United States Department of Labor
Employees' Compensation Appeals Board

L.S., Appellant	)	
and	)	**Docket No. 14-605**
	)	**Issued: June 9, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On January 23, 2014 appellant filed a timely appeal from the September 19, 2013 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 this case.

ISSUE

The issue is whether appellant met her burden of proof to establish more than 10 percent permanent impairment of each arm for which she received schedule awards.

FACTUAL HISTORY

On April 30, 2009 appellant, then a 46-year-old clerk, filed an occupational disease claim alleging upper extremity conditions due to the performance of repetitive work duties over time. Her claim was initially accepted for work-related bilateral carpal tunnel syndrome. It was later

[1] 5 U.S.C. §§ 8101-8193.

expanded to include left thumb arthritis, right rotator cuff strain, localized osteoarthritis of the left hand, disorder of the bursae in the right shoulder and rupture of the extensor tendons in the left hand/wrist.

On January 27, 2010 appellant underwent a right shoulder arthroscopy, arthroscopic subacromial decompression, partial acromioplasty, partial distal claviculectomy and right shoulder tissue graft application. At the time, she had been diagnosed with right shoulder rotator cuff tendinitis and bursitis, partial-thickness bursal-sided rotator cuff tear of the infraspinatus and right shoulder acromioclavicular joint pain with arthritis. On February 16, 2011 appellant underwent left thumb trapeziectomy, tendon transfer to the left thumb metacarpal base and interposition arthroplasty of the carpometacarpal joint. Dr. Peter Evans, an attending Board-certified orthopedic surgeon's, postoperative diagnoses included left thumb carpometacarpal arthritis and de Quervain's tenosynovitis. These procedures were authorized by OWCP.

In an October 13, 2011 report, Dr. Evans stated that appellant had reached maximum medical improvement.

On March 27, 2012 appellant filed a claim for a schedule award due to her accepted work injuries.

In an August 1, 2013 report, Dr. Kim L. Stearns, an attending Board-certified orthopedic surgeon, detailed the findings of his examination of appellant's upper extremities and concluded that appellant had a 10 percent permanent impairment of the whole person under the standards of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). Regarding the calculation of appellant's impairment, Dr. Stearns stated:

> "For her limited strength and range of motion in the shoulders she has 7 percent impairment of the upper extremity on the right which is a 4 percent impairment of the whole person, 6 percent impairment of the upper extremity on the left which is 4 percent impairment of the whole person, and 8 percent for her shoulders. For her limited wrist strength and mobility there is a 4 percent impairment of the upper extremity bilateral, 2 percent impairment of the whole person, for a combined 10 percent impairment of the whole person based upon the allowed conditions, physical findings and Table 16-3 on page 439 of [the fifth edition of the A.M.A., *Guides*]."

OWCP referred the case to Dr. Morley Slutsky, a Board-certified occupational medicine physician serving as an OWCP medical adviser, and requested that he review the record, including Dr. Stearns' report, and provide an opinion on appellant's arm impairments under the standards of the sixth edition of the A.M.A., *Guides.*

On August 27, 2013 Dr. Slutsky discussed Dr. Stearns' report and other medical evidence of record and concluded that appellant had a 10 percent permanent impairment of her right arm and a 10 percent permanent impairment of her left arm under the standards of the sixth edition of the A.M.A., *Guides.* He indicated that he determined that appellant had a 10 percent impairment of her right arm by applying the standards of Table 15-5 (Shoulder Regional Grid) on page 403

which involves a diagnosis-based rating scheme related to acromioclavicular joint injury or disease. Dr. Slutsky noted that appellant's right acromioclavicular surgery placed her under class 1 with a default value of 10 percent. He detailed appellant's grade modifiers and applied the net adjustment formula but determined that this calculation did not alter the finding that appellant's total right arm impairment was 10 percent.

Dr. Slutsky calculated that appellant had 10 percent impairment of her left arm by applying the standards of Table 15-2 (Digit Regional Grid) on page 394 which also involves a diagnosis-based rating scheme related to thumb arthroplasty. He noted that appellant's left thumb arthroplasty surgery placed her under class 3 with a default value of 30 percent for the left thumb. Dr. Slutsky detailed appellant's grade modifiers and applied the net adjustment formula and determined that, under Table 15-2, this calculation moved the number one space to the left of the default value of 30 percent. Thereby, appellant had 28 percent impairment of her thumb, which when converted to the arm under Table 15-12 on page 421, yielded a total left arm impairment of 10 percent. Dr. Slutsky also considered, under Table 15-23 on page 449, whether appellant had additional impairment due to bilateral carpal syndrome, but found that the diagnostic testing of appellant's arms (including June 8, 2009 electromyogram testing) did not meet the criteria for rating under this table. Appellant also had no rating under Table 15-3 (Wrist Regional Grid) on page 395 because her bilateral wrist pain was nonspecific and thereby fell under "[c]lass 0" of that table.

In a September 19, 2013 decision, OWCP granted appellant a schedule award for 10 percent permanent impairment of her right arm and 10 percent permanent impairment of her left arm. The award ran for 62.4 weeks from August 1, 2013 to October 11, 2014 and was based on the impairment rating of Dr. Slutsky.

LEGAL PRECEDENT

The schedule award provision of FECA[2] and its implementing regulations[3] 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[4] For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6th ed. 2009) is used for evaluating

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] *Id*.

permanent impairment.[5] A schedule award is not payable under section 8107 of FECA for an impairment of the whole person.[6]

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the shoulder, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the Class of Diagnosis (CDX) is determined from the Shoulder Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for Functional History (GMFH), grade modifier for Physical Examination (GMPE) and grade modifier for Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[7] The sixth edition of the A.M.A., *Guides* also contains diagnosis-based rating schemes for digits and wrist under Table 15-2 (Digit Regional Grid) on pages 391 to 394 and Table 15-3 (Wrist Regional Grid) on pages 395 to 397, respectively.[8] Impairment of the arms due to entrapment/compression neuropathy is calculated under Table 15-23.[9]

ANALYSIS

OWCP accepted that appellant sustained work-related bilateral carpal tunnel syndrome, left thumb arthritis, right rotator cuff strain, localized osteoarthritis of the left hand, disorder of the bursae in the right shoulder and rupture of the extensor tendons in the left hand/wrist. On January 27, 2010 appellant underwent a right shoulder arthroscopy, arthroscopic subacromial decompression, partial acromioplasty, partial distal claviculectomy and right shoulder tissue graft application. On February 16, 2011 appellant underwent left thumb trapeziectomy, tendon transfer to the left thumb metacarpal base and interposition arthroplasty of the carpometacarpal joint. These procedures were authorized by OWCP.

In a September 19, 2013 decision, OWCP granted appellant a schedule award for 10 percent permanent impairment of her right arm and 10 percent permanent impairment of her left arm. The award was based on the impairment rating of Dr. Slutsky, a Board-certified occupational medicine physician, who served as an OWCP medical adviser.[10]

The Board finds that, on August 27, 2013, Dr. Slutsky properly concluded that appellant had 10 percent permanent impairment of both arms under the standards of the sixth edition of the

[5] *See* FECA Bulletin No. 09-03 (issued March 15, 2009). For OWCP decisions issued before May 1, 2009, the fifth edition of the A.M.A., *Guides* (5th ed. 2001) is used.

[6] *See Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

[7] *See* A.M.A., *Guides* 401-11 (6th ed. 2009).

[8] *Id.* at 391-94, 395-97.

[9] *Id.* at 449. The text related to this table discusses the standards for when test results do not meet specific criteria and are placed in the "[g]rade 0" category. *Id.*

[10] Dr. Slutsky reviewed the medical evidence of record including the August 1, 2013 findings of Dr. Stearns, an attending Board-certified orthopedic surgeon.

A.M.A., *Guides.* Appellant has not submitted medical evidence showing that she has a greater level of impairment. Dr. Slutsky properly determined that appellant had 10 percent impairment of her right arm by applying the standards of Table 15-5 (Shoulder Regional Grid) on page 403 which involves a diagnosis-based rating scheme related to acromioclavicular joint injury or disease. He noted that appellant's right acromioclavicular surgery placed her under class 1 with a default value of 10 percent and that grade modifier calculations did not alter this determination. Dr. Slutsky calculated that appellant had 10 percent impairment of her left arm by applying the standards of Table 15-2 (Digit Regional Grid) on page 394 which involves a diagnosis-based rating scheme related to thumb arthroplasty. He noted that appellant's left thumb arthroplasty surgery placed her under class 3 with a default value of 30 percent of the left thumb. Dr. Slutsky indicated that appellant's grade modifiers changed her left thumb impairment to 28 percent, which when converted to the arm under Table 15-12 on page 421, yielded a total left arm impairment of 10 percent.[11]

In his August 1, 2013 report, Dr. Stearns indicated that appellant had 10 percent permanent impairment of the whole person under the standards of the fifth edition of the A.M.A., *Guides.* However, a schedule award is not payable under section 8107 of FECA for an impairment of the whole person and Dr. Stearns applied the standards of an edition of the A.M.A., *Guides* that was not in effect at that time.[12]

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 did not meet her burden of proof to establish more than 10 percent permanent impairment of her right arm and 10 percent permanent impairment of her left arm, for which she received a schedule award.

[11] Dr. Slutsky also considered, under Table 15-23 on page 449, whether appellant had additional impairment due to bilateral carpal syndrome, but found that the diagnostic testing of appellant's arms did not meet the criteria for rating under this table. Appellant also had no rating under Table 15-3 on page 395 because her bilateral wrist pain was nonspecific and thereby fell under "[c]lass 0" of that table.

[12] *See supra* notes 5 and 6. On appeal, appellant asserted that the amount of schedule award compensation he received was improper because Dr. Evans, an attending Board-certified orthopedic surgeon, indicated that he reached maximum medical improvement on October 13, 2011. In an October 13, 2011 report, Dr. Evans stated that appellant had reached maximum medical improvement, but he did not provide any assessment of appellant's arm impairment under the relevant standards.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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