



which arose on or about February 18, 1992.<sup>1</sup> Between 1992 and 2002, appellant underwent three Office-approved surgical procedures. Her first surgery was a right carpal tunnel release performed on July 30, 1992. Appellant had a left carpal tunnel release on July 12, 2002, followed by another right carpal tunnel release on August 9, 2002.

After her 1992 surgery, appellant received a schedule award for six percent impairment of the right upper extremity due to residuals of her carpal tunnel syndrome. The August 19, 1994 award was based on the July 6, 1994 examination of Dr. George Varghese, a Board-certified physiatrist and Office referral physician. The district medical adviser, Dr. Daniel D. Zimmerman, reviewed Dr. Varghese's findings and concurred with the six percent impairment rating.

Following her surgeries in 2002, appellant filed a claim for an additional schedule award. In July 2003, the Office again referred appellant to Dr. Varghese for an impairment rating regarding her bilateral carpal tunnel syndrome. In a report dated August 29, 2003, Dr. Varghese found 12 percent impairment of the right upper extremity due to carpal tunnel syndrome. He also found four percent impairment of the left upper extremity. Dr. Zimmerman, on behalf of the Office, reviewed Dr. Varghese's findings and concurred with the August 29, 2003 impairment ratings for both the left and right upper extremities.

On October 28, 2003 the Office granted a schedule award for four percent impairment of the left upper extremity. Appellant also received an additional award of 12 percent for the right upper extremity. The Office, however, neglected to offset this latest 12 percent award by the 6 percent award appellant previously received in 1994.

Appellant made arrangements with Dr. Varghese for an assessment of her right shoulder condition, as this was not part of the doctor's August 29, 2003 right upper extremity impairment rating. In a September 26, 2003 report, Dr. Varghese acknowledged he had not previously rated appellant's right shoulder. Based on his September 22, 2003 examination results, he found seven percent impairment of the right upper extremity due to loss of range of motion in the shoulder.

Dr. Zimmerman reviewed Dr. Varghese's September 26, 2003 report and concurred with the seven percent rating for loss of motion in the right shoulder. In his March 22, 2004 report, he explained that combining the 7 percent shoulder impairment with the 12 percent wrist impairment represented a total right upper extremity impairment of 18 percent. Because appellant already received a 12 percent award in October 2003, she was only entitled to an additional 6 percent due to her right shoulder impairment. However, Dr. Zimmerman noted that the Office neglected to offset the 1994 and 2003 awards for permanent impairment due to right carpal tunnel syndrome. As a result, appellant received an additional six percent impairment for carpal tunnel syndrome to which she was not entitled. Dr. Zimmerman recommended that the Office correct its earlier mistake by not paying additional monies for the right shoulder impairment.

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<sup>1</sup> When the Office initially accepted appellant's claim in 1992, left carpal tunnel syndrome was not among the accepted conditions. It was not until June 2002 when the Office expanded the claim to include left carpal tunnel syndrome an accepted condition.

The Office followed Dr. Zimmerman's advice and issued a March 24, 2004 decision denying an additional schedule award. The Office explained that the 1994 schedule award for 6 percent impairment was not taken into account when appellant received her 2003 award for 12 percent impairment of the right upper extremity. Accordingly, the Office reduced the current six percent additional rating for the right shoulder by the six percent award appellant received in 1994 for her right carpal tunnel syndrome. Appellant requested reconsideration of the March 24, 2004 decision. The Office denied her request by decision dated May 13, 2004.

On May 26, 2006 appellant filed another claim for a schedule award. She submitted an April 11, 2006 report from Dr. Dana R. Towle, a Board-certified plastic surgeon with a subspecialty in hand surgery. Dr. Towle found 4 percent impairment of the left upper extremity and 21 percent impairment of the right upper extremity. Although he stated his impairment rating was in accord with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> ed. 2001) he did not otherwise explain how he reached his finding.<sup>2</sup>

Dr. Zimmerman advised the Office that Dr. Towle's April 11, 2006 report was not suitable for determining the extent of appellant's upper extremity permanent impairment. Accordingly, he recommended that appellant be referred to another physician skilled in the use of the A.M.A., *Guides* (5<sup>th</sup> ed. 2001). The Office once again selected Dr. Varghese to evaluate appellant's right upper extremity impairment due to carpal tunnel syndrome.

In a report dated October 12, 2006, Dr. Varghese found 15 percent permanent impairment of the right upper extremity "for [appellant's] deficits from right carpal tunnel syndrome." The overall rating included impairments for sensory deficit (10 percent) and loss of motion at the wrist (5 percent).

On October 30, 2006 Dr. Zimmerman reviewed Dr. Varghese's October 12, 2006 impairment rating. According to the district medical adviser, Dr. Varghese's 15 percent rating for right carpal tunnel syndrome was "correctly performed" using the A.M.A., *Guides* (5<sup>th</sup> ed. 2001). Dr. Zimmerman noted, however, that appellant had already been "processed as having an 18 percent [right] upper extremity schedule award due to permanent residuals of a carpal tunnel syndrome." He also noted his March 22, 2004 remarks regarding appellant having improperly received a 12 percent award in addition to the 6 percent award she received in 1994. Because appellant already received an 18 percent award for her right carpal tunnel syndrome, Dr. Zimmerman advised that she was not entitled to an additional award based on Dr. Varghese's latest 15 percent impairment rating.<sup>3</sup>

In a decision dated November 1, 2006, the Office denied appellant's claim for an additional schedule award. The Office explained that appellant had been paid a schedule award

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<sup>2</sup> Dr. Towle's examination was limited to appellant's hand, wrists and elbows. Appellant stated that he did not evaluate her right "shoulder disability."

