



## **FACTUAL HISTORY**

On September 25, 2012 appellant, then a 40-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 24, 2012 she injured her left wrist on an employing establishment van door. She stopped work on September 27, 2012. Appellant began treatment with Dr. S. Vic Glogovac, a Board-certified orthopedic surgeon. On November 27, 2012 OWCP accepted the condition of a left wrist contusion. A December 12, 2012 electrodiagnostic study of the left upper extremity demonstrated sensory carpal tunnel syndrome. On January 31, 2013 OWCP expanded the claim to include the condition of left carpal tunnel syndrome.

On February 20, 2013 Dr. Glogovac performed left carpal tunnel decompression. Appellant returned to full duty on May 24, 2013. On July 11, 2013 she filed a notice of recurrence of disability (Form CA-2a) which was accepted by OWCP on August 28, 2013. Appellant returned working limited duty and missed intermittent periods thereafter.

In a February 10, 2014 decision, OWCP denied her claim for continued disability compensation, noting that Dr. Glogovac released her to regular duty for the left hand on January 24, 2014.<sup>2</sup>

On December 21, 2015 appellant filed a claim for a schedule award (Form CA-7). By report dated March 4, 2016, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon and OWCP medical adviser, noted his review of the record. He advised that appellant should be referred for a second opinion evaluation.

In March 2016 OWCP referred appellant to Dr. Richard T. Katz, a Board-certified physiatrist, for a second opinion and impairment evaluation. In a May 24, 2016 report, Dr. Katz described appellant's complaints of left hand pain, weakness, and numbness. He reviewed the medical record, noting that a December 12, 2012 left upper extremity electromyography and nerve conduction velocity (EMG/NCV) studies demonstrated sensory carpal tunnel syndrome, and that appellant's adjusted *QuickDASH* score was 57. Dr. Katz advised that appellant's left wrist range of motion was full with no instability. He utilized Table 15-23, Entrapment/Compression Neuropathy Impairment, of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2009) (A.M.A., *Guides*),<sup>3</sup> finding that she had a test findings modifier of grade 1 due to a conduction delay, a grade 2 modifier for history due to significant intermittent symptoms, and a grade 1 modifier for physical examination. Dr. Katz averaged the modifiers, finding a grade 1 modifier which had a default value of two percent. Based on appellant's *QuickDASH* score of 57, he modified her left upper extremity impairment to total three percent.

In a June 14, 2016 report, Dr. Morley Slutsky, an OWCP medical adviser who is Board-certified in occupational medicine, reviewed the record, including Dr. Katz's report. He advised

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<sup>2</sup> In a January 24, 2014 report, Dr. Glogovac advised that appellant could return to full duty with regard to her left hand.

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

that there was no ratable impairment under Table 15-23 because the December 12, 2012 EMG/NCV used to identify a test findings grade did not meet the standards identified in Appendix 15-B, Electrodiagnostic Evaluation of Entrapment Syndromes, found at page 487 of the A.M.A., *Guides*.<sup>4</sup> Rather, the medical adviser found that the diagnosis-based impairment (DBI) method was the preferred, rating method. He determined that, under Table 15-3, Wrist Regional Grid, using the diagnosis of nonspecific left upper extremity pain, appellant had a class 1 impairment. After applying the net adjustment formula, Dr. Slusky concluded that appellant had one percent left upper extremity impairment, with the date of maximum medical improvement May 24, 2016.

By decision dated August 4, 2016, appellant was granted a schedule award for one percent impairment of the left upper extremity, for 3.12 weeks, to run from May 24 to June 14, 2016.

### **LEGAL PRECEDENT**

Section 8149 of FECA delegates to the Secretary of Labor the authority to prescribe rules and regulations for the administration and enforcement of FECA. The Secretary of Labor has vested the authority to implement the FECA program with the Director of OWCP.<sup>5</sup> Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.<sup>6</sup> FECA, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>7</sup>

The sixth edition of the A.M.A. *Guides* was first printed in 2008. Within months of the initial printing, the A.M.A. issued a 52-page document entitled “Clarifications and Corrections, Sixth Edition, *Guides to the Evaluation of Permanent Impairment*.” The document included various changes to the original text, intended to serve as an *erratum*/supplement to the first printing of the A.M.A., *Guides*. In April 2009, these changes were formally incorporated into the second printing of the sixth edition.

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<sup>4</sup> OWCP’s medical adviser specifically noted that the measurements for distal motor latency and distal peak latency did not meet the requirements found in Appendix 15-B and further found that conduction block and axon loss had not been established on the December 12, 2012 EMG/NCV.

<sup>5</sup> See 20 C.F.R. §§ 1.1-1.4.

<sup>6</sup> For a complete loss of use of an arm, an employee shall receive 312 weeks’ compensation. 5 U.S.C. § 8107(c)(1).

<sup>7</sup> 20 C.F.R. § 10.404. See also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>8</sup> The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.<sup>9</sup>

### ANALYSIS

The issue is whether appellant has more than one percent permanent impairment of her left arm, for which she previously received a schedule award.

The Board finds this case is not in posture for decision.

The Board has found that OWCP has inconsistently applied Chapter 15 of the sixth edition of the A.M.A., *Guides* when granting schedule awards for upper extremity claims. No consistent interpretation has been followed regarding the proper use of the DBI or the ROM methodology when assessing the extent of permanent impairment for schedule award purposes.<sup>10</sup> The purpose of the use of uniform standards is to ensure consistent results and to ensure equal justice under the law to all claimants.<sup>11</sup> In *T.H.*, the Board concluded that OWCP physicians were at odds over the proper methodology for rating upper extremity impairment, having observed attending physicians, evaluating physicians, second opinion physicians, impartial medical examiners, and district medical advisers use both DBI and ROM methodologies interchangeably without any consistent basis. Furthermore, the Board observed that physicians interchangeably cited to language in the first printing or the second printing when justifying use of either ROM or DBI methodology. Because OWCP's own physicians had shown inconsistency in the application of the A.M.A., *Guides*, the Board found that OWCP could no longer ensure consistent results and equal justice under the law for all claimants.<sup>12</sup>

In order to ensure consistent results and equal justice under the law for cases involving upper extremity impairment, the Board will set aside the March 13, 2017 decision. Utilizing a consistent method for calculating permanent impairment for upper extremities applied uniformly, and after such other development as may be deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim for an upper extremity schedule award.<sup>13</sup>

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<sup>8</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

<sup>9</sup> *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>10</sup> *T.H.*, Docket No. 14-0943 (issued November 25, 2016).

<sup>11</sup> *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

<sup>12</sup> *Supra* note 10.

<sup>13</sup> FECA Bulletin No. 17-06 (issued May 8, 2017).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 4, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: November 8, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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