United States Department of Labor
Employees' Compensation Appeals Board

C.T., Appellant	)	
	)	**Docket No. 13-12**
and	)	**Issued: February 25, 2013**
U.S. POSTAL SERVICE, BULK MAIL CENTER, Los Angeles, CA, 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 October 1, 2012 appellant filed a timely appeal from a September 19, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) granting a 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 schedule award decision.

ISSUE

The issue is whether appellant has more than a 10 percent permanent impairment of the right upper extremity and a 5 percent permanent impairment of the left upper extremity.

FACTUAL HISTORY

On July 7, 2009 appellant, then a 66-year-old maintenance support clerk, filed a traumatic injury claim alleging that on July 5, 2009 he broke both wrists when he fell on asphalt. OWCP accepted the claim for a closed fracture of the lower end of the right forearm and a closed

[1] 5 U.S.C. § 8101 *et seq.*

fracture of the left distal radius. Appellant underwent bilateral wrist surgery to repair the fractures on July 5, 2009. On September 11, 2009 he underwent surgery to excise wires from his left wrist. Appellant stopped work on July 5, 2009 and returned to work on January 3, 2010.

On May 17, 2011 appellant underwent an authorized ulnar nerve decompression of the right elbow with medial epicondylectomy.

In a report dated July 29, 2011, Dr. John T. Knight, a Board-certified orthopedic surgeon, found that appellant was permanent and stationary. On examination he found right hand atrophy and 15 millimeters two-point discrimination of the right little finger. Dr. Knight measured full range of motion of the hands, elbows and fingers with normal sensation except for the right little finger. He applied the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). Dr. Knight found that appellant had an 8 percent impairment of the right upper extremity due to loss of range of motion of the right wrist and a 4 percent right upper extremity impairment due to a sensory deficit of the ulnar nerve, for a total right upper extremity impairment of 12 percent. He further found a five percent impairment of the left upper extremity due to reduced motion of the left wrist. Dr. Knight indicated that appellant had a 10 percent whole person impairment.

On October 26, 2011 Dr. Ellen Pichey, an OWCP medical adviser, reviewed Dr. Knight's report and applied the provisions of the sixth edition of the A.M.A., *Guides* to his clinical findings. She identified the diagnosis as a class 1 bilateral wrist fracture using the wrist regional grid set forth in Table 15-3 on page 396. This yielded a default value of three percent. After determining the impairment class and default grade, the medical adviser considered whether there were any applicable grade adjustments for functional history, physical examination and clinical studies. She found grade modifiers of 2 for both functional history and physical examination. Dr. Pichey noted that clinical studies were used to identify the diagnosis. Utilizing the net adjustment formula, she moved the default position by two places to find a five percent impairment of the upper extremities bilaterally.

Dr. Pichey next evaluated appellant's right cubital tunnel syndrome in accordance with Table 15-23 on page 449, relevant to determining impairments due to entrapment neuropathy. She found a grade modifier of 3 for history and physical findings and a grade modifier of 1 for clinical studies, for an average grade modifier of 2, and an upper extremity impairment of five percent. Dr. Pichey noted that the functional impairment of two did not change the impairment rating. She concluded that appellant had a 10 percent impairment of the right upper extremity and a 5 percent impairment of the left upper extremity. Dr. Pichey found that appellant reached maximum medical improvement on August 1, 2011.

By decision dated February 13, 2012, OWCP granted appellant a schedule award for a 10 percent permanent impairment of the right upper extremity and a 5 percent permanent impairment of the left upper extremity. The period of the awards ran for 46.80 weeks from August 1, 2011 to June 23, 2012.

On April 12, 2012 appellant requested reconsideration. In an accompanying statement, he related that he had to retire because of his work injuries and also had to stop working at a second job.

By decision dated September 19, 2012, OWCP denied modification of its February 13, 2012 decision.

On appeal appellant noted that OWCP did not discuss his surgeries of July 6, 2009.

LEGAL PRECEDENT

The schedule award provision of FECA,[2] and its implementing federal 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[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).

ANALYSIS

OWCP accepted that appellant sustained bilateral wrist fractures and a right ulnar nerve decompression with medial epicondylectomy. Appellant's attending physician, Dr. Knight, found that he was permanent and stationary on July 29, 2011. Appellant had atrophy of the right hand with loss of sensation in the right little finger. Dr. Knight measured range of motion for both extremities and concluded that, pursuant to the fifth edition of the A.M.A., *Guides*, appellant had an eight percent impairment of the right upper extremity and a five percent impairment of the left upper extremity due to loss of range of motion of the wrists. He further found a 4 percent impairment of the right upper extremity due to a sensory deficit of the ulnar nerve, for a total right upper extremity impairment of 12 percent and left upper extremity impairment of 5 percent. Effective May 1, 2009, however, the sixth edition of the A.M.A., *Guides* is to be used to rate impairment for schedule award purposes.[7] As Dr. Knight's report

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Id.* at § 10.404(a).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & 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] *See supra* note 5.

was not in accordance with the appropriate edition of the A.M.A., *Guides*, his opinion is of diminished probative value.[8]

Dr. Pichey, an OWCP medical adviser, applied the sixth edition of the A.M.A., *Guides* to Dr. Knight's findings. The sixth edition of the A.M.A., *Guides* provides that upper extremity impairments be classified by diagnosis and then adjusted by grade modifiers according to the above-noted formula. Dr. Pichey found that appellant's diagnosis was a class 1 bilateral wrist fracture, which yielded a default value of three percent pursuant to Table 15-3. She applied grade modifiers 2 for functional history and physical examination. Dr. Pichey found that clinical studies were not applicable in the net adjustment formula as they were used to identify the diagnosis. She applied the net adjustment formula to move the default value right two places and find a five percent impairment of the upper extremities bilaterally.[9]

Dr. Pichey evaluated appellant's right cubital tunnel syndrome or ulnar nerve entrapment of the elbow, in accordance with Table 15-23. She found a grade modifier of 3 for history and physical findings and a grade modifier of 1 for clinical studies for an average grade modifier of 2, which yielded an upper extremity impairment of five percent. Dr. Pichey concluded that appellant had a 10 percent impairment of the right upper extremity and a 5 percent impairment of the left upper extremity. Appellant has not submitted sufficient medical evidence to show a greater impairment in accordance with the sixth edition of the A.M.A., *Guides*.

On appeal appellant argues that OWCP did not consider his prior wrist surgeries in July 2009. OWCP's medical adviser, however, considered the clinical findings of his attending physician and applied the sixth edition of the A.M.A., *Guides* to these findings.

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 has no more than a 10 percent permanent impairment of the right upper extremity and a 5 percent permanent impairment of the left upper extremity.

[8] *See A.B.*, Docket No. 10-2124 (issued August 10, 2011).

[9] GMFH-CDX (2-1=1); GMPE-CDX (2-1=1). Adding one plus one yielded a new adjustment of two.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2013
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