical report from Dr. Defranzo dated August 6, 1996 referenced continuing problems with the left hand and noted that appellant had "borderline nerve conduction studies on the left in the past." On September 16, 1996 appellant underwent authorized left carpal tunnel release surgery.

In 1999 appellant began to complain of problems with the right forearm but, in a September 21, 1999 report, Dr. Defranzo found no lateral epicondylitis. Appellant continued to work full time.

In August 2009, Dr. Defranzo noted continued problems with lateral epicondylitis. He noted that, with appellant's repetitive employment duties, he anticipated that appellant would continue to have intermittent problems with this condition. On October 15, 2009 Dr. Defranzo diagnosed bilateral chronic medial and lateral epicondylitis due to repetitive overuse of his arms with flexion and extension of the elbows.

By decision dated October 26, 2009, OWCP expanded the accepted conditions to include bilateral lateral and medial epicondylitis.

On March 25, 2011 appellant filed a claim for a schedule award (Form CA-7) due to his accepted work injuries. He provided a copy of a January 19, 2011 functional capacity evaluation report, which had been obtained by Dr. Defranzo, finding that appellant's "injured area has returned to normal or near normal function." Appellant also submitted a report of Dr. Defranzo dated February 17, 2011 in which he references the "excellent effort and valid results" of the functional capacity evaluation and finds five percent permanent impairment rating for bilateral carpal tunnel syndrome and two percent permanent impairment rating for bilateral medial and lateral epicondylitis.

OWCP forwarded the medical record to Dr. Howard G. Hogshead, a Board-certified orthopedic surgeon serving as the OWCP medical adviser, for review. Dr. Hogshead found that appellant should be rated one percent bilaterally for lateral epicondylitis and two percent for bilateral carpal tunnel syndrome. By letter dated May 16, 2011, OWCP forwarded Dr. Hogshead's report to Dr. Defranzo for a supplemental report.

In his June 9, 2011 supplemental report, Dr. Defranzo noted that appellant complained of painful bilateral medial and lateral epicondylitis, but that appellant had not undergone surgery for

this condition as he continued to work in the highly repetitive position with the employing establishment. He provided an impairment evaluation under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>2</sup> Under Table 15-4 (Elbow Regional Grid) on page 399, Dr. Defranzo diagnosed lateral and medial epicondylitis under class 1. He claimed that appellant had a class 1 grade “C2” which equaled two percent permanent impairment of his left upper extremity and two percent permanent impairment of his right upper extremity.

For appellant’s bilateral carpal tunnel syndrome, Dr. Defranzo referenced Table 15-23 on page 449 and concluded that he had five percent permanent impairment bilaterally due to this condition. He referenced nerve conduction studies that had been conducted in 1994 and in 1995 which reflected 4.3 on the right and 4.5 on the left.<sup>3</sup> Based on these nerve conduction studies, which Dr. Defranzo found as “mildly abnormal motor conduction blocks,” he placed appellant under grade modifier 2 for five percent permanent impairment bilaterally due to the carpal tunnel syndrome.

OWCP again forwarded the record to Dr. Hogshead for review. In his June 22, 2011 report, Dr. Hogshead found that Dr. Defranzo’s assessment of appellant’s impairment due to epicondylitis was reasonable, but that he disagreed with the assessment of appellant’s impairment due to carpal tunnel syndrome. He noted that, in Dr. Defranzo’s earlier November 8, 1994 report, he had found that electrodiagnostic testing studies and physical examinations were normal. Dr. Hogshead noted that Dr. Defranzo had repeatedly referred to motor conduction “blocks” rather than motor conduction “delays” and commented that this was a significant distinction in determining whether appellant fell under class 1 or class 2 under Table 15-23 on page 449. He noted that Dr. Defranzo did not provide the physical examination findings or the Semmes-Weinstein graduation of sensory loss. Dr. Hogshead determined that appellant should be rated at three percent, which was the higher end of class 1, rather than five percent, which was the default rating for class 2. He determined that was “a reasonable compromise.” Adding the two percent impairment due to epicondylitis in each upper extremity to the three percent impairment due to carpal tunnel syndrome in each upper extremity meant that appellant had five percent impairment of each upper extremity.

In a July 1, 2011 decision, OWCP granted appellant a schedule award for five percent permanent impairment of each upper extremity. The award ran for 31.2 weeks and was based on the June 22, 2011 opinion of Dr. Hogshead.

