United States Department of Labor
Employees' Compensation Appeals Board

S.N., Appellant	)	
and	)	**Docket No. 10-2301**
	)	**Issued: August 10, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Kansas City, KS, Employer	)	

Appearances:
Pamela M. Byrd, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 14, 2010 appellant, through her representative, filed a timely appeal from decisions of the Office of Workers' Compensation Programs (OWCP) dated May 5 and July 27, 2010 finding that she was not entitled to an additional 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 merits of the schedule award.

ISSUE

The issue is whether appellant has a left upper extremity greater than six percent.

On appeal, appellant asserts that she is entitled to an increased award, and that OWCP did not sufficiently explain its findings.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On December 14, 2004 appellant, then a 47-year-old parcel post distribution clerk, filed an occupational disease claim alleging that she developed work-related tenosynovitis of the left hand. OWCP accepted left dorsal tenosynovitis, left de Quervain's tenosynovitis, and left wrist ganglion cyst as employment related. On September 19, 2006 Dr. Leslie Thomas, a Board-certified orthopedic surgeon, performed surgical release. Appellant received compensation and returned to full duty on December 8, 2006.

On June 5, 2007 appellant filed a traumatic injury claim, stating that she injured her left hand when she tripped on a floor mat and fell. She stopped work that day and returned on June 19, 2007. The claim was accepted for left hand sprain. Appellant received intermittent wage-loss compensation while attending medical and physical therapy appointments. On November 9, 2007 Dr. Thomas advised that she had reached maximum medical improvement.

Appellant filed a schedule award claim on May 27, 2008. By letter dated June 5, 2008, OWCP informed her that she needed to submit a medical report in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*)[2] to support her claim. In a September 5, 2008 report, Dr. Thomas advised that, in accordance with Figure 1625 of the fifth edition of the A.M.A., *Guides*, appellant had a 25 percent loss of flexion of the left hand. On September 26, 2008 Dr. Daniel D. Zimmerman, a Board-certified internist and OWCP medical adviser, found that the rating by Dr. Thomas was not in accordance with the A.M.A., *Guides* and could not be used for schedule award purposes. He recommended a second-opinion evaluation and impairment rating.

OWCP referred appellant to Dr. William O. Hopkins, a Board-certified orthopedic surgeon. In an October 27, 2008 report, Dr. Hopkins provided findings on examination including range of motion measurements for the wrist, fingers and thumbs. He cited figures and tables of the fifth edition of the A.M.A., *Guides* and advised appellant had a 15 percent impairment due to loss of wrist flexion, a 7 percent impairment due to loss of wrist deviation, and a 33 percent hand impairment due to loss of finger and thumb function, for a total 45 percent left upper extremity impairment due to loss of function. Dr. Hopkins added an additional half percent for loss of grip strength, yielding a total left upper extremity impairment of 45.5 percent with a date of maximum medical improvement of November 9, 2007. On November 11, 2008 he advised that x-rays demonstrated no evidence of post-traumatic arthritic changes in the wrist or hand. Dr. Hopkins opined that appellant's physical residuals were the result of chronic tendinitis with a previous de Quervain's tendinopathy treated surgically with good results and would relate her current symptoms of pain, motion and motor loss secondary to some adhesive tenosynovitis in the area of her injury.

By report dated November 27, 2008, Dr. Zimmerman reviewed the report of Dr. Hopkins. He advised that, in accordance with the fifth edition of the A.M.A., *Guides*, appellant had one percent impairment for radial deviation. Dr. Zimmerman further advised that she would not be entitled to an impairment of the digits as this would not be due to the accepted condition, and

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[2] A.M.A., *Guides* (5th ed. 2001).

also found that she was not entitled to a rating for loss of strength or pain. He concluded that appellant had one percent impairment of the left arm.

By decision dated February 9, 2009, appellant was granted a schedule award for a one percent impairment of the left upper extremity, a period of 3.12 weeks to run from November 10 to December 1, 2007.

On March 6, 2009 appellant requested a review of the written record. In an April 20, 2009 decision, OWCP's hearing representative vacated the February 9, 2009 decision and remanded the case for further development. In a May 12, 2009 report, Dr. Hopkins noted that he had reviewed Dr. Zimmerman's report. He stood by his impairment rating of 15 percent for loss of wrist range of motion and added an additional one percent for chronic pain.

OWCP determined that a conflict in medical opinion arose between Dr. Hopkins, OWCP's referral physician and Dr. Zimmerman, OWCP's medical adviser. It referred appellant to Dr. Garth Russell, Board-certified in orthopedic surgery. In a September 24, 2009 report, Dr. Russell noted the history of injury, his review of the medical record and appellant's complaint of stiffness and pain in her left wrist. He provided findings on physical examination, stating there was no loss of motion of the left wrist but weakness in grip. Dr. Russell advised that, with the use of the dynometer, appellant's initial left hand grip was 38 pounds, followed by 44, 44 and 40 pounds. He diagnosed strain/sprain of the left wrist secondary to the June 5, 2007 fall, which was superimposed on chronic tendinitis of the first dorsal compartment. Dr. Russell advised that, in accordance with the sixth edition of the A.M.A., *Guides*,[3] under Table 15-3, Wrist Regional Grid, based on a diagnosis of wrist pain/strain with no residual instability or loss of motion but with persistent pain and weakness of left hand grip, appellant had a class 1 impairment with loss of function, for grade C or a six percent impairment and noted that she could be given an additional one to two percent for pain.

By decision dated October 16, 2009, OWCP awarded appellant an additional five percent impairment of the left arm or a total six percent impairment. The award was for 15.6 weeks and ran from December 2, 2007, the end of her previous schedule award, to March 20, 2008.

On November 5, 2009 appellant requested a review of the written record. In a March 18, 2010 decision, OWCP's hearing representative noted that, OWCP improperly found a conflict in opinion between two OWCP physicians, Dr. Hopkins, a referral physician, and Dr. Zimmerman, OWCP's medical adviser. She noted that its procedures require that after obtaining all necessary medical evidence, the case should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment. OWCP's hearing representative set aside the October 16, 2009 decision and remanded the case for further medical development, instructing OWCP to refer the record, including Dr. Hopkins' May 12, 2009 report and Dr. Russell's September 24, 2009 second-opinion report, for review and an opinion regarding appellant's degree of permanent impairment.

In a March 31, 2010 report, Dr. Zimmerman, reviewed Dr. Russell's report, who found a class C impairment of six percent. He advised that under Table 15-3, a wrist sprain/strain with a

[3] *Id*. at (6th ed. 2008).

history of painful injury and residual symptoms without objective findings, appellant had a class 1 impairment with a default value of C which yielded a one percent impairment for the diagnosis. Dr. Zimmerman further advised that, taking her additional diagnoses into account, the most advantageous would be residuals of the accepted left wrist ganglion cyst. A class 1 impairment for ganglion cyst under Table 15-3 had a default value of C for a two percent impairment or an additional one percent left upper extremity impairment.

By decision dated April 5, 2010, OWCP found that appellant did not have more than the six percent impairment previously awarded.

On April 27, 2010 appellant requested a review of the written record. In a July 27, 2010 decision, OWCP's hearing representative affirmed the April 5, 2010 decision.[4]

LEGAL PRECEDENT

The schedule award provision of FECA[5] and its implementing federal regulations[6] 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.[7] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[8] For decisions issued after May 1, 2009, the sixth edition will be used.[9]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[10] Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment class for the Diagnosed Condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and

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[4] OWCP hearing representative further found that an overpayment in compensation could be declared because appellant received a six percent schedule award when she was only entitled to one of two percent. *See infra* note 21.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id*. at § 10.404(a).

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

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

[10] A.M.A., *Guides, supra* note 3 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

Clinical Studies (GMCS).[11] The net adjustment formula is GMFH - CDX + GMPE - CDX + GMCS - CDX.[12]

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 OWCP's medical adviser providing rationale for the percentage of impairment specified.[13]

ANALYSIS

The Board finds that appellant has not established that she has more than a six percent impairment of the left upper extremity. The accepted conditions in this case are left dorsal tenosynovitis, left de Quervain's tenosynovitis and left wrist ganglion cyst. Appellant received a schedule award for a one percent left upper extremity impairment on February 9, 2009 and a schedule award for an additional five percent on October 16, 2009, for a total impairment of six percent.

For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is to be used in calculating schedule awards.[14] The medical evidence relevant to a left arm impairment rating include the September 5, 2008 report in which Dr. Thomas rated impairment in accordance with the fifth edition of the A.M.A., *Guides*. Likewise, in reports dated October 27, 2008 and May 12, 2009, Dr. Hopkins, who provided a second-opinion evaluation for OWCP, also provided findings in accordance with the fifth edition of the A.M.A., *Guides*.[15] A medical opinion not based on the appropriate edition of the A.M.A., *Guides* has diminished probative value in determining the extent of a claimant's permanent impairment.[16] Thus, the reports of Dr. Thomas and Dr. Hopkins are insufficient to establish entitlement to an increased schedule award.

In a September 24, 2009 report, Dr. Russell, who provided a second-opinion evaluation for OWCP,[17] provided physical examination findings and diagnosed strain/sprain of the left wrist

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[11] *Id*. at 385-419.

[12] *Id*. at 411.

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

[14] *Supra* note 9.

[15] The Board notes that it does not appear that Dr. Hopkins reexamined appellant prior to the May 12, 2009 report.

[16] *See Fritz A. Klein*, 53 ECAB 642 (2002).

[17] OWCP initially found that a conflict was created between two OWCP physicians, Dr. Hopkins and OWCP's medical adviser. As correctly noted by OWCP's hearing representative in a March 18, 2010 decision, OWCP improperly found that a conflict in medical evidence had been created between the two OWCP physicians. Section 8123(a) of FECA provides that if there is 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 an examination. 5 U.S.C. § 8123(a); *see Geraldine Foster*, 54 ECAB 435 (2003).

secondary to the June 5, 2007 fall, which was superimposed on chronic tendinitis of the first dorsal compartment. He advised that, in accordance with the sixth edition of the A.M.A., *Guides*, under Table 15-3, Wrist Regional Grid, based on a diagnosis of wrist pain/strain with no residual instability or loss of motion but with persistent pain and weakness of left hand grip, appellant had a class 1 impairment with loss of function, for grade C or a six percent impairment, and noted that she could be given an additional one to two percent for pain.

Following remand, in a March 31, 2010 report, OWCP's medical adviser reviewed the evidence, including Dr. Russell's findings. He advised that the most advantageous schedule award would be for residuals of the accepted left wrist ganglion cyst, for a class 1 impairment, that under Table 15-3 had a default value of C for a two percent.

The maximum class 1 impairment for a wrist sprain/strain under Table 15-3 is two percent,[18] not the six percent found by Dr. Russell. While this can be modified, as explained in section 15.3 of the sixth edition of the A.M.A., *Guides*,[19] Dr. Russell did not indicate that he followed the net adjustment formula.[20] The Board finds that the evidence supports that appellant has no more than a six percent right upper extremity impairment, for which she received schedule awards. There is no other medical evidence of record addressing the extent of appellant's permanent impairment under the appropriate edition of the A.M.A., *Guides*, which supports any greater impairment.[21]

As to appellant's argument on appeal that OWCP did not fully explain its findings, while it erred in finding a conflict in medical evidence between Dr. Hopkins and OWCP's medical adviser, this was corrected. In the subsequent decisions, OWCP fully explained its findings and conclusions regarding appellant's 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.

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[18] A.M.A., *Guides, supra* note 3 at 395.

[19] *Id*. at 405-419.

[20] *Id*. at 411.

[21] OWCP continued to develop the claim, and on August 9, 2010 issued a preliminary overpayment finding on the grounds that appellant was overpaid by the October 16, 2009 schedule award. After it issued the July 27, 2010 decision, appellant filed an appeal with the Board of the May 5 and July 27, 2010 schedule award decisions. From that point forward, the Board had jurisdiction over the issue of left upper extremity impairment and entitlement to an additional schedule award. *Cathy B. Millin*, 51 ECAB 331 (2000). By decision dated October 21, 2010, OWCP's hearing representative reversed the preliminary overpayment finding, vacated the October 16, 2009 schedule award decision and remanded the case to OWCP for further develop of appellant's impairment rating. By decision dated April 14, 2011, OWCP found that appellant was not entitled to an additional schedule award. It had no jurisdiction to issue a decision that might affect the issue before the Board. Therefore, OWCP's decision dated October 21, 2010 is null and void with regards to the schedule award finding, and the April 14, 2011 decision is null and void. *D.S.*, 58 ECAB 392 (2007).

CONCLUSION

The Board finds that appellant has no more than a six percent permanent impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 27 and May 5, 2010 are affirmed.

Issued: August 10, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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