<sup>3</sup> Dr. Zimmerman's October 30, 2006 report did not reference the September 26, 2003 rating of seven percent for appellant's right shoulder. He also did not mention the Office's March 24, 2004 decision that rectified the offset problem he originally raised in his March 22, 2004 report.

for 18 percent impairment of the right upper extremity and Dr. Varghese's October 12, 2006 impairment rating of 15 percent represented "an improvement from the prior schedule award."

On December 19, 2006 appellant requested reconsideration. She argued that her right wrist impairment had not improved, but in fact had worsened. Appellant also characterized the Office's method of offsetting her earlier awards for the right wrist and right shoulder as "fuzzy math." The Office denied appellant's request for reconsideration in a decision dated February 12, 2007.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act 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>4</sup> The Act, 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. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>5</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>6</sup>

The Act and its implementing regulations provide for the reduction of compensation for subsequent injury to the same scheduled member.<sup>7</sup> Benefits payable under section 8107(c) shall be reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.<sup>8</sup>

### **ANALYSIS**

Thus far appellant has received schedule awards for a total right upper extremity impairment of 18 percent. The overall rating was a combination of impairments to the wrist and shoulder. As Dr. Zimmerman explained in his March 22, 2004 report, the 12 percent impairment of the wrist due to residuals of carpal tunnel syndrome when combined with the 7 percent impairment of the right shoulder for loss of motion represented an overall impairment of 18 percent.<sup>9</sup>

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<sup>4</sup> For a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1) (2000).

<sup>5</sup> 20 C.F.R. § 10.404 (2007).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

<sup>7</sup> 5 U.S.C. § 8108; 20 C.F.R. § 10.404(c).

<sup>8</sup> 20 C.F.R. § 10.404(c)(1), (2).

<sup>9</sup> See 604-06 Combined Values Chart, A.M.A., *Guides*.

In 2006 appellant submitted evidence of a worsening of her right upper extremity impairment. According to Dr. Towle, appellant had 21 percent impairment of the right upper extremity. However, the Office properly disregarded Dr. Towle's April 11, 2006 report because it was not prepared in accordance with the A.M.A., *Guides*.<sup>10</sup> The Office referred appellant to Dr. Varghese, who found a 15 percent impairment of the right upper extremity due to carpal tunnel syndrome. Dr. Zimmerman noted that Dr. Varghese's October 12, 2006 rating was "correctly performed" using the A.M.A., *Guides*.

In denying appellant's claim for an additional schedule award, the Office seemed to have forgotten that her prior schedule awards were for a combination of impairments to the right wrist and shoulder, and not simply for carpal tunnel syndrome. When Dr. Zimmerman suggested that appellant not be paid an additional award in 2006, he was apparently unaware that the offset issue he initially raised on March 22, 2004 had already been resolved. The Office compounded Dr. Zimmerman's mistake by similarly failing to account for the March 24, 2004 decision that offset the award appellant would have otherwise been entitled to because of her seven percent impairment of the right shoulder. Accordingly, appellant's right carpal tunnel syndrome represents only 12 percent of the previously awarded 18 percent right upper extremity impairment.

While appellant previously had only 12 percent impairment due to carpal tunnel syndrome, Dr. Varghese's October 12, 2006 rating found 15 percent impairment. Ostensibly this represents a worsening of appellant's impairment attributable to her right carpal tunnel syndrome. However, contrary to Dr. Zimmerman's finding, this latest rating provided by Dr. Varghese was not "correctly performed." Of the total 15 percent rating, 5 percent was attributed to loss of range of motion at the wrist. The other 10 percent was for sensory deficit. The inclusion of the five percent impairment for loss of range of motion was improper under the A.M.A., *Guides*.<sup>11</sup> Impairment for carpal tunnel syndrome is rated based on motor and/or sensory deficits.<sup>12</sup> Therefore, appellant should not have received a rating for loss of motion at the wrist in addition to the 10 percent rating she received for sensory deficit. When the 5 percent motion impairment is properly excluded, appellant's current impairment due to carpal tunnel syndrome is only 10 percent.<sup>13</sup> Because she has already been awarded at least 12 percent impairment for her right carpal tunnel syndrome, appellant is not entitled to an additional schedule award at this time.

Although the outcome remains the same, the Office's rationale for denying an additional schedule award was incorrect. The November 1, 2006 decision will be modified to reflect the Board's findings as to appropriate basis for denying appellant's claim for an additional schedule award.

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<sup>10</sup> Dr. Towle noted the A.M.A., *Guides* in his report, but he did not identify the specific method he used to calculate a 21 percent impairment of the right upper extremity.

<sup>11</sup> See A.M.A., *Guides* 480-83, section 16.5.

<sup>12</sup> *Id.*; *Kimberly M. Held*, 56 ECAB 670, 675 (2005).

<sup>13</sup> Dr. Varghese's August 29, 2003 rating, which formed the basis of the October 28, 2003 award for 12 percent impairment also mistakenly included a rating for loss of motion at the wrist.

**CONCLUSION**

Appellant failed to establish entitlement to an additional schedule award for permanent impairment of the right upper extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 1, 2006 decision of the Office of Workers' Compensation Programs is affirmed as modified.<sup>14</sup>

Issued: May 5, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>14</sup> In view of the Board's disposition of the merits of the schedule award, the Office's February 12, 2007 nonmerit decision is rendered moot.