In a June 21, 2012 letter, appellant requested reconsideration of his schedule award claim. He argued that OWCP had not adequately considered the severity of his carpal tunnel test results as found by Dr. Defranzo. Appellant submitted an August 18, 1999 letter from Dr. Defranzo noting that he believed appellant had five percent permanent disability due to his bilateral carpal tunnel syndrome and a December 8, 2011 report from Dr. Defranzo referencing ongoing symptoms with bilateral medial epicondylitis.

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>3</sup> These reports are not in the record.

In an August 7, 2012 decision, OWCP affirmed its July 1, 2011 decision, noting that appellant had submitted insufficient evidence to establish more than five percent permanent impairment of each arm.

In a July 26, 2013 letter, appellant again requested reconsideration of his claim. He argued that OWCP had not adequately considered the severity of his carpal tunnel test results.

On October 23, 2013 Dr. Hogshead again reviewed the record and reiterated that appellant had five percent permanent impairment of each upper extremity.

In an October 28, 2013 decision, OWCP affirmed its August 7, 2012 schedule award decision, finding that appellant had not established more than five percent permanent impairment of each upper extremity.

In a September 5, 2014 decision,<sup>4</sup> the Board set aside OWCP's October 28, 2013 decision and remanded the case to OWCP for further development. The Board found that Dr. Hogshead had not adequately explained how his impairment rating of five percent permanent impairment of each arm comported with the relevant standards of the sixth edition of the A.M.A., *Guides*. The Board noted that Dr. Hogshead found that Dr. Defranzo's assessment of appellant's impairment due to epicondylitis was reasonable and adopted the position that appellant had two percent impairment to each upper extremity due to this condition. The Board noted, however, that Dr. Hogshead had not adequately explained how he had reached this conclusion. The Board further found that, with respect to appellant's upper extremity impairment due to bilateral carpal tunnel syndrome, Dr. Hogshead had also not provided an adequate explanation of his conclusion. The Board remanded the case to OWCP for further development of the medical evidence with respect to appellant's permanent impairment and the issuance of an appropriate decision regarding appellant's permanent impairment of his upper extremities.

On remand OWCP again referred the case to Dr. Hogshead for a supplemental report.

On December 12, 2014 Dr. Hogshead applied the standards of Table 15-23 on page 449 of the sixth edition of the A.M.A., *Guides* with respect to appellant's carpal tunnel syndrome. He indicated that the electrodiagnostic studies were important and referred to the report of Dr. Defranzo, dated November 8, 1994, in which he noted that EMG and nerve conduction velocity (NCV) findings were normal bilaterally. Dr. Hogshead reiterated that the three percent impairment rating for carpal tunnel syndrome in this case was "a reasonable compromise because the electrodiagnostic study reveals a motor delay, not a motor block. This is a major difference."

As to epicondylitis, Dr. Hogshead noted that he used Table 15-4 on page 399 of the A.M.A., *Guides* to assign class 1, grade D, for epicondylitis in each upper extremity. Dr. Hogshead indicated that no surgery had been performed.

In a December 15, 2014 decision, OWCP found that appellant had not established more than five percent permanent impairment of his left upper extremity or more than five percent

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<sup>4</sup> Docket No. 14-1200 (issued September 5, 2014).

permanent impairment of his right upper extremity, for which he received a schedule award. It found that Dr. Hogshead's supplemental report provided a rationalized explanation of why the evidence had not established additional impairment.

### **LEGAL PRECEDENT**

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.<sup>5</sup> With respect to a schedule award, it is appellant's burden of proof to establish permanent impairment.<sup>6</sup> A claimant may seek an increased schedule award if the evidence establishes that he or she sustained an increased impairment causally related to an employment injury.<sup>7</sup> The medical evidence must include a detailed description of the permanent impairment.<sup>8</sup>

The schedule award provision of FECA<sup>9</sup> and its implementing regulations<sup>10</sup> 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 to all claimants, good administrative practice necessitates 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 the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>11</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*.<sup>12</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>13</sup> In Table 15-23, grade modifier levels (ranging from zero to four) 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

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<sup>5</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>6</sup> *Edward W. Spohr*, 54 ECAB 806, 810 (2003).

<sup>7</sup> *See Rose V. Ford*, 55 ECAB 449 (2004).

<sup>8</sup> *See Vanessa Young*, 55 ECAB 575 (2004).

<sup>9</sup> 5 U.S.C. § 8107.

<sup>10</sup> 20 C.F.R. § 10.404 (1999).

