United States Department of Labor
Employees' Compensation Appeals Board

C.J., Appellant	)	
and	)	**Docket No. 13-342**
	)	**Issued: May 6, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Arnold, MO, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 27, 2012 appellant timely appealed the June 5, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 merits of the schedule award claim.

ISSUE

The issue is whether appellant has greater than one percent impairment of both upper extremities.

FACTUAL HISTORY

Appellant, a 63-year-old letter carrier, has an accepted claim for bilateral carpal tunnel syndrome (CTS) and right trigger finger (ring/fourth) (acquired), which arose on or about January 1, 2010. Dr. Bruce S. Schlafly, a Board-certified hand surgeon, performed a right carpal

[1] 5 U.S.C. §§ 8101-8193 (2006).

tunnel release and right trigger finger (ring/fourth) release on November 12, 2010. He also performed a left carpal tunnel release on February 10, 2011. OWCP approved all three surgical procedures. On March 29, 2011 appellant resumed her regular letter carrier duties. Dr. Schlafly released her from his care effective May 20, 2011, noting that she had reached maximum medical improvement (MMI).

On December 14, 2011 appellant filed a claim for a schedule award (Form CA-7).

In his May 20, 2011 report, Dr. Schlafly noted it had been three and a half months since appellant's latest surgery and she was working full time delivering mail, with two hours of office work each day. Appellant reportedly had good range of motion in her hands and there was good relief of numbness. Also, her two-point discrimination was normal at the fingertips and the first dorsal interosseous and abductor pollicis brevis muscles were working in both hands. Dr. Schlafly also provided range of motion and grip strength measurements for both wrists and forearms. He further noted that there was no triggering in the fingers of appellant's hands and that she was not taking any hand-related medications. Dr. Schlafly also reported that she dropped letters somewhat with her left hand. He described appellant's condition as satisfactory and indicated that no additional surgery was required. Accordingly, Dr. Schlafly found that she reached MMI and he discharged her from his care, but he did not provide a specific impairment rating under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2008).

OWCP prepared a statement of accepted facts and referred the case record, including Dr. Schlafly's May 20, 2011 report, to its district medical adviser (DMA) for review. In a May 22, 2012 report, the DMA found one percent impairment of both upper extremities under Table 15-23, Entrapment/Compression Neuropathy Impairment, A.M.A., *Guides* 449 (6th ed. 2008). Based on Dr. Schlafly's finding of "no triggering," the DMA found zero percent impairment under Table 15-2, Digit Regional Grid, A.M.A., *Guides* 392 (6th ed. 2008).

On June 5, 2012 OWCP granted a schedule award for one percent impairment of each upper extremity. The award covered a period of 6.24 weeks from May 21 through July 3, 2011.

LEGAL PRECEDENT

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.[2] It, 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

[2] 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).

losses.[3] Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).[4]

ANALYSIS

OWCP accepted appellant's claim for bilateral CTS and right trigger finger (ring/fourth). Appellant underwent bilateral carpal tunnel releases and a right trigger finger release. Approximately three months after her latest surgery, Dr. Schlafly found that appellant had reached MMI. Although appellant's surgeon did not provide a specific impairment rating, the DMA was able to provide an upper extremity rating based on Dr. Schlafly's most recent examination findings.[5]

Relying on the May 20, 2011 examination findings, the DMA found zero percent impairment under Table 15-2, A.M.A., *Guides* 392 (6th ed. 2008). Dr. Schlafly noted that there was no triggering in the fingers of appellant's hands. Accordingly, there is no upper extremity impairment for digital stenosing tenosynovitis (trigger digit) under Table 15-2.

Regarding residuals of appellant's CTS, the DMA properly found one percent bilateral upper extremity impairment under Table 15-23, A.M.A., *Guides* 449 (6th ed. 2008). He explained that her March 18, 2010 abnormal electrodiagnostic studies represented a grade 1 modifier (test findings) under Table 15-23. The DMA also indicated that appellant had a grade 0 modifier for both history and physical findings. Appellant was reportedly asymptomatic when Dr. Schlafly examined her on May 20, 2011. The DMA also considered Dr. Schlafly's examination findings as essentially normal.[6] The average grade modifier based on test findings (1), history (0) and physical findings (0) was .33 (1 + 0 + 0 ÷ 3 .33), which when rounded-up represented a grade 1 modifier with a default upper extremity impairment of two percent.[7] With respect to functional scale, the DMA noted that appellant had been working without limitations according to Dr. Schlafly. As such, this represented a normal functional scale and a corresponding grade 0 modifier. Because the functional scale grade modifier (0) was less than the grade assigned for the condition (1), the DMA properly reduced appellant's upper extremity rating from one to two percent, bilaterally.

[3] 20 C.F.R. § 10.404.

[4] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

[5] Before a case can be referred to the DMA, the attending physician should describe the impairment in sufficient detail to permit clear visualization of the impairment and the restrictions and limitations which have resulted. *Supra* note 5 at Chapter 3.700.3a(2).

[6] Dr. Schlafly's grip strength measurements varied to such an extent that the DMA considered them unreliable for purposes of assigning a higher grade modifier for physical findings.

[7] Under Table 15-23, a grade 1 modifier has an upper extremity impairment range from one to three percent.

The DMA's May 22, 2012 impairment rating is in accordance with the A.M.A., *Guides* (6th ed. 2008) and thus, represents the weight of the medical evidence with respect to appellant's entitlement to a schedule award under FECA.

Appellant may request a schedule award or increased 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

Appellant has not established that she has greater than one percent impairment of each upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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