



edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*)<sup>2</sup> always be used.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 19, 2013 appellant, then a 53-year-old sign language interpreter, fell in a parking lot at work and injured her knees and left arm. In October 2013 she transferred to a position as an Equal Employment Opportunity (EEO) assistant. In October 2014 appellant moved from Florida to South Carolina and transferred to a Veterans Affairs facility there.

OWCP accepted the claim for left knee contusion, left wrist sprain, left elbow/forearm sprain, right knee bursitis, left carpal tunnel syndrome, and left ulnar nerve lesion.

By decision dated October 21, 2015, OWCP granted appellant as schedule award for three percent permanent impairment of the right leg. The date of maximum medical improvement was noted as April 16, 2015 and the period of the award ran from April 16 to June 15, 2015. Appellant subsequently appealed to the Board.

During the pendency of the appeal, appellant submitted an April 4, 2016 report from Dr. Barry D. Oliver, a Board-certified orthopedic surgeon, who noted her complaints of bilateral hand and wrist pain with progressive numbness and tingling. Following physical examination Dr. Oliver diagnosed bilateral cubital tunnel syndrome and bilateral Guyon's canal syndrome.

Appellant transferred to an EEO specialist position with the Department of the Navy in Washington, DC, in June 2016 and moved from South Carolina to Virginia.

In a treatment note dated October 20, 2016, Dr. Ryan M. Jander, Board-certified in orthopedic and hand surgery, noted seeing appellant for evaluation of her left arm. He noted the employment injury, a past history of left elbow decompression surgery on April 1, 2014, and described left arm examination findings, noting dysesthetic symptoms in the medial forearm, paresthesias in the distribution of the ulnar nerve over the hand and fingers, and a positive Tinel's at the wrist. Dr. Jander diagnosed ulnar neuropathy.

On December 12, 2016 appellant filed a claim for an additional schedule award (Form CA-7). By letter dated December 13, 2016, OWCP noted that she had previously received a schedule award for three percent permanent impairment of the right lower extremity. It informed appellant of the medical evidence needed to support her claim.

In a December 19, 2016 response, appellant requested that OWCP send her for an impairment evaluation.

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

<sup>3</sup> Docket No. 16-0475 (issued July 14, 2016).

By decision dated January 17, 2017, OWCP denied appellant's claim for an additional schedule award. It noted that the medical evidence of record did not establish right lower extremity permanent impairment greater than the three percent previously awarded.

### **LEGAL PRECEDENT**

It is the claimant's burden of proof to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of any employment injury.<sup>4</sup>

The schedule award provisions of FECA<sup>5</sup> and its implementing federal regulations,<sup>6</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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>7</sup> For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>8</sup>

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).<sup>9</sup> Under the sixth edition, for lower extremity impairments the evaluator identifies the impairment class for the diagnosed condition is Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).<sup>10</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>11</sup> Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.<sup>12</sup> Section 16.2a of the A.M.A., *Guides*, provides that if the class selected is defined by physical examination findings or clinical studies results, these same findings may not be used as grade modifiers to adjust the rating.<sup>13</sup>

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<sup>4</sup> See *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> *Id.* at § 10.404(a).

<sup>8</sup> 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> *Supra* note 2 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

<sup>10</sup> *Id.* at 494-531.

<sup>11</sup> *Id.* at 521.

<sup>12</sup> *Id.* at 23-28.

<sup>13</sup> *Id.* at 500.

## ANALYSIS

The Board finds that appellant has not established impairment greater than three percent for the right leg, for which she previously received a schedule award. Dr. Oliver and Dr. Jander provided the only medical evidence not previously reviewed by the Board. Neither physician, however, provided an impairment evaluation. There is, therefore, no probative medical evidence establishing a greater degree of impairment to the right leg.<sup>14</sup>

On appeal appellant maintains that the record establishes entitlement to a left upper extremity schedule award. The January 17, 2017 OWCP schedule award decision, however, does not include a specific finding regarding appellant's left upper extremity. The Board's jurisdiction is limited to reviewing final decisions of OWCP.<sup>15</sup>

Appellant further asserts on appeal that OWCP should send her for an impairment evaluation. However, it is her burden of proof to establish that she has permanent impairment or increased impairment of a scheduled member or function as a result of any employment injury.<sup>16</sup>

Finally, appellant also asserts that OWCP procedures do not require application of the sixth edition of the A.M.A., *Guides*. However, OWCP's procedures provide and the Board has long held that for decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>17</sup>

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

## CONCLUSION

The Board finds that appellant has not established more than three percent permanent impairment of the right leg for which she previously received a schedule award.

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<sup>14</sup> See *M.P.*, Docket No. 15-0383 (issued July 1, 2015).

<sup>15</sup> 20 C.F.R. § 501.2(c); see *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

<sup>16</sup> See *supra* note 4.

<sup>17</sup> *B.M.*, Docket No. 09-2231 (issued May 14, 2010); see *supra* note 9.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 17, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 27, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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