<sup>11</sup> *K.H.*, Docket No. 09-341 (issued December 30, 2009). For OWCP decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>13</sup> *Supra* note 3 at 449, Table 15-3

rating value may be modified up or down by one percent based on Functional Scale, an assessment of impact on daily living activities.<sup>14</sup>

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the elbow, the relevant portion of the upper extremity for the present case, reference is made to Table 15-4 (Elbow Regional Grid) beginning on page 398. After the Class of Diagnosis (CDX) is determined from the Elbow Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for Functional History (GMFH), grade modifier for Physical Examination (GMPE) and grade modifier for Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>15</sup>

### ANALYSIS

On February 24, 1993 OWCP accepted that appellant, then a 34-year-old letter carrier, sustained bilateral carpal tunnel syndrome due to the performance of his repetitive work duties.<sup>16</sup> It upgraded his accepted conditions to include lateral and medial epicondylitis of both elbows. In a July 1, 2011 decision, OWCP granted appellant a schedule award for five percent permanent impairment to each upper extremity. The awards were based on the June 22, 2011 opinion of Dr. Hogshead, the Board-certified orthopedic surgeon serving as the medical adviser. Dr. Hogshead reviewed the physical findings and impairment ratings of Dr. Defranzo, the treating physician and Board-certified orthopedic surgeon.<sup>17</sup>

Appellant filed a claim for more than five percent permanent impairment in each upper extremity and, in August 7, 2012 and October 28, 2013 decisions, OWCP found that he had not met his burden of proof to establish additional impairment. In a September 5, 2014 decision, the Board set aside the October 28, 2013 decision and remanded the case to OWCP for further development of the medical evidence. On remand OWCP referred appellant's case to Dr. Hogshead for a supplemental report addressing the matters delineated in the Board's September 5, 2014 decision. Dr. Hogshead provided a supplemental report dated December 12, 2014 clarifying his findings and, in a December 15, 2014 decision, OWCP affirmed its prior schedule award decisions finding that appellant had not met his burden of proof to establish more than five percent permanent impairment in each upper extremity.

The Board finds that both the treating physician and the OWCP physician agree that appellant has two percent permanent impairment of the upper extremity relating to the accepted

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<sup>14</sup> A survey completed by a given claimant, known by the name *QuickDASH*, may be used to determine the Functional Scale score. *Id.* at 448-49.

<sup>15</sup> *Id.* at 398-400, 405-11.

<sup>16</sup> On June 2, 1993 appellant underwent right carpal tunnel release surgery. On September 16, 1996 he underwent left carpal tunnel release surgery. The procedures were authorized by OWCP.

<sup>17</sup> Dr. Defranzo found that appellant had a seven percent permanent impairment of his left upper extremity and a seven percent permanent impairment of his right upper extremity.

condition of bilateral lateral and medial epicondylitis. As to the accepted condition of bilateral carpal tunnel syndrome, appellant argues that Dr. Defranzo's report should be the weight of the medical evidence, warranting an increased impairment to seven percent. Dr. Defranzo references, in his June 9, 2011 report, nerve conduction studies which had been conducted in 1994 and in 1995 reflecting 4.3 on the right and 4.5 on the left.<sup>18</sup> Based on these nerve conduction studies, utilizing Table 15-23 on page 449 of the A.M.A., *Guides*, he placed appellant into the category of grade modifier 2 for five percent permanent impairment bilaterally due to the carpal tunnel syndrome. This category is described as motor conduction block, significant intermittent symptoms, and decreased sensation.

Dr. Hogshead disagreed with this finding as the 1994 and 1995 nerve conduction studies referenced by Dr. Defranzo were not in the record, and conflicted with a previous November 8, 1994 report of Dr. Defranzo in which he noted that “[Appellant] has normal EMG nerve conduction studies.” Dr. Hogshead reviewed the existing medical records and the physical examination findings in the case and determined that appellant fell within the range under grade modifier 1, which was described as conduction delay, mild intermittent symptoms, and normal physical findings. The range under grade modifier 1 was between one and three. Dr. Hogshead determined that a “reasonable compromise” was at the high end of grade modifier 1 or three percent impairment bilaterally for the carpal tunnel syndrome, rendering a total impairment for the upper extremities at five percent.

The Board finds that OWCP properly relied on the report of Dr. Hogshead to find that appellant had failed to establish more than five percent permanent of the upper extremities. Dr. Hogshead based his report on the medical evidence in the record, was based on an accurate review of the A.M.A., *Guides*, and was well rationalized. The Board finds that appellant has not established more than five percent permanent impairment of the right upper extremities.

Appellant may request an increased schedule award at any time based on the submission of new and relevant evidence showing progression of an employment-related condition resulting in increased impairment.

### **CONCLUSION**

The Board finds that appellant has failed to establish more than five percent permanent impairment of the right upper extremities.

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<sup>18</sup> These reports are not in the record.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 15, 2014 is affirmed.

Issued: July 22, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board