

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>M.L., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 07-2392</b>
	)	<b>Issued: July 2, 2008</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Dayton, OH, Employer</b>	)	
	)	

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*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 22, 2007 appellant filed a timely appeal from a June 22, 2007 decision of the Office of Workers' Compensation Programs regarding a schedule award and a September 5, 2007 decision denying her request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUES**

The issues are: (1) whether appellant has established that she sustained a ratable impairment of the upper extremities; and (2) whether the Office properly denied appellant's request for a hearing.

**FACTUAL HISTORY**

The Office accepted that, on or before December 20, 2002 appellant, then a 42-year-old flat sorter machine clerk, sustained bilateral carpal tunnel syndrome. She stopped work on February 8, 2003. Appellant underwent a right median nerve release on May 7, 2003 and a left median nerve release on June 18, 2003. The Office authorized both procedures. After a period

of limited duty, appellant resumed full duty in April 2004. She received appropriate compensation for work absences.

On May 7, 2004 appellant claimed a schedule award. The Office obtained a second opinion from Dr. Pietro Seni, a Board-certified orthopedic surgeon. In a May 26, 2004 report, Dr. Seni noted bilateral weakness of grip strength but no neurologic deficits related to the accepted carpal tunnel syndrome.

In a September 16, 2004 letter, the Office advised appellant of the additional evidence needed to determine her entitlement to a schedule award. It requested that her physician provide the date of maximum medical improvement and any percentages of impairment due to decreased strength and sensory deficit. The Office noted that schedule awards were calculated according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, "A.M.A., *Guides*").

In an October 18, 2004 response, Dr. Gary E. Krause, an attending Board-certified orthopedic surgeon, noted that appellant reached maximum medical improvement as of October 18, 2004. He opined that appellant had a 25 percent impairment of each hand due to pain and an additional 25 percent impairment of each hand due to decreased strength.<sup>1</sup>

The Office referred the medical record to an Office medical adviser for review. In a November 15, 2006 report, the Office medical adviser stated that he could not calculate a schedule award due to the lack of current medical evidence.

The Office obtained a second opinion from Dr. Rudolf A. Hofmann, a Board-certified orthopedic surgeon. In a February 27, 2007 report, Dr. Hofmann stated that appellant had reached maximum medical improvement. He found bilaterally decreased grip strength but stated that appellant had no residuals of carpal tunnel syndrome. Referring generally to pages 494 and 495 of the A.M.A., *Guides*, Dr. Hofmann stated that appellant had a zero percent impairment of the upper extremities. He explained that, according to the A.M.A., *Guides*, "in compression neuropathies additional impairment values are not given for decreased grip strength." Dr. Hofmann recommended work restrictions.

By decision dated June 22, 2007, the Office denied appellant's schedule claim on the grounds that the medical evidence did not demonstrate a ratable impairment of either upper extremity due to the accepted carpal tunnel syndrome. It accorded the weight of the medical evidence to Dr. Hofmann.

In a letter dated and postmarked August 3, 2007, appellant requested a hearing.

By decision dated September 5, 2007, the Office denied appellant's hearing request on the grounds that it was not timely filed within the 30 days time limitation under section 8124(b) of the Act. It found that appellant's request for a hearing was postmarked on August 3, 2007,

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<sup>1</sup> The Office did not develop appellant's schedule award claim during the period October 2004 to October 2006. Appellant submitted several letters inquiring as to the status of her claim.

more than 30 days after the issuance of the June 22, 2007 decision. The Office additionally denied appellant's hearing request on the grounds that the issues involved could be addressed equally well through submitting relevant evidence accompanying a valid request for reconsideration.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> provides for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. 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 the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.<sup>3</sup> As of February 1, 2001, schedule awards are calculated according to the fifth edition of the A.M.A., *Guides*, published in 2000.<sup>4</sup>

The standards for evaluation of the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.<sup>5</sup> Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedures for determining impairments of the upper extremities due to pain, discomfort, loss of sensation, or loss of strength.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained bilateral carpal tunnel syndrome necessitating bilateral median nerve releases. Appellant claimed a schedule award. In support of her claim, she submitted an October 18, 2004 report from Dr. Krause, an attending Board-certified orthopedic surgeon. Dr. Krause opined that appellant had a 25 percent impairment of each hand due to pain and an additional 25 percent impairment of each hand due to weakness. However, Dr. Krause did not discuss how he applied the A.M.A., *Guides* to arrive at those percentages of impairment.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>4</sup> See FECA Bulletin No. 01-05 (issued January 29, 2001) (schedule awards calculated as of February 21, 2001 should be evaluated according to the fifth edition of the A.M.A., *Guides*. Any recalculations of previous awards which result from hearings, reconsideration or appeals should, however, be based on the fifth edition of the A.M.A. *Guides* effective February 1, 2001).

<sup>5</sup> See *Paul A. Toms*, 28 ECAB 403 (1987).

<sup>6</sup> A.M.A. *Guides* 433-521, Chapter 16, "The Upper Extremities" (5<sup>th</sup> ed. 2001).

The Office obtained a second opinion report from Dr. Hofmann, a Board-certified orthopedic surgeon, who stated in a February 27, 2007 report that appellant did not have a ratable impairment of either upper extremity according to pages 494 and 495 of the A.M.A., *Guides*. It denied the schedule award claim based on Dr. Hofmann's opinion as the weight of the medical evidence. However, Dr. Hofmann did not adequately explain how he applied the specific tables or grading schemes of the A.M.A., *Guides* to his clinical findings. Therefore, his opinion requires further clarification. The case will be remanded to the Office for additional development.

On remand of the case, the Office shall request a supplemental report from Dr. Hoffman, setting forth how he applied specific tables and grading schemes of the A.M.A., *Guides* in determining that appellant had no ratable impairment of either upper extremity. Following this and all other development deemed necessary, the Office shall issue an appropriate decision in the case.

### **CONCLUSION**

The Board finds that the case is not in posture for a decision. The case will be remanded to the Office for additional development. As the case will be remanded for additional action on the schedule award issue, the second issue regarding the denial of hearing is moot.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 22, 2007 is set aside, and the case remanded to the Office for further development consistent with this decision and order. The decision dated September 5, 2007 is moot.

Issued: July 2, 2008  
Washington, DC

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board