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

| | | |
|---|---|---|
| **A.B., Appellant** | ) | |
| **and** | ) | **Docket No. 10-2124** |
| | ) | **Issued: August 10, 2011** |
| **U.S. POSTAL SERVICE, NEW JERSEY INTERNATIONAL & BULK MAIL CENTER, Newark, NJ, Employer** | ) | |

*Appearances:*
*Thomas R. Uliase, Esq.*, for the appellant
*Office of the Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

### ***JURISDICTION***

On August 19, 2010 appellant filed a timely appeal from a May 5, 2010 merit decision of the Office of Workers' Compensation Programs concerning her schedule award. Pursuant to the Federal Employees' Compensation Act[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 has more than nine percent impairment of her left upper extremity, for which she received a schedule award.

### ***FACTUAL HISTORY***

On December 29, 2004 appellant, then a 43-year-old mail handler, was injured when she struck her left hand and little finger when she grabbed hold of a hamper as she started to fall.

[1] 5 U.S.C. §§ 8101-8193.

OWCP initially accepted the claim for a contusion of the left wrist and later expanded it to include left carpal tunnel syndrome. It paid appropriate benefits including left carpal tunnel surgery which appellant underwent August 29, 2006. Appellant returned to limited-duty work.

On December 30, 2008 appellant requested a schedule award for left arm impairment due to her December 29, 2004 work injury. In a July 16, 2008 report, Dr. Arthur F. Becan, an orthopedic surgeon, noted the history of injury and set forth his examination findings. He diagnosed: chronic strain/sprain of the left wrist; post-traumatic left carpal tunnel syndrome; left ulnar nerve neuropathy; partial tear of the triangular fibrocartilage; status post left carpal tunnel release and chronic left median nerve neuropathy. Dr. Becan opined that the diagnosed conditions were causally related to the December 29, 2004 work injury and that appellant reached maximum medical improvement on July 16, 2008. Under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[2] he opined that appellant had 39 percent left arm impairment. On October 28, 2008 appellant's treating physician Dr. Mark A. Filippone, a Board-certified physiatrist, indicated that he agreed with Dr. Becan's finding that appellant had 39 percent left upper extremity impairment.[3]

In a March 18, 2009 report, OWCP's medical adviser indicated that he could not accept Dr. Becan's impairment finding as the record revealed appellant had a successful carpal tunnel release. He stated that the treating surgeon's postoperative notes indicated a normal sensory nerve recovery and concluded that a referral to a specialist for an independent examination was necessary. The treatment notes from the treating surgeon Dr. Teofilo A. Dauhajre, a Board-certified orthopedic surgeon, noted status post left carpal tunnel release on August 29, 2007 and indicated the following: on the January 31, 2007 examination, appellant had infrequent paresthesias; on the April 4, 2007 examination, appellant exhibited no hypersensitivity and had normal perspiration in the left hand; and on the May 2, 2007 examination, appellant denied any further numbness.

OWCP determined a conflict of medical opinion existed between Dr. Becan and the OWCP medical adviser and referred appellant to Dr. Sebastian O. Adibe, a Board-certified orthopedic surgeon, for an impartial examination. In a June 4, 2009 report, Dr. Adibe noted that the history of injury, his review of the statement of accepted facts and the medical records and set forth his physical findings. He diagnosed left carpal tunnel syndrome and partial tear of the left wrist triangular fibrocartilage. Under the sixth edition of the A.M.A., *Guides*, Dr. Adibe opined that appellant had nine percent left arm impairment. He opined that appellant reached maximum medical improvement on May 2, 2007 when she was discharged by her surgeon. Under Table 15-3, page 396, Dr. Adibe assigned a class 1 or 8 percent arm impairment for the partial tear of the triangular fibrocartilage complex of the left wrist as documented by the

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

[3] In a September 25, 2008 report, Dr. Becan referenced an October 20, 1999 work-related injury. He opined that appellant reached maximum medical improvement and that she had 30 percent left leg impairment and 36 percent right arm impairment under the fifth edition of the A.M.A., *Guides*. On November 25, 2008 Dr. Filippone agreed with Dr. Becan's finding. Matters regarding the claim for the October 20, 1999 injury claim are not before the Board on the present appeal.

magnetic resonance imaging (MRI) scan. Based on his minimal findings, he assigned a grade 1 modifier for Physical Examination (GMPE) adjustment under Table 15-8, page 408. Based on MRI scan studies, Dr. Adibe assigned a grade 1 modifier for Clinical Studies (GMCS) adjustment under Table 15-9, page 410. He did not indicate a modifier for Functional History (GMFH) adjustment. Dr. Adibe stated that the net adjustment was zero and thus indicated that the impairment rating remained at the default level of eight percent. Under Table 15-23, page 449, he assigned one percent impairment for carpal tunnel syndrome. Dr. Adibe noted that test findings of mild conduction delay resulted in grade modifier 1, history was grade modifier 2 and normal physical findings were grade modifier 1. He found the grade modifiers totaled four. As the average of the grade modifiers was 1.33, Dr. Adibe selected the default upper extremity impairment of two percent. He then modified this value and selected one percent upper extremity impairment as appellant's condition of carpal tunnel had resolved. Dr. Adibe combined the impairment values for the two diagnoses to find a total of nine percent upper extremity impairment.[4]

On January 10, 2010 a different OWCP medical adviser reviewed the medical documentation of file, including Dr. Adibe's June 4, 2009 report. He opined that the documentation and physical findings indicated that carpal tunnel syndrome and partial tear of the triangular fibrocartilage of the left wrist with a date of maximum medical improvement of May 2, 2007, when appellant was discharged from care. Under Table 15-3, page 396, he found class 1 with eight percent default impairment for fibrocartilaginous tear with positive MRI scan. He found a GMPE grade modifier of 1 and GMCS grade modifier of 1 equated to a net adjustment of zero. For the carpal tunnel syndrome, he utilized Table 15-23, page 449. He found grade modifier 1 for clinical studies, grade modifier 2 for history, grade modifier 1 for physical findings totaled 4. He determined the average was 1.33 and rounded down to 1 to select a grade modifier 1 with a default value of 1 percent impairment. He advised the combined total impairment was 8 and 1 or 9 percent arm impairment.

By decision dated January 27, 2010, OWCP awarded appellant a schedule award for nine percent permanent impairment of the left upper extremity. The award ran from May 2 to November 14, 2007 for a total of 28.08 weeks of compensation.

In a February 12, 2010 letter, appellant's attorney disagreed with OWCP's decision and requested a review of the written record. He argued that OWCP failed to make a timely schedule award determination under the fifth edition of the A.M.A., *Guides* thereby depriving appellant of her due process rights and benefits under FECA.

By decision dated May 5, 2010, OWCP's hearing representative affirmed the January 27, 2010 decision that appellant had not established greater than nine percent impairment to the left upper extremity. The hearing representative noted that OWCP incorrectly found a conflict in medical evidence existed between the first OWCP medical adviser and Dr. Becan, but found that the weight of the medical evidence remained with Dr. Adibe as a second opinion physician. The hearing representative indicated that there was no medical conflict as the first OWCP medical

[4] On December 3, 2009 the original OWCP medical adviser rereviewed appellant's file. There is no indication that OWCP used this report in issuing the schedule award determination.

adviser did not provide an impairment rating but questioned whether Dr. Becan's findings were supported by reports from appellant's surgeon.

## ***LEGAL PRECEDENT***

The schedule award provision of FECA[5] provides for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a mater which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized 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 OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[6] Schedule award decisions issued between February 1, 2001 and April 30, 2009 utilize the fifth edition of the A.M.A., *Guides.*[7] Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides*,[8] published in 2008, as the appropriate edition for all awards issued after that date.[9]

For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.[10] 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).[11] Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.[12] The net adjustment formula is (GMFH - CDX) + (GMPE - DCX) + (GMCS - CDX).

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides.*[13]

---

[5] 5 U.S.C. §§ 8101-8193.

[6] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

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

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

[9] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

[10] *See supra* note 8.

[11] A.M.A., *Guides* (6th ed. 2008), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[12] A.M.A., *Guides* 494-531 (6th ed. 2008).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

## ***ANALYSIS***

The Board finds that OWCP properly applied the sixth edition of the A.M.A., *Guides* to determine the extent of appellant's impairment. Effective May 1, 2009, OWCP applied the sixth edition of the A.M.A., *Guides* to calculate awards.[14]

Appellant asserts that he has a property right in a schedule award benefit under the fifth edition of the A.M.A., *Guides* and a protected property interest cannot be deprived without due process, citing *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Mathews v. Eldridge*, 424 U.S. 319 (1976). These cases held only that a claimant who was in receipt of benefits (in *Goldberg* public assistance and in *Mathews* social security benefits) could not be terminated without due process. Appellant had received no schedule award under the fifth edition.

In *Harry D. Butler*,[15] the Board noted that Congress delegated authority to the Director regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the Director adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.[16] On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of the Office should reflect use of the sixth edition of the A.M.A., *Guides*.[17] The applicable date of the sixth edition is as of the schedule award decision reached. It is not determined by either the date of maximum medical improvement or when the claim for such award was filed.

In this case, OWCP's medical adviser examined Dr. Becan's findings and found his impairment rating was not supported by the reports from appellant's surgeon, who had noted a decrease or absence of objective findings following surgery. OWCP found a conflict in medical opinion existed and referred appellant for an impartial medical examination with Dr. Adibe. However, the Board finds no conflict in medical opinion existed between Dr. Becan and the medical adviser as the medical adviser did not render an impairment opinion but questioned Dr. Becan's findings in light of an apparent successful carpal tunnel release. Thus, OWCP hearing representative properly treated Dr. Adibe as a second opinion physician.

The Board finds that Dr. Becan's opinion is of diminished probative value. Dr. Becan provided an impairment rating in accordance with the fifth edition of the A.M.A., *Guides*. As noted above, the sixth edition of the A.M.A., *Guides* is to be used in calculating impairment after May 1, 2009.[18] Since Dr. Becan's report was not in accordance with the appropriate edition of

---

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

[15] 43 ECAB 859 (1992).

[16] *Id.* at 866.

[17] FECA Bulletin No. 09-03 (March 15, 2009). The FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award & Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).

[18] *Supra* note 8.

the A.M.A., *Guides*, it is of diminished probative value.[19] Additionally, Dr. Becan provided no medical rationale for his finding of marked impairment in view of Dr. Dauhajre postsurgical findings from April and May 2007 that appellant had no hypersensitivity or numbness. Medical conclusions unsupported by rationale are of diminished probative value.[20]

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. Adibe properly determined that appellant was a class 1 for partial tear of the triangular fibrocartilage complex of the left wrist under Table 15-3, page 396, which was eight percent. He properly applied the grade modifiers of 1 for physical examination physical examination (GMPE) adjustment under Table 15-8, page 408 and grade modifier of 1 for clinical studies (GMCS) adjustment under Table 15-9, page 410. Dr. Adibe also properly applied the applicable formula to determine that appellant had a net adjustment of zero.[21] Further, he properly calculated appellant's impