United States Department of Labor
Employees' Compensation Appeals Board

J.T., Appellant	)	
and	)	**Docket No. 11-701**
	)	**Issued: October 25, 2011**
U.S. POSTAL OFFICE, POST OFFICE, Niles, OH, Employer	)	

Appearances:
Alan J. Shapiro, 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 January 25, 2011 appellant, through his representative, filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated December 15, 2010 which affirmed the denial of appellant's claim for a schedule award. 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 merits of the case.

ISSUE

The issue is whether appellant sustained permanent impairment to his left arm warren ting a schedule award.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On January 7, 1999 appellant, then a 47-year-old city carrier, was injured when he pulled a frozen lever to open a door and experience pain in the fourth and fifth digits of his left hand and wrist. OWCP accepted the claim for left hand tendinitis. Appellant did not stop work.

From November 30, 2005 to August 28, 2007 appellant came under the treatment of Dr. Randall Hartwig, an osteopath, for left wrist pain with decreased range of motion. Dr. Hartwig diagnosed tendinitis of the left wrist and sprain of the left wrist.

On December 15, 2007 appellant filed a claim for a schedule award. On December 20, 2007 OWCP informed him that for consideration to be given to the payment of a schedule award, the medical evidence must support a finding that the accepted injury resulted in permanent impairment or loss of use of a member or function of the body. It also had to demonstrate that the residuals of the injury reached a fixed state, known as maximum medical improvement. OWCP advised that the medical evidence in appellant's file indicated that he had not reached maximum medical improvement and therefore a claim for a schedule award could not be considered at this time.

Appellant submitted reports dated March 14 and May 19, 2008 from Dr. Hartwig, who noted decreased range of motion of the left wrist for flexion, extension, ulnar and radial deviation with no motor deficit. Dr. Hartwig diagnosed tendinitis of the left wrist and sprained left wrist.

In a December 29, 2008 report, OWCP's medical adviser reviewed Dr. Hartwig's findings and noted that he failed to provide a date of maximum medical improvement or a physical description pursuant to the fifth edition of the A.M.A., *Guides.*[2]

On November 29, 2009 appellant came under the treatment of Dr. William N. Grant, a Board-certified internist, for left hand pain. Dr. Grant noted findings upon physical examination of left wrist swelling, tenderness to palpation, range of motion for flexion measured 10 degrees, extension measured 10 degrees, ulnar deviation measured 10 degrees and radial deviation measured 10 degrees. He diagnosed left hand tendinitis and noted appellant reached maximum medical improvement. Dr. Grant opined that appellant sustained a 38 percent permanent impairment of the left upper extremity pursuant to Table 15-32 of the sixth edition of the A.M.A., *Guides.*[3] He noted that pursuant to Table 15-32, page 473 of the A.M.A., *Guides*, left wrist flexion of 10 degrees was 9 percent impairment, extension of 10 degrees was 9 percent impairment, ulnar deviation of 10 degrees was 12 percent impairment and radial deviation of 10 degrees was 12 percent impairment. Dr. Grant noted that pursuant to the Combined Values Chart, appellant sustained 38 percent impairment of the left upper extremity. He stated that this impairment was severe.

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

[3] *Id*. at 473 (6th ed. 2008).

In a January 21, 2010 report, OWCP's medical adviser reviewed Dr. Grant's report and noted that pursuant to the statement of accepted facts appellant injured his fourth and fifth digits and his claim was accepted for left hand tendinitis; however, Dr. Grant provided an impairment rating for the left wrist. Dr. Grant suggested OWCP refer appellant to an OWCP referral physician for an impairment rating.

On January 22, 2010 OWCP referred appellant for a second opinion evaluation to Dr. Manhal A. Ghanma, a Board-certified orthopedist. OWCP provided Dr. Ghanma with appellant's medical records, a statement of accepted facts as well as a detailed description of his employment duties. In a medical report dated March 4, 2010, Dr. Ghanma indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted physical examination of the left hand revealed no objective findings consistent with left hand tendinitis, with no swelling, scarring, tenderness or temperature changes. Dr. Ghanma noted left wrist extension of 40 degrees, flexion of 55 degrees, radial deviation of 18 degrees and ulnar deviation of 30 degrees. He noted appellant's forearms measured 31 centimeters without atrophy and she had normal grip strength. Dr. Ghanma noted "very poor effort" from appellant for range of motion testing of the left arm. He advised that appellant reached maximum medical improvement on February 7, 1999. Dr. Ghanma noted that pursuant to the A.M.A., *Guides*, Table 15-3, Wrist Regional Grid, page 395, appellant sustained zero percent impairment to the left arm. He noted appellant was a class zero for the condition of tendinitis for no impairment, physical findings provided a grade modifier of zero pursuant to Table 15-8, Functional History (GMFH) adjustment provided a grade modifier of one pursuant to Table 15-7 and Clinical Studies (GMCS) adjustment provided a grade modifier of zero. Dr. Ghanma noted that the net adjustment formulas equaled one but this did not change the impairment rating as the class zero diagnosis did not provide any impairment.

In an April 7, 2010 report, OWCP's medical adviser reviewed Dr. Ghanma's report and noted that pursuant to the statement of accepted facts appellant injured his fourth and fifth digits and his condition was accepted for left hand tendinitis. However, Dr. Ghanma did not address the fourth and fifth digits in his impairment evaluation. He asked that OWCP obtain a supplemental report from Dr. Ghanma which addressed if there was impairment in the left fourth and fifth fingers, including motor or sensory findings.

On April 27, 2010 OWCP requested that Dr. Ghanma provided a supplemental report addressing impairment of the fourth and fifth digits of the left hand. In a May 19, 2010 report, Dr. Ghanma indicated that upon examination of the fourth and fifth digits of appellant's left hand he found no evidence of tenderness, loss of sensation or motor weakness. He noted that appellant did not give full effort with regards to range of motion testing. Dr. Ghanma further noted that appellant was able to fully flex all fingers full and was able to stabilize his left wrist.

In a June 14, 2010 report, OWCP's medical adviser noted reviewing the supplemental report of Dr. Ghanma dated May 19, 2010. He referenced the Muscle/Tendon section of the Digit Regional Grid, Table 15-2, page 391 of the A.M.A., *Guides* and diagnosed pain in the digit. OWCP's medical adviser noted that Dr. Ghanma found no evidence of tenderness, loss of sensation, motor weakness of the left fourth and fifth fingers, consistent with a class zero diagnosis with zero percent impairment. He noted that the impairment was not adjusted with grade modifiers as no adjustment out of class was permitted. OWCP's medical adviser opined

that appellant had no impairment of the left upper extremity based on diagnoses of hand tendinitis.

In a decision dated June 24, 2010, OWCP denied appellant's claim for a schedule award. It determined that the evidence was insufficient to establish that appellant sustained permanent impairment to a scheduled member due to the accepted work injury.

On July 6, 2010 appellant requested a telephonic oral hearing which was held on October 5, 2010.

In a decision dated December 15, 2010, OWCP's hearing representative affirmed OWCP's decision dated June 24, 2010.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing regulations[5] 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.[6]

For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.[8] It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.[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 of the A.M.A., *Guides*, for upper extremity impairments the evaluator identifies the impairment class for the Diagnosed Condition (CDX),

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *See id*.; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

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

[8] *Supra* note 3.

[9] *Tammy L. Meehan*, 53 ECAB 229 (2001).

[10] A.M.A., *Guides*, *supra* note 1 at 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

which is then adjusted by grade modifiers based on GMFH, Physical Examination (GMPE) and GMCS.[11] The net adjustment formula is GMFH - CDX + GMPE - CDX + GMCS - CDX.[12]

ANALYSIS

OWCP accepted appellant's claim for left hand tendinitis and he claimed a schedule award. In a November 29, 2009 report, Dr. Grant found that appellant sustained a 38 percent permanent impairment of the left arm pursuant to Table 15-32, wrist range of motion, of the sixth edition of the A.M.A., *Guides*.[13] He stated that this impairment was severe. However, Dr. Grant did not sufficiently address how the range of motion loss was due to the accepted left hand tendinitis. He did not explain how trying to open a frozen lever to open a door in 1999 would cause such severe symptoms and permanent impairment.[14] To be entitled to a schedule award appellant must establish that he sustained a permanent impairment of a listed member of the body due to an employment injury.[15] Without the necessary reasoned medical opinion evidence establishing that he has permanent impairment causally related to his accepted left hand tendinitis, Dr. Grant's report is insufficient to establish that appellant sustained a permanent impairment as a result of his work injury. On January 21, 2010 OWCP's medical adviser opined that Dr. Grant's opinion was an insufficient basis on which to grant a schedule award and recommended a second opinion.

OWCP referred appellant to Dr. Ghanma who, in a March 4, 2010 report, noted physical examination of the left hand revealed no objective findings consistent with left hand tendinitis, with no swelling, scarring, tenderness and temperature increases or decreases. Dr. Ghanma noted findings for left wrist range of motion but noted that appellant gave very poor effort on range of motion testing of the left arm. He noted no atrophy and normal grip strength. Dr. Ghanma advised appellant had reached maximum medical improvement. He noted that pursuant to the A.M.A., *Guides*, Table 15-3, Wrist Regional Grid, page 395, appellant sustained zero impairment to the left upper extremity as his diagnosis was class zero due to the lack of significant symptoms or findings on examination. Dr. Ghanma opined that appellant had no disability as a result of the diagnosed condition of left hand tendinitis. In a supplemental report dated May 19, 2010, he addressed whether appellant had any impairment emanating from the fourth and fifth digits of the left hand. Dr. Ghanma noted finding of no evidence of tenderness, loss of sensation or motor weakness. He noted that appellant was able to fully flex all fingers and stabilize his left wrist. OWCP's medical adviser also properly applied the A.M.A., *Guides* to the information provided in Dr. Ghanma's March 4 and May 19, 2010 reports and determined

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

[12] *Id.* at 411.

[13] A.M.A., *Guides* (6th ed. 2008).

[14] The Board notes that, on his traumatic injury claim, appellant attributed his condition to pulling a frozen lever to open a door while Dr. Grant attributed it to picking up bundles of mail. *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

[15] *See Veronica Williams*, 56 ECAB 367 (2005) (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).

that appellant had no impairment rating causally related to his accepted condition of left hand tendinitis.

The Board finds that, under the circumstances of this case, appellant did not sustain any work-related permanent impairment of the upper extremities. Dr. Ghanma examined appellant and noted essentially normal findings. He indicated that range of motion testing was unreliable due to appellant's poor effort and he also considered whether appellant had a ratable diagnosis based impairment. Both Dr. Ghanma and OWCP's medical adviser explained that the wrist or two fingers involved in the work injury did not result in any permanent impairment. Dr. Ghanma and OWCP's medical adviser found no other basis on which to attribute any permanent impairment to the accepted condition of left hand tendinitis.

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 the medical evidence does not establish that appellant has a ratable impairment of his left arm for schedule award purposes.

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 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