

L.S., Appellant

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH
ADMINISTRATION, Denver, CO, Employer**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case submitted on the record

Before:

JURISDICTION

ISSUE

¹ The record also contains a March 25, 2013 decision denying appellant's claim for leave without pay. However, appellant's representative has not appealed this decision.

²⁵ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 17, 2011 appellant, then a 39-year-old nurse, was injured when her left hand was caught in an elevator door.³ On October 12, 2011 OWCP accepted the claim for contusion of the left wrist. Appellant returned to work in a full-time, modified capacity shortly after the injury but also missed intermittent periods of work for which she received compensation. The record indicates that she stopped all work on November 17, 2011 secondary to an emotional condition.⁴

In a letter dated July 19, 2012, appellant's representative requested a schedule award and submitted medical evidence. In a report dated May 24, 2012, Dr. Samuel Chan, a Board-certified internist, noted appellant's history of injury and treatment and utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (6th ed. 2008). He related that appellant continued to be symptomatic with diffuse forearm and left wrist pain. Wrist range of motion was within functional limits and no edema was noted. Dr. Chan indicated that there was a slightly cooler temperature on the left side compared to the right and there were no mottling changes of the skin. He advised that an October 13, 2011 electromyography (EMG) scan of the left upper extremity was normal. Dr. Chan also indicated that the magnetic resonance imaging scan of the left arm was normal. He explained that despite the fact that appellant continued to be symptomatic, her objective findings were essentially normal. Dr. Chan opined that, despite her subjective complaints, appellant had plateaued. He noted physical restrictions and addressed permanent impairment. Dr. Chan referred to Figure 15-3 of the A.M.A., *Guides* for the diagnosis of wrist/strain and contusion and determined that appellant would qualify for class 1, grade C.⁵ He referred to Table 15-7 and determined the grade modifier for functional history, would correlate to a grade modifier 2.⁶ Dr. Chan referred to Table 15-8 and determined the grade modifier for physical examination correlated to a grade modifier of one.⁷ He referred to Table 15-9 and advised that the grade modifier for clinical studies would also equate to a grade modifier of one.⁸ Dr. Chan utilized the net adjustment formula determined that the net adjustment was equal to 1, with an adjustment of 1 and advised that adjusting 1 level above C, appellant would be eligible for a two percent arm impairment secondary to the injury that occurred on August 17, 2011.

On July 12, 2012 Dr. Hiep Ritzer, a Board-certified practitioner and treating physician, noted that appellant had reached maximum medical improvement.

³ The record reflects that appellant also has a claim for an injury on August 2, 2011, which was accepted for a lumbar and sacral strains. File No. xxxxxx658.

⁴ The emotional condition has not been accepted as employment related.

⁵ A.M.A., *Guides* 395.

⁶ *Id.* at 406.

⁷ *Id.* at 411.

⁸ *Id.* at 408

In a report dated August 10, 2012, an OWCP medical adviser determined that appellant had no objective basis for left arm impairment. The medical adviser explained that the diagnosis-based impairment was the preferred rating method and that the most impairing diagnosis in the left wrist region was a sprain/contusion, which was the same diagnosis utilized by Dr. Chan. He indicated that he disagreed with the grade modifiers assigned by Dr. Chan. The medical adviser utilized the net adjustment formula and opined that the final net adjustment was -2, final grade was A and final impairment correlated to zero percent left upper extremity as opposed to the final impairment of two percent assigned by Dr. Chan. He explained his discrepancies with Dr. Chan. The medical adviser referred to Table 15-7 and explained that, for the functional history grade modifier, appellant would be entitled to a value of 1, as the record did not support that any functional modifications were required for self-care.⁹ For physical examination grade modifier, he assigned a value of zero, noting no objective deficits. The medical adviser acknowledged Dr. Chan's comment about the left hand being slightly cooler than the right, but explained that he did not consider this a valid observation as there was no evidence of any formal temperature measurements documented. He also noted that regarding the diagnostic studies grade modifier, he assigned a value of zero, as all testing was negative. The medical adviser determined that this resulted in a net adjustment of minus two and a final rating of zero percent impairment. He determined that appellant reached maximum medical improvement on May 24, 2012.

By decision dated August 24, 2012, OWCP denied appellant's claim for a schedule award. It found that the medical evidence of record did not support a permanent impairment to a scheduled member or function of the body.

On August 28, 2012 appellant requested a hearing, which was held on December 13, 2012. Appellant's representative argued that the medical adviser disagreed with Dr. Chan's findings and argued that he did not actually examine appellant. He also argued that the medical adviser's opinion was not valid.

By decision dated March 7, 2012, the hearing representative affirmed the prior decision.

LEGAL PRECEDENT

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.¹⁰

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.¹¹ FECA, 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 for all claimants under

⁹*Id.* at 406.

¹⁰*Veronica Williams*, 56 ECAB 367 (2005).

¹¹5 U.S.C. § 8107.

the law, good administrative practice requires the use of uniform standards applicable to all claimants.¹² The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.¹³ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.¹⁴

In addressing upper extremity impairments, 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).¹⁵ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹⁶

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the 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.¹⁷

ANALYSIS

The evidence of record is insufficient to establish that appellant is entitled to a schedule award in accordance with the sixth edition of the A.M.A., *Guides*. OWCP accepted her claim for contusion of the left wrist.

Appellant did not submit any evidence from a physician finding that she had permanent impairment of the arm due to her accepted condition which properly conformed to the A.M.A., *Guides*. The report from Dr. Chan found a two percent arm impairment. However, the calculation was based on determinations, which were unsupported by the findings. Dr. Chan referred to Figure 15-3 of the A.M.A., *Guides* for the diagnosis of wrist/strain and contusion and determined that appellant would qualify for class 1, grade C, which has a default rating of one percent impairment.¹⁸ He applied grade modifiers to conclude that she had two percent impairment. However, it remains unclear how Dr. Chan determined that the grade modifier for functional history, would correlate to a grade modifier 2 as there is no indication that appellant needed modifications to perform self-care activities.¹⁹ He also referred to Table 15-8 and

¹² *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

¹³ 20 C.F.R. § 10.404.

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010); *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

¹⁵ A.M.A., *Guides* 494-531; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

¹⁶ A.M.A., *Guides* at 521.

¹⁷ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

¹⁸ A.M.A., *Guides* 395.

¹⁹ *Id.* at 406.

determined the grade modifier for physical examination was one.²⁰ However, Dr. Chandidid not explain this finding when there were no objective findings on examination. Likewise, he referred to Table 15-9, for clinical findings when the diagnostic testing was normal.²¹ Thus, the modifiers in the net adjustment formula were unsupported. The Board precedent is well settled that when an attending physician's report gives an estimate of permanent impairment, but does not base that estimate upon correct application of specifically identifiable sections, grading schemes, tables or figures of the A.M.A., *Guides*, OWCP is correct to follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.²²

The medical adviser explained the discrepancies in Dr. Chan's calculations in his report dated August 10, 2012 and determined that there was no basis on which to find any ratable left arm impairment. He referred to Table 15-7 and explained, for the functional history grade modifier, appellant would only be entitled to a value of 1 as the record did not support that any functional modifications were required for self-care.²³ For the physical examination grade modifier, the medical adviser assigned a value of zero as there were no objective deficits. He acknowledged Dr. Chan's comment about the left hand being slightly cooler than the right, but there were no formal temperature measurements documented. The medical adviser also explained that, for clinical studies, the grade modifier was also zero as all testing was negative. He applied the grade modifiers of one for functional history, zero for physical examination and clinical studies under Table 15-7, Table 15-8 and Table 15-9. Under the net adjustment formula noted, this equated minus two for a net adjustment of two grades to the left of the default grade C, which resulted in zero percent impairment. The Board finds that the medical adviser's report comports with the A.M.A., *Guides* and the evidence does not support that appellant has a permanent impairment.

Appellant did not submit any other medical evidence to support that she was entitled to a schedule award, under the sixth edition of the A.M.A., *Guides*, for a scheduled member of the body under FECA. Accordingly, the Board finds that she has not established entitlement to a schedule award.

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

The Board finds that appellant has not met her burden of proof to establish that she has an impairment caused by her accepted employment injuries that would entitle her to a schedule award.

²⁰*Id.* at 411.

²¹*Id.* at 408

²²See *Ronald J. Pavlik*, 33 ECAB 1596 (1982); *Robert R. Snow*, 33 ECAB 656 (1982); *Quincy E. Malone*, 31 ECAB 846 (1980).

²³*Supra* note 19.

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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