United States Department of Labor
Employees' Compensation Appeals Board

W.F., Appellant	)	
and	)	**Docket No. 11-440**
	)	**Issued: October 27, 2011**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Southeastern, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., 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 December 14, 2010 appellant, through her attorney, filed a timely appeal from an August 24, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for increased schedule awards. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has more than a 10 percent permanent impairment of the right arm or a 28 percent permanent impairment of the left arm for which she received schedule awards.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. On February 25, 2008 the Board set aside a December 8, 2006 decision finding that appellant had no more than a 10 percent impairment of the right upper extremity and a 28 percent impairment of the left upper extremity.[2] The Board determined that neither her attending physician nor OWCP's medical adviser properly applied the provisions of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). The Board remanded the case for OWCP to obtain an opinion sufficient to establish the extent of appellant's right and left upper extremity impairments. The facts of the case as set forth in the prior decision of the Board are hereby incorporated by reference.

By decision dated April 29, 2008, OWCP denied appellant's claim for an additional schedule award. It found that OWCP's medical adviser had adequately explained how he applied the A.M.A., *Guides*.

In a decision dated January 2, 2009, a hearing representative set aside the April 29, 2008 decision. He determined that there was no current medical evidence addressing the extent of appellant's impairment. The hearing representative remanded the case for OWCP to refer her for a second opinion examination.

On January 15, 2009 OWCP referred appellant to Dr. Robert F. Draper, Jr., a Board-certified orthopedic surgeon, for a second opinion examination. On February 24, 2009 Dr. Draper found that appellant had a negative Tinel's sign and Phalen's test for the right wrist with full grip strength and five millimeters of two-point discrimination. For the left wrist, he found a positive Tinel's sign and Phalen's test over the median nerve of the left wrist. Dr. Draper measured range of motion of the right shoulder of 120 degrees forward flexion, 120 degrees abduction, 80 degrees internal rotation and 70 degrees external rotation. For the left shoulder, he measured 160 degrees forward flexion and abduction, 80 degrees internal rotation and 70 degrees external rotation. Using the fifth edition of the A.M.A., *Guides*, Dr. Draper determined that appellant had a 10 percent impairment of each upper extremity due to carpal tunnel syndrome. He further found that she had an additional seven percent impairment of the right shoulder and a two percent impairment of the left shoulder due to loss of range of motion.

On February 26, 2009 an OWCP medical adviser concurred with Dr. Draper's determination and concluded that appellant had a 16 percent right upper extremity impairment and a 12 percent left upper extremity impairment.

By decision dated April 21, 2009, OWCP denied appellant's claim for an additional schedule award. It found that her impairment of the upper extremities was less than that previously awarded.

[2] Docket No. 07-1548 (issued February 25, 2008). OWCP accepted that appellant sustained bilateral carpal tunnel syndrome and bilateral adhesive capsulitis of the shoulders. Appellant underwent a right carpal tunnel release in July 2001 and a left carpal tunnel release in October 2001. On April 16, 2006 OWCP granted her schedule awards for a 28 percent left upper extremity impairment and a 10 percent right upper extremity impairment.

On April 23, 2009 appellant, through her attorney, requested an oral hearing. By decision dated November 18, 2009, the hearing representative set aside the April 21, 2009 decision. She found that Dr. Draper did not adequately explain his findings. The hearing representative remanded the case for OWCP to obtain clarification from Dr. Draper regarding his impairment evaluation using the provisions of the sixth edition of the A.M.A., *Guides*.

By letter dated November 19, 2009, OWCP requested that Dr. Draper evaluate appellant's impairment of the upper extremities under the sixth edition of the A.M.A., *Guides*. It provided him a statement of accepted facts that indicated that she had accepted bilateral carpal tunnel syndrome and bilateral adhesive capsulitis and that the conditions had been combined under one file number.

On December 5, 2009 Dr. Draper applied the sixth edition of the A.M.A., *Guides* to his prior examination findings. He found that appellant's impairment due to carpal tunnel syndrome should be rated using Table 15-21 on page 438 of the A.M.A., *Guides*. Dr. Draper identified a class 1 impairment for carpal tunnel syndrome below the midfoream, which yielded a default value of five percent. After determining the impairment class and default grade, he considered whether there were any applicable grade adjustments for Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS). Dr. Draper found that clinical studies were inapplicable and that appellant had a grade modifier or one for functional history and physical examination. Utilizing the net adjustment formula discussed above, (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), or (1-1) + (1-1) + (0-0) = 0, he found no net adjustment from the default value of five percent.

For the bilateral shoulders, Dr. Draper identified a class 1 impairment due to a partial thickness rotator cuff tear using the shoulder regional grid set forth in Table 15-5, which yielded a default value of three percent. After applying grade modifiers, he determined that appellant had a four percent impairment of the right shoulder and a three percent impairment of the left shoulder. Dr. Draper added the shoulder and carpal tunnel impairment ratings to find an eight percent left upper extremity impairment and a nine percent right upper extremity impairment.

On December 20, 2009 an OWCP medical adviser reviewed Dr. Draper's February 24, 2009 report. He applied Table 15-23 on page 449 and found that appellant had a two percent impairment of the right upper extremity due to carpal tunnel syndrome and a five percent impairment of the left upper extremity due to carpal tunnel syndrome. Regarding the shoulder, the medical adviser noted that Table 15-5 on page 405 provided that an impairment due to shoulder impingement could also be assessed using loss of range of motion. He found that, for the right shoulder 120 degrees flexion yielded a three percent impairment, 120 degrees abduction yielded a three percent impairment, 70 degrees internal rotation yielded a two percent impairment and 70 degrees external rotation yielded no impairment, for a total right upper extremity impairment of eight percent. For the left shoulder, the medical adviser found that 160 degrees flexion yielded a three percent impairment, 160 degrees abduction yielded a three percent impairment and that 80 degrees internal rotation and 70 degrees external rotation yielded no impairment, for a total right upper extremity impairment of six percent. He combined with the impairments due to carpal tunnel syndrome with the impairments due to loss of range of motion of the shoulder to find an 11 percent left upper extremity impairment and a 10 percent right upper extremity impairment.

By decision dated February 17, 2010, OWCP denied appellant's claim for an additional schedule award.

On February 23, 2010 counsel requested an oral hearing. At the hearing, held on June 16, 2010, he argued that the initial schedule award paid appellant only for an impairment due to carpal tunnel syndrome. Counsel maintained that appellant was challenging only the amount awarded for both shoulders.

By decision dated April 24, 2010, the hearing representative affirmed the February 17, 2010 decision.

On appeal counsel maintains that appellant has two separate claims. He asserts that he is not challenging the initial award made for carpal tunnel syndrome but that appellant was entitled to an increased award for her shoulder impairment separate from the original award for carpal tunnel syndrome.

LEGAL PRECEDENT

The schedule award provision of FECA,[3] and its implementing federal regulations,[4] 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.[5] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[6]

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.[7] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

If carpal tunnel syndrome is found under the standards of Appendix 15-B, impairment is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[8] In Table 15-23, grade modifiers are described for test findings, history and physical findings. A survey completed by a given claimant, known by the name *Quick*DASH, is used to further modify the grade and to choose the appropriate

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Id*. at § 10.404(a).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[7] A.M.A., *Guides* 494-531.

[8] *Id*. at 449, Table 15-23.

numerical impairment rating.[9] If carpal tunnel syndrome is not found under the standards of Appendix 15-B, impairment due to median nerve dysfunction is evaluated under the scheme found in Table 15-21 (Peripheral Nerve Impairment: Upper Extremity Impairments).[10] Under Table 15-21, observed conditions are placed into classes (ranging from class 0 to class 4) based on diagnosis and the severity of the condition. After the class is identified, the precise degree of the impairment can be modified by various factors, including functional history, physical examination and clinical studies.[11]

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome and bilateral adhesive capsulitis of the shoulders due to factors of her federal employment. In 2001 appellant underwent bilateral carpal tunnel releases. On February 25, 2008 the Board set aside OWCP's December 8, 2006 schedule award decision which found that appellant had a 28 percent permanent impairment of the left upper extremity and 10 percent permanent impairment of the right upper extremity. The Board remanded the case for OWCP to obtain an impairment evaluation of the bilateral upper extremities consistent with the A.M.A., *Guides*.

On February 24, 2009 Dr. Draper, an OWCP referral physician, found a positive Tinel's sign and Phalen's test of the right wrist and a negative Tinel's sign and Phalen's test of the left wrist. He measured range of motion of the right shoulder as 120 degrees forward flexion 120 degrees abduction, 80 degrees internal rotation and 70 degrees external rotation. Dr. Draper measured range of motion for the left shoulder of 160 degrees forward flexion and abduction, 80 degrees internal rotation and 70 degrees external rotation. He applied the fifth edition of the A.M.A., *Guides* and found that appellant had a 16 percent right upper extremity impairment and a 12 percent left upper extremity impairment due to carpal tunnel syndrome and a loss of range of motion of the shoulder.

On November 19, 2009 OWCP asked Dr. Draper to determine the extent of appellant's upper extremity impairment utilizing the sixth edition of the A.M.A, *Guides*. In a report dated December 5, 2009, Dr. Draper advised that appellant had a five percent bilateral impairment due to carpal tunnel syndrome using Table 15-21 of the A.M.A., *Guides*. He further found a four percent impairment of the right shoulder and a three percent impairment of the left shoulder using the diagnosis-based impairment method set forth in Table 15-5 on page 403.

OWCP referred Dr. Draper's February 24 and December 5, 2009 reports to an OWCP medical adviser for review. The medical adviser applied the sixth edition of the A.M.A., *Guides* to the clinical findings from Dr. Draper's February 24, 2009 report.[12] He utilized Table 15-23 on page 449 to find a two percent impairment of the right upper extremity due to carpal tunnel syndrome and a five percent impairment of the left upper extremity due to carpal tunnel

[9] *Id*. at 448.

[10] *Id*. at 437-40, Table 15-21.

[11] *Id*. at 406-09.

[12] It does not appear that OWCP's medical adviser reviewed Dr. Draper's December 5, 2009 report.

syndrome. However, as discussed, with respect to evaluating impairment due to dysfunction of the median nerves, Appendix 15-B (Electrodiagnostic Evaluation of Entrapment Syndromes) contains criteria for evaluating whether carpal tunnel syndrome is present. If carpal tunnel syndrome is found under the standards of Appendix 15-B, the impairment is evaluated under the schedule found in Table 15-23. If carpal tunnel syndrome is not found under the standards of Appendix 15-B, impairment due to median nerve dysfunction is evaluated under the scheme found in Table 15-21. There is no indication that OWCP's medical adviser considered Appendix 15-B and he did not provide any explanation regarding why he evaluated appellant's impairment due to carpal tunnel syndrome under Table 15-23.

OWCP's medical adviser further found that appellant's shoulder impairment could be alternatively assessed using range of motion measurements rather than the diagnosis-based method.[13] He determined that, using Table 15-34, appellant had an eight percent right upper extremity impairment and a six percent left upper extremity impairment due to loss of range of motion of the shoulder. The medical adviser based his determination on Dr. Draper's range of motion measurements for flexion, abduction, internal rotation and external rotation. However, the A.M.A., *Guides* requires evaluation of six ranges of shoulder motion: flexion, extension, abduction, adduction, external rotation and internal rotation.[14] Dr. Draper's report did not provide insufficient clinical findings to evaluate appellant's shoulder impairment using range of motion. Accordingly, the Board finds that the case must be remanded to OWCP to obtain a report consistent with the A.M.A., *Guides*.[15] After such further development as deemed necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

[13] *Id*. at 401-05, Table 15-5. The Shoulder Regional Grid, provides that, if loss of motion is present, the impairment may be assessed by using range of motion under section 15.7g.

[14] *Id*. at 475.

[15] On appeal appellant's attorney argues that the award for the shoulder condition should be separate from the award for carpal tunnel syndrome. However, the relevant issue is the total impairment of appellant's upper extremities under the sixth edition of the A.M.A., *Guides*.

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: October 27, 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