

FACTUAL HISTORY

The case was previously before the Board.² The Board noted that appellant's November 22, 2002 claim had been accepted for bilateral wrist tendinitis and bilateral carpal tunnel syndrome. With respect to a permanent impairment, the Board found that the August 7, 2009 report from Dr. David Trotter, an orthopedic surgeon selected as a second opinion physician, was not a rationalized medical opinion. The Board noted that Dr. Trotter did not explain his findings under Table 15-23 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ The case was remanded to OWCP for further development. The history of the case as provided in the Board's prior decision is incorporated herein by reference.

OWCP referred appellant to Dr. Trotter for a supplemental opinion. In a report dated May 5, 2011, Dr. Trotter provided results on examination and reviewed medical evidence. With respect to a diagnosis of carpal tunnel syndrome, he stated that he found no clinical evidence to support the diagnosis. Dr. Trotter stated, "With negative Tinell['s] [sign] and Phalen['s] [test] and without evidence of atrophy of the musculature and with breakaway weakness and inconsistent weakness and normal sensation to crude touch along with a history of a normal electrical study, as noted above there is no reasonable or credible evidence that would support that this individual has any recurrent or any residual bilateral carpal tunnel syndrome." He opined that there was no evidence of a permanent impairment, and again opined that the date of maximum medical improvement was September 2, 2004 based on the evidence of record.

By decision dated July 15, 2011, OWCP found appellant was not entitled to a schedule award based on the evidence of record. Appellant requested a hearing before an Office hearing representative, which was held on November 14, 2011.

On February 13, 2012 appellant submitted a January 20, 2012 report from Dr. William Grant, a Board-certified internist, who provided a history and results on examination. Dr. Grant provided a functional assessment based on a Disabilities of the Arm, Shoulder and Hand (*QuickDASH*) score.⁴ He opined that appellant had a two percent right arm impairment for right hand/wrist tenosynovitis.⁵ As to carpal tunnel syndrome, Dr. Grant found a nine percent bilateral impairment, using Table 15-23. He indicated that he found a grade modifier of 3 and a *QuickDASH* score of 72.

² Docket No. 10-1613 (issued March 24, 2011).

³ The Board also noted that Dr. Trotter did not fully explain his opinion that the date of maximum medical improvement was September 2, 2004. It was noted that appellant also had a 2007 claim that was accepted for carpal tunnel syndrome and she underwent a carpal tunnel release on January 28, 2008. The 2007 claim (OWCP File No. xxxxxx304) has been administratively combined with the current claim.

⁴ For an entrapment/compression neuropathy impairment, the A.M.A., *Guides* refer to a functional assessment using a shortened version of *QuickDASH*. A.M.A., *Guides* 449, Table 15-23.

⁵ Dr. Grant identified Table 15-5 of the A.M.A., *Guides*, but that is a shoulder impairment table. He apparently was referring to Table 15-3 for a wrist impairment. See A.M.A., *Guides* 395-397, Table 15-3.

By decision dated February 16, 2012, OWCP's hearing representative affirmed the July 15, 2011 OWCP decision.

By letter dated February 28, 2012, appellant requested reconsideration, noting the submission of Dr. Grant's January 20, 2012 report. OWCP referred the evidence to OWCP's medical adviser. In a report dated March 19, 2012, the medical adviser noted that there was a disagreement between Dr. Trotter and Dr. Grant. For example, Dr. Grant had found positive bilateral de Quervain's tests, but Dr. Trotter reported negative Finkelstein's test maneuver and negative Tinel's sign and Phalen's tests. According to the medical adviser, "When differences arise in the opinions of two physicians, it is accepted practice to put more weight on the opinion of the independent medical examiner (IME). Therefore, Dr. Grant's rating should be disregarded in favor of the IME of Dr. Trotter. This leads to the conclusion of zero percent impairment for each of her upper extremities."

By decision April 11, 2012, OWCP reviewed the merits of the claim. It found that appellant was not entitled to a schedule award based on the evidence of record.

LEGAL PRECEDENT

Section 8107 of FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁶ Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁸

FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination.⁹ The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹⁰

⁶ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁷ A. George Lampo, 45 ECAB 441 (1994).

⁸ FECA Bulletin No. 09-03 (March 15, 2009).

⁹ 5 U.S.C. § 8123.

¹⁰ 20 C.F.R. § 10.321 (1999).

ANALYSIS

The Board finds there is a disagreement in the medical evidence between Dr. Grant and Dr. Trotter. Dr. Grant opined that appellant did have a permanent impairment under the A.M.A., *Guides* based on carpal tunnel syndrome and tendinitis. He identified grade modifiers and a functional assessment scale and applied tables in the sixth edition of the A.M.A., *Guides*. Dr. Trotter opined that appellant did not have a permanent impairment, finding no evidence of an entrapment syndrome or evidence of a continuing impairment.

OWCP's medical adviser stated that the disagreement should be resolved based on the principle that the opinion of an "IME" has more weight than an attending physician. While the opinion of a physician selected as referee physician to resolve a conflict under 5 U.S.C. § 8123(a) is entitled to special weight, if based on a proper background and supported by medical rationale, in this case Dr. Trotter was a second opinion physician. Section 8123(a) was specifically designed to provide a method for resolving a conflict between an attending physician, such as Dr. Grant, and a second opinion physician such as Dr. Trotter.

The case accordingly will be remanded to OWCP for resolution of the conflict in the medical evidence. OWCP should refer appellant to a referee physician for a rationalized medical opinion as to the extent if any of permanent impairment under the A.M.A., *Guides*. The physician should also provide an opinion as to the date of maximum medical improvement.¹¹ After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision due to a conflict in the medical evidence.

¹¹ The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury. *Albert Valverde*, 36 ECAB 233, 237 (1984).

ORDER

IT IS HEREBY ORDERED THAT the April 11 and February 16, 2012 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: December 4, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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