United States Department of Labor
Employees' Compensation Appeals Board

Jn.R., Appellant	)	
and	)	**Docket No. 11-326**
	)	**Issued: September 14, 2011**
U.S. POSTAL SERVICE, POST OFFICE, White Hall, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 22, 2010 appellant filed a timely appeal from an August 20, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding his 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 claim.

ISSUE

The issue is whether appellant has more than three percent impairment of the right upper extremity and more than three percent impairment of the left upper extremity, for which he received schedule awards.

FACTUAL HISTORY

On May 2, 2008 appellant, then a 45-year-old regular city carrier, filed an occupational disease claim for a ruptured disc he attributed to carrying mail and stepping in holes while on his

[1] 5 U.S.C. §§ 8101-8193.

route. He was first aware of his condition and its relationship to his employment on July 11, 2007. OWCP accepted the claim for cervical radiculopathy and paid benefits, including surgery for an anterior cervical microdiscectomy and fusion at C5-6 on May 27, 2008. Appellant was totally disabled from May 27 through July 17, 2008. He returned to limited duty on July 18, 2008 and unrestricted work on March 1, 2009.

On May 19, 2009 appellant requested a schedule award. In a December 10, 2008 report, Dr. James J. Coyle, a Board-certified orthopedic surgeon, noted that appellant was back to work delivering mail seven months postoperation. Examination findings revealed excellent strength and very good neck range of motion. Dr. Coyle restricted appellant from lifting over 20 pounds with gradual increase in the amount lifted until March. He indicated that on March 1, 2009 appellant may resume his regular unrestricted load, at which point he would be at maximum medical improvement.

In a June 4, 2009 letter, OWCP advised appellant that the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*) was used to calculate impairment and requested that he take the attached permanent worksheet forms for to his treating physician for an impairment rating.

In a September 29, 2009 letter, Dr. Donald E. Murray, a Board-certified internist, diagnosed cervical radiculopathy with numbness and tingling to appellant's fingertips. There was almost normal range of motion of the cervical spine, strength four plus to five, normal range of motion in both upper extremities and an intact sensory system. Dr. Murray indicated that he was unable to complete the forms provided by OWCP. A copy of the impairment worksheets dated September 15, 2001 were provided which indicated primary impairing diagnosis was cervical spinal stenosis with a subsidiary diagnosis of cervical radiculopathy.

On May 31, 2010 OWCP's medical adviser reviewed the medical record for purposes of determining impairment. He noted that testing showed a C5-6 herniation and appellant had surgery at that level with good relief of symptoms. OWCP's medical adviser stated that Dr. Coyle noted residual bilateral shoulder pain. Under Table 15-21 of the A.M.A., *Guides*, he stated that residual shoulder pain corresponded to a three percent permanent partial impairment of each upper extremity. OWCP's medical adviser further indicated that maximum medical improvement was reached March 1, 2009.

By decision dated August 20, 2010, OWCP granted a schedule award for three percent permanent partial impairment to the right and left upper extremities. The awards ran from March 1 to July 10, 2009, for a period of 18.72 weeks.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations[2] 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in

[2] 20 C.F.R. § 10.404.

making such a determination is a matter that rests within the sound discretion of OWCP.[3] 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] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[5]

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).[6] The net adjustment formula is GMFH-CDX + GMPE-CDX + GMCS-CDX.[7]

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of permanent impairment and OWCP may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings of the attending physician.[8]

ANALYSIS

Under the sixth edition of the A.M.A., *Guides*, impairments of the upper extremities are covered by Chapter 15. Section 15-2, entitled Diagnosis-Based Impairment, indicates that diagnosis-based impairment is the primary method of evaluation of the upper limb.[9] The initial step in the evaluation process is to identify the impairment class by using the corresponding diagnosis-based regional grid. The Board notes that OWCP accepted cervical radiculopathy and appellant underwent anterior cervical microdiscectomy and fusion at C5-6. Dr. Coyle noted appellant's status but did not rate impairment. Dr. Murray diagnosed cervical radiculopathy with numbness and tingling to his fingertips. He stated that appellant had almost normal range of motion cervical spine, strength, four plus five, normal range of motion in bilateral upper extremities and intact sensory. Dr. Murray declined to provide an impairment rating under the A.M.A., *Guides*. Thus, these reports are of limited probative value in establishing impairment.

OWCP medical adviser found that appellant had three percent impairment of each arm due to residual shoulder pain and referenced Table 15-21 of the A.M.A., *Guides* for peripheral

[3] *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

[4] *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[5] 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).

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

[7] *Id.* at 521.

[8] *Linda Beale*, 57 ECAB 429 (2006).

[9] Section 15.2, A.M.A., *Guides* 387.

nerve impairment. While Table 15-21 pertains to peripheral nerve impairment, he failed to identify the nerve upon which an impairment class and default value could be assigned. OWCP's medial adviser provided no explanation as to whether there were any applicable grade adjustments for grade modifiers, which are used in net adjustment formula to calculate a net adjustment and arrive at the final impairment grade.[10] The A.M.A., *Guides* note that it is important to determine the anatomic distribution and severity of loss of function resulting from sensory deficits or pain and motor deficits and loss of power and that these must be accurately graded to define the potential range of impairments associated with the nerve lesion. Only unequivocal and permanent deficits are given permanent impairment ratings.[11] Furthermore, OWCP's medical adviser failed to reference Table 15-14, which Table 15-21 specifically notes must be used to grade severity of sensory and motor deficits.[12] As it is unclear how he calculated the three percent impairment ratings for both upper extremities, the case must be remanded to OWCP for further clarification.

Proceedings under FECA are not adversarial in nature nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. Once it has begun an investigation of a claim, it must pursue the evidence as far as reasonably possible. OWCP has an obligation to see that justice is done.[13] The medical evidence of record does not fully comport with the A.M.A., *Guides* or provide a complete analysis of appellant's left and right upper extremity impairments. The case will be remanded to OWCP for further development on the extent of impairment of appellant's left and right upper extremities in accordance with the sixth edition of the A.M.A., *Guides*.[14]

CONCLUSION

The Board finds that the case is not in posture for decision as to the extent of appellant's left and right upper extremity impairments.

[10] Net Adjustment = GMFH-CDX + GMPE-CDX + GMCS-CDX. Section 15.3d, A.M.A., *Guides* 411. *See also* A.M.A., *Guides*, section 15.4, at 419, which sets forth the method for evaluating upper extremity nerve impairment.

[11] A.M.A., *Guides* 423.

[12] *Id.* at 436.

[13] *A.A.*, 59 ECAB 726 (2008).

[14] In light of the disposition of this case, appellant's arguments on appeal are moot.

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2010 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded to OWCP for further proceedings consistent with this opinion of the Board.

Issued: September 14, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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