United States Department of Labor
Employees' Compensation Appeals Board

C.L., Appellant	)	
and	)	**Docket No. 12-127**
	)	**Issued: July 16, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 19, 2011 appellant, through his attorney, filed a timely appeal from an August 26, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which affirmed the denial of a schedule award. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant met his burden of proof to establish more than a 36 percent impairment of the left arm, for which he received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On or before February 25, 1991 appellant, then 41-year-old letter carrier, sustained an occupational disease involving stiffness in the left shoulder, arm and hand due to the repetitive duties of his position.[2] OWCP accepted the claim for left shoulder impingement syndrome, left full thickness rotator cuff tear and left wrist carpal tunnel syndrome. Appellant had surgery for a left shoulder debridement on August 19, 1992 and left carpal tunnel decompression on March 31, 1994. On April 11, 1996 OWCP granted him a schedule award for 36 percent permanent impairment of the left arm. The award covered a period of 112.32 weeks for the period January 22, 1996 to March 18, 1998. In 1999, OWCP accepted left lateral epicondylitis and authorized a February 4, 2000 left lateral epicondylectomy.

On February 1, 2007 appellant underwent authorized left shoulder open rotator cuff reconstruction and distal clavicle excision. On December 10, 2007 he returned to full-time unrestricted duty. Appellant received compensation benefits.

On July 15, 2010 appellant filed a claim for an increased schedule award. He provided a May 21, 2010 report from Dr. Martin Fritzhand, a Board-certified urologist, who noted appellant's history and utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6th ed. 2009) (hereinafter, A.M.A., *Guides*). Dr. Fritzhand noted appellant's range of motion of the cervical spine, left shoulder, left elbow and left wrist. Appellant had tenderness on palpation of the left paracervical musculature and over the left trapezius with arthroscopic portal scars and a longitudinal surgical scar over the left shoulder. Dr. Fritzhand advised that there was a seven centimeter longitudinal surgical scar over the left lateral epicondyle with tenderness on palpation. Furthermore, appellant had a longitudinal surgical scar in the left interthenar region. Dr. Fritzhand advised that appellant had undergone two procedures on the left shoulder, a left carpal tunnel release and a left lateral epicondylectomy with continued musculoskeletal distress, ongoing pain and discomfort involving the cervical spine and left upper extremity associated with his work activities. Appellant found it very difficult to use his left arm whether at work or at home and that appellant could no longer participate in sports and extracurricular activities. Dr. Fritzhand opined that appellant reached maximum medical improvement, and he noted that the subjective symptoms were corroborated by the objective findings. Dr. Fritzhand referred to Table 15-5[3] to assess the left shoulder impairment. He found a class 1 full thickness rotator cuff tear with residuals loss of function, which yielded a default value of five percent arm impairment. Dr. Fritzhand applied a grade modifier of 2 for functional history and physical examination due to appellant's pain and decreased motion and a grade modifier of 2 for clinical studies due to a *Quick*DASH score of 72.5. He found that this moved the default value to E for a seven percent left arm impairment. For the left elbow, Dr. Fritzhand referred to Table 15-4[4] and determined that appellant had a

[2] Claim number xxxxxx621. On August 9, 2006 appellant filed an occupational disease claim for a right knee condition that was later accepted for several right knee conditions in claim number xxxxxx409. OWCP administratively combined claim numbers xxxxxx621 and xxxxxx409.

[3] A.M.A., *Guides* 403.

[4] *Id.* at 399.

class 1 impairment due to epicondylitis and surgical release. He referred to Table 15-7[5] and applied a grade modifier of 1 for functional history due to pain and reduced motion. Dr. Fritzhand referred to Table 15-8[6] and selected a grade modifier of 1 for physical examination due to pain and Table 15-9[7] and selected a grade modifier of 1 for clinical examination findings. He found that appellant had a default level of C or a five percent arm impairment. Dr. Fritzhand referred to Table 15-23[8] to assess appellant's left carpal tunnel syndrome. He applied a grade modifier of 1 for clinical findings of conduction delays, a grade modifier of 2 for physical findings of atrophy and weakness and a grade modifier of 2 for history and a *Quick*DASH score of 72.5, which he found yielded six percent impairment. Dr. Fritzhand combined the five percent impairment of the elbow, the seven percent of the left shoulder and the six percent for carpal tunnel syndrome to find a total of 17 percent permanent left arm impairment.[9] He noted that appellant had congenital deformities of the right arm which magnified the significance of appellant's left arm impairment.

In a September 1, 2010 report, OWCP's medical adviser concurred with Dr. Fritzhand's rating of 17 percent impairment for the left arm. He noted a few differences with his calculation but the outcome was the same. The medical adviser agreed with Dr. Fritzhand's use of Table 15-5[10] to rate the full thickness rotator cuff tear, but advised that a grade modifier 3 applied for functional history with a *Quick*DASH score of 72.5 according to Table 15-7,[11] instead of grade modifier 2 as noted by Dr. Fritzhand. He agreed with the physician's other findings and explained that the final impairment due to the shoulder remained the same, seven percent. For the left elbow, the medical adviser concurred with Dr. Fritzhand but noted that clinical studies of the left elbow were not available for his review. He deferred to Dr. Fritzhand's assessment. The medical adviser also noted that a grade modifier for functional history should not be applied according to page 406 of the A.M.A., *Guides*. He explained that the "functional history grade modifier should be applied only to the single, highest diagnosis-based impairment (DBI)." However, the medical adviser concurred with Dr. Fritzhand and explained the net adjustment was zero and the impairment was equal to five percent. Regarding carpal tunnel syndrome, he explained that Dr. Fritzhand's findings were appropriate although clinical studies of the left wrist were not available for his review. The medical adviser deferred to the assessment of Dr. Fritzhand and concurred that the impairment was six percent. He combined the impairment values and opined that appellant had 17 percent left arm impairment.

[5] *Id.* at 406.

[6] *Id.* at 408.

[7] *Id.* at 410.

[8] *Id.* at 449.

[9] *Id.* at 604.

[10] *Id.* at 403.

[11] *Id.* at 406.

On February 7, 2011 OWCP denied appellant's claim for an additional schedule award. It found that the medical evidence did not support an increase of the impairment already compensated.

On February 11, 2011 appellant requested a hearing, which was held on June 1, 2011.

In an August 26, 2011 decision, an OWCP hearing representative affirmed the February 7, 2011 decision.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing federal regulations,[12] 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.[13] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[14] For decisions issued after May 1, 2009, the sixth edition will be used.[15]

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[16] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[17]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides,* with the medical adviser providing rationale for the percentage of impairment specified.[18]

ANALYSIS

Dr. Fritzhand and OWCP's medical adviser agreed as to the extent of appellant's permanent impairment to the left arm. Appellant's accepted conditions include left shoulder

[12] 20 C.F.R. § 10.404; 5 U.S.C. § 8107.

[13] *Id*. at § 10.404(a).

[14] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[15] FECA Bulletin No. 09-03 (issued March 15, 2009).

[16] A.M.A., *Guides* 494-531; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

[17] A.M.A., *Guides* 521.

[18] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

impingement syndrome, left full thickness rotator cuff tear, left wrist carpal tunnel syndrome and left lateral epicondylitis.

On May 21, 2010 Dr. Fritzhand rated permanent impairment. The sixth edition of the A.M.A., *Guides* provides that upper extremity impairments be classified by diagnosis which is then adjusted by grade modifiers according to the formula noted above.[19] For the left shoulder, Dr. Fritzhand referred to Table 15-5[20] and found that appellant had a class 1 full thickness rotator cuff tear, for a default impairment of five percent. He applied grade modifiers to the net adjustment formula to arrive at seven percent left arm impairment due to his rotator cuff tear. For the left elbow, Dr. Fritzhand found that appellant had impairment due to his class 1 epicondylitis with surgical release. After applying grade modifiers, he concluded that appellant had a five percent impairment of the left elbow under Table 15-4 on page 399. Applying the provisions of the sixth edition of the A.M.A., *Guides* to his findings, Dr. Fritzhand rated appellant's impairment due to carpal tunnel syndrome under Table 15-23. He applied grade modifiers of 1 for clinical findings a grade modifier of 2 for physical examination findings and a grade modifier of 2 for functional history. Dr. Fritzhand further adjusted the value up from the default value based on appellant's *Quick*DASH score of 72.5, to find six percent impairment for his left carpal tunnel syndrome. He combined five percent impairment of the elbow, the seven percent of the left shoulder and the six percent for carpal tunnel syndrome would result in 17 percent permanent left upper extremity impairment.

OWCP's medical adviser concurred with Dr. Fritzhand. He was of the opinion that appellant sustained no more that 17 percent impairment of the left arm. The Board notes that while the medical adviser disagreed with Dr. Fritzhand regarding the grade modifier for functional history in the rating for the rotator cuff tear, the maximum award for the shoulder was seven percent, the same amount found by Dr. Fritzhand. The Board finds that the weight of the medical evidence establishes that appellant has no more than 17 percent impairment of his left arm. As he previously received an award for 36 percent impairment to the left upper extremity, he has not established greater impairment.

Appellant may request a schedule award 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 met his burden of proof to establish that he has more than 36 percent permanent impairment of his left upper extremity, for which he received a schedule award.

[19] *Supra* note 17.

[20] A.M.A., *Guides* 403.

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2011 decision of Office of Workers' Compensation Programs be affirmed.

Issued: July 16, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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