

**United States Department of Labor
Employees' Compensation Appeals Board**

H.I., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Fort Worth, TX, Employer**

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**Docket No. 15-405
Issued: May 6, 2015**

Appearances:
Harry James, Jr., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 9, 2014 appellant, through his representative, filed a timely appeal from a November 5, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than two percent permanent impairment of the right arm, for which he received a schedule award.

On appeal appellant's representative, asserts that the opinion of the attending physician should be credited regarding the degree of impairment and the date of maximum medical improvement (MMI).

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On June 22, 2012 appellant, then a 56-year-old carrier technician, filed an occupational disease claim alleging that work duties caused pain and swelling in his right wrist and hand. In June 2012, he came under the care of Dr. Les Benson.² A June 20, 2012 magnetic resonance imaging (MRI) scan study of the right wrist demonstrated severe erosive arthritic changes, widening of the scapholunate ligament interval, thinning and perforation of the triangular fibrocartilage complex, neutral to slightly positive ulnar variance, and dorsal tilting of the lunate. OWCP accepted right carpal tunnel syndrome on August 7, 2012. A September 14, 2012 electrodiagnostic study of the right upper extremity was consistent with carpal tunnel syndrome. Dr. Benson referred appellant to Dr. Robert Ippolito, Board-certified in plastic and hand surgery, who performed right carpal tunnel decompression on January 4, 2013. Appellant was placed on the periodic compensation rolls and returned to modified duty on August 12, 2013.

On October 22, 2013 appellant filed a schedule award claim. By letter dated October 28, 2013, OWCP informed him as to the type of evidence needed to support his schedule award claim. This was to include an impairment evaluation from his physician that was in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).³

In a September 16, 2013 report, Dr. Benson advised that MMI was reached on August 6, 2013. He referenced the June 20, 2012 MRI scan study and September 14, 2012 electrodiagnostic study and diagnosed right carpal tunnel syndrome. Dr. Benson advised that the evaluation was completed in accordance with the sixth edition of the A.M.A., *Guides*. He advised that appellant's impairment was best determined by range of motion analysis of the wrist. Range of motion measurements of the right wrist demonstrated flexion of 28, extension of 42, radial deviation of 8, and ulnar deviation of 16, which Dr. Benson advised demonstrated losses of 3 percent, 3 percent, 4 percent, and 4 percent respectively, for a total right upper extremity impairment of 14 percent.

On December 20, 2013 Dr. Michael M. Katz, a Board-certified orthopedic surgeon and the medical adviser, reviewed the medical record, including Dr. Benson's report. He stated that for loss of motion of the wrist, Table 15-32 of the A.M.A., *Guides* was applicable. Dr. Katz advised that, under Table 15-32, appellant's measurements for ulnar deviation and radial deviation yielded impairments of two percent each, not the four percent found by Dr. Benson. He further found that, as the accepted condition was carpal tunnel syndrome, Dr. Benson's decision to rate the right wrist on the basis of a stand-alone range of motion method rather than using Table 15-23, Entrapment Neuropathy, implied that the entirety of the wrist motion deficit was from the accepted diagnosis of carpal tunnel syndrome. Dr. Katz noted that the June 20, 2012 MRI scan study of the right wrist referenced by Dr. Benson demonstrated structural articular pathology and inflammatory erosive changes within the wrist, none of which were accepted conditions but were likely causes for decreased wrist motion. He recommended a second opinion evaluation.

² Dr. Benson's credentials could not be ascertained.

³ A.M.A., *Guides* (6th ed. 2008).

In February 2014 OWCP referred appellant to Dr. James E. Butler, a Board-certified orthopedic surgeon, for a second opinion evaluation.⁴ In a February 25, 2014 report, Dr. Butler reported appellant's medical and surgical history and his complaint of continued right wrist and hand pain and weakness. He noted that appellant was left-hand dominant and described the diagnostic studies reviewed, including the September 14, 2012 electrodiagnostic study. Right upper extremity examination demonstrated negative Finkelstein, Phalen, Tinel's tests. Observed wrist range of motion was decreased with flexion of 45 degrees, extension of 30, ulnar deviation of 30, and radial deviation of 20. Grip strength, sensation testing, and strength testing were normal. Dr. Butler diagnosed right carpal tunnel syndrome, operated, resolved. He agreed with Dr. Benson that MMI was reached on August 6, 2013. Dr. Butler advised that, based on Table 15-23 of the A.M.A., *Guides*, appellant had a modifier of one for test findings, a modifier of one for history, and a modifier of one for physical findings based on normal sensation, for a total modifier of three with an average of one. He further noted that appellant's *QuickDASH* score was 25. Dr. Butler concluded that, based on these findings, appellant had an average grade modifier of one with a default value of two percent right upper extremity impairment.

On April 1, 2014 Dr. H. Mobley, an OWCP medical adviser, reviewed the medical record including Dr. Butler's report. He advised that the date of MMI was February 25, 2014, the date of Dr. Butler's evaluation. Dr. Mobley agreed with Dr. Butler's assessment under Table 15-23 that appellant had grade modifiers of one each for test findings, history, and physical findings, which he added and averaged, finding a grade modifier of one with a default value of two percent. He further noted that Table 15-23 indicated that functional scale could be used to modify the impairment value and with appellant's *QuickDASH* score of 25 or a mild impairment, this too equaled a grade modifier of 1 with no modification of the final impairment of two percent.

By decision dated April 28, 2014, appellant was granted a schedule award for two percent impairment of the right arm, for 6.24 weeks of compensation, to run from February 25, 2014 (the date of MMI) to April 9, 2014, based on a weekly pay rate of \$1,109.69.⁵ He timely requested a review of the written record, asserting that the proper date of MMI was in September 2013. Appellant also resubmitted Dr. Benson's September 16, 2013 report in support of a greater schedule award.

On November 5, 2014 an OWCP hearing representative affirmed the April 28, 2014 schedule award decision. He found that the weight of the medical evidence rested with the opinion of Dr. Butler, as reviewed by the medical adviser. The hearing representative concurred that the date of MMI was the date of Dr. Butler's report.

⁴ Dr. Butler had previously evaluated appellant on April 4, 2013 regarding his work capabilities.

⁵ On April 16, 2014 OWCP requested that the employing establishment provide appellant's pay rate effective February 25, 2014. On that day, the employing establishment advised that appellant's annual rate of pay was \$58,281.00, which equates to \$1,120.79 a week.

LEGAL PRECEDENT

The schedule award provision of FECA, and its implementing federal regulations⁶ 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 issued after May 1, 2009, the sixth edition will be used.⁸

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).⁹ Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment class for the Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).¹⁰ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹¹

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text in section 15.4f of the A.M.A., *Guides*.¹² In Table 15-23, grade modifiers levels (ranging from 0 to 4) are described for the categories test findings, history, and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down by one percent based on functional scale, an assessment of impact on daily living activities.¹³

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.¹⁴

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁹ 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."

¹⁰ *Id.* at 385-419.

¹¹ *Id.* at 411.

¹² *Id.* at 433-50.

¹³ *Id.* at 448-50.

¹⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

The period covered by a schedule award commences on the date that the employee reaches MMI from the residuals of the injury. The question of when MMI has been reached is a factual one which depends upon the medical findings in the record. The determination of such date is to be made in each case upon the basis of the medical evidence in that case.¹⁵

ANALYSIS

The Board finds that appellant has not established that he has greater than two percent impairment of the right upper extremity.

The Board finds the date of February 25, 2014 as the proper date of MMI. Dr. Benson's September 16, 2013 report is of diminished probative value. He determined that appellant's right arm impairment was best determined by range of motion analysis and concluded that appellant had a 14 percent right upper extremity impairment. The accepted condition is right carpal tunnel syndrome. As noted above, this diagnosis is properly evaluated under section 15.4f and Table 15-23 of the A.M.A., *Guides*.¹⁶ Carpal tunnel syndrome is not a diagnosis in which the A.M.A., *Guides* indicate that motion loss may be alternatively addressed.¹⁷ Moreover, although Dr. Benson referenced the A.M.A., *Guides*, he did not indicate which table he used to assess appellant's range of motion. As pointed out by Dr. Katz, an OWCP medical adviser, Table 15-32 is used for wrist range of motion impairment analysis. However, the percentages provided by Dr. Benson do not correspond with those of Table 15-32.¹⁸ For these reasons, Dr. Benson's report is of insufficient probative value regarding appellant's right upper extremity impairment.

The Board finds that Dr. Butler, OWCP referral physician, properly evaluated appellant's right arm impairment. In his February 25, 2014 report, Dr. Butler reported appellant's medical and surgical history and his complaint of continued right wrist and hand pain and weakness. He provided extensive right arm examination findings and diagnosed right carpal tunnel syndrome, operated, resolved. Dr. Butler advised that, based on Table 15-23 of the A.M.A., *Guides*, test findings, history, and physical findings yielded grade modifiers of one each, with a total modifier of three and average of one. He further noted that appellant's *QuickDASH* score was 25. Dr. Butler concluded that, based on these findings, appellant had an average grade modifier of one which had a default value of two percent.

¹⁵ *L.H.*, 58 ECAB 561 (2007).

¹⁶ A.M.A., *Guides*, *supra* note 3 at 433-50.

¹⁷ Compare Tables 15-2 to 15-5. *Id.* at 391-405. The sixth edition of the A.M.A., *Guides* also provides that under certain circumstances, range of motion may be selected as an alternative approach in rating impairment. An impairment rating that is calculated using range of motion may not be combined with a diagnosis-based impairment and stands alone as a rating.¹⁷ The A.M.A., *Guides* explains that diagnoses in the grid that may be rated using range of motion are followed by an asterisk. *Id.* at 390.

¹⁸ *E.g.*, Dr. Benson reported measurements of appellant's radial and ulnar deviation were 8 and 16 degrees respectively. He indicated that these yielded four percent impairments each. However, Table 15-32 indicates that these yield impairments of two percent each. *Id.* at 473. Section 15.7a of the A.M.A., *Guides* further indicates that range of motion should be recorded from three separate range of motion efforts. *Id.* at 464.

On April 1, 2014 Dr. Mobley, the medical adviser, reviewed the medical record including Dr. Butler's report. He advised that the date of MMI was February 25, 2014, the date of Dr. Butler's evaluation. Dr. Mobley agreed with Dr. Butler's assessment under Table 15-23, that appellant had grade modifiers of one each for test findings, history, and physical findings, which he added and averaged, finding a grade modifier of one with a default value of two percent. He further noted that Table 15-23 indicated that functional scale could be used to modify the impairment value and, with appellant's *QuickDASH* score of 25 or a mild impairment, this too equaled a grade modifier of one, and therefore the impairment of two percent was not modified.

The Board concludes that the medical adviser applied the appropriate sections of the A.M.A., *Guides* to the clinical findings of record.¹⁹ The record therefore establishes that appellant has two percent right arm impairment, for an award of 6.24 weeks.²⁰

On appeal appellant asserted that the date of MMI should be September 13, 2013 rather than February 25, 2014 on which the schedule award was based. As noted above, the question of when MMI has been reached is a factual one which depends upon the medical findings in the record. The determination of such date is to be made in each case upon the basis of the medical evidence in that case.²¹ The date is usually the date of the medical examination which determined the extent of the impairment.²²

The Board has long advised that a retroactive date for MMI carries certain disadvantages because an earlier date could be based on a lower pay rate, and an earlier date of MMI would not change appellant's impairment rating or increase the number of weeks of compensation he or she received.²³ As noted above, the Board found the later date appropriate.

In this case, appellant's reported pay rate for September 2013 was less than that reported for February 2014. Nonetheless, the Board finds that OWCP did not use the proper pay rate for compensation purposes. On April 16, 2014 OWCP asked the employing establishment to provide appellant's pay rate effective February 25, 2014. The employing establishment responded that his pay rate was \$58,281.00 annually or \$1,120.79 weekly. Rather than using this pay rate, when issuing the April 28, 2014 schedule award, OWCP instead used the pay rate reported by the employing establishment on March 15, 2013 of \$57,704.00 annually or \$1,109.69 per week. The Board will modify the April 28, 2014 schedule award, affirmed on November 5, 2014, to reflect that the award should have been based on a weekly pay rate of \$1,120.79. The degree of impairment and number of weeks of the award is affirmed.

¹⁹ See *W.M.*, Docket No. 11-1706 (issued March 20, 2012).

²⁰ Section 8107(b)(1) of FECA provides that 100 percent disability of the arm yields 312 weeks of compensation. A two percent disability thus yields 6.24 weeks of compensation. 5 U.S.C. § 8107(b)(1).

²¹ *Supra* note 15.

²² *J.H.*, Docket No. 08-2432 (issued June 15, 2009).

²³ *Supra* note 15.

CONCLUSION

The Board finds that appellant has a two percent impairment of the right upper extremity, for a total of 6.24 weeks of compensation. The Board will modify the schedule award to reflect that the proper pay rate for schedule award compensation purposes is \$1,120.79 weekly.

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2014 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: May 6, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board