

1983 while performing her federal job duties. OWCP accepted appellant's claim for right elbow strain, right upper extremity tendinitis, and right carpal tunnel syndrome. On July 23, 1984 appellant underwent right carpal tunnel release. She underwent right elbow surgery on May 28, 1985 for release of the extensor carpi radialis brevis, excision of scar lateral epicondyle, and partial excision of the annular ligament.

Appellant filed a claim for a schedule award (Form CA-7) on October 26, 1986. By decision dated September 17, 1987, OWCP granted appellant a schedule award for 35 percent permanent impairment of her right upper extremity.

Appellant underwent a release of the right ulnar nerve and right pisiform bone repair on August 30, 2002. On March 3, 2003 she filed a claim for an additional schedule award (Form CA-7). By decision dated January 5, 2007, OWCP denied appellant's claim for an additional schedule award. On January 26, 2007 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated July 30, 2007, OWCP's hearing representative denied appellant's claim for an additional schedule award finding that she had no more than 35 percent permanent impairment of her right upper extremity, for which she previously received a schedule award.

On May 31, 2011 Dr. James C. Murphy, III, a Board-certified orthopedic surgeon, examined appellant due to numbness and tingling in her right arm. He found a positive Tinel's sign in her right wrist. Dr. Murphy recommended further testing and diagnosed recurrent carpal tunnel syndrome and possible radial nerve problems. He noted that appellant's carpal tunnel syndrome had recurred due to scar tissue.

Appellant underwent a nerve conduction velocity (NCV) study and electromyography (EMG) of the right arm on January 27, 2012 which showed mild slowing of the sensory conduction in the right median nerve across the wrist. Testing demonstrated mild sensory carpal tunnel syndrome.

Dr. Murphy examined appellant on July 8, 2013 due to bilateral trigger thumbs and left carpal tunnel syndrome. On March 11, 2014 he diagnosed residual carpal tunnel syndrome in the right wrist, especially into the thenar eminence.

In a note dated June 21, 2014, Dr. Murphy reviewed appellant's permanent impairment noting that she continued to experience numbness and tingling in the right index and middle fingers. He noted that appellant reported weakness and pain in her right hand. Dr. Murphy provided range of motion (ROM) for appellant's right wrist of 53 degrees of dorsiflexion and 50 degrees of volar flexion as well as 20 degrees of radial deviation and 10 degrees of ulnar deviation. He opined that appellant had an additional 15 percent permanent impairment of her right upper extremity due to radial and median nerve irritation, chronic wrist pain, reduced strength, and reduced ROM. Dr. Murphy based his impairment rating on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). He concluded that appellant had 50 percent permanent impairment of her right arm.

Dr. Murphy completed an additional report on May 21, 2015 addressing appellant's permanent impairment. He evaluated her right elbow and noted loss of extension and supination.

Dr. Murphy reported a positive Tinel's sign at the right wrist with limited ulnar deviation of 10 degrees, radial deviation of 20 degrees, flexion of 50 degrees, and dorsiflexion of 40 degrees. He opined that appellant had increased right upper extremity impairment totaling 55 percent permanent impairment. Dr. Murphy based his rating on the fifth edition of the A.M.A., *Guides*.

In a letter dated October 15, 2015, OWCP informed appellant that Dr. Murphy's reports were insufficient to establish her claim for increased permanent impairment as the reports were not based on the correct edition of the A.M.A., *Guides*, sixth edition.² It afforded appellant 30 days to submit the necessary medical opinion evidence.

Dr. Murphy completed an addendum to his May 21, 2015 report and found that appellant had 55 percent permanent impairment of the right upper extremity based on the sixth edition of the A.M.A., *Guides*.

OWCP's medical adviser reviewed the medical evidence on March 25, 2016 and noted the loss of extension in appellant's right elbow and 15 degrees of supination. He also reviewed Dr. Murphy's findings regarding loss of ROM of the right wrist. The medical adviser applied the diagnosis-based impairment (DBI) rating methodology to appellant's physical findings and determined that she had five percent permanent impairment due to entrapment of the median nerve.³ He further found that she had five percent permanent impairment of the ulnar nerve,⁴ but that the impairment of the second nerve must be halved to three percent permanent impairment of the ulnar nerve. The medical adviser found that appellant had six percent permanent impairment due to right trigger thumb.⁵ He determined that appellant had 10 percent permanent impairment of the right upper extremity. Due to this impairment rating, the medical adviser opined that appellant did not have additional impairment warranting an increased schedule award.⁶

On July 7, 2014 and October 5, 2015 appellant filed claims for an additional schedule award (Form CA-7).

In a decision dated April 21, 2016, OWCP denied appellant's claim for an additional schedule award. Appellant requested an oral hearing on May 3, 2016.

Appellant testified before an OWCP hearing representative at the oral hearing on January 9, 2017. Counsel contended that appellant was entitled to receive a schedule award for

² For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6th ed. (2009); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

³ A.M.A., *Guides* 449, Table 15-23.

⁴ *Id.*

⁵ *Id.* at 392, Table 15-2.

⁶ The Board notes that OWCP's medical adviser incorrectly noted that appellant had previously received schedule awards totaling 50 percent permanent impairment of her right upper extremity.

50 percent permanent impairment of her right upper extremity in 2007 based on OWCP's medical adviser's 2016 report.

By decision dated March 21, 2017, OWCP's hearing representative found that appellant had no more than 35 percent permanent impairment of her right upper extremity, for which she previously received a schedule award.

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.⁷ 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.⁸ 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.⁹

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.

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).¹⁰ 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.¹¹

ANALYSIS

The Board finds that 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

⁷ See 20 C.F.R. §§ 1.1-1.4.

⁸ For a complete loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

⁹ 20 C.F.R. § 10.404. See also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

¹⁰ See *supra* note 2.

¹¹ *Isidoro Rivera*, 12 ECAB 348 (1961).

consistent interpretation had been followed regarding the proper use of the DBI or the ROM methodology when assessing the extent of permanent impairment for schedule award purposes.¹² The purpose of the use of uniform standards is to ensure consistent results and to ensure equal justice under the law to all claimants.¹³ In *T.H.*,¹⁴ 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 were inconsistent 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.¹⁵

In order to ensure a consistent result and equal justice under the law for cases involving upper extremity impairment, the Board will set aside the March 21, 2017 decision. Utilizing a consistent method for calculating permanent impairment for upper extremities to be applied uniformly, and 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.¹⁶

CONCLUSION

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

¹² *T.H.*, Docket No. 14-0943 (issued November 25, 2016).

¹³ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

¹⁴ *Supra* note 12.

¹⁵ *Supra* note 12.

¹⁶ *See* FECA Bulletin No. 17-06 (issued May 8, 2017).

ORDER

IT IS HEREBY ORDERED THAT March 21, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: October 16, 2017
Washington, DC

Christopher J. Godfrey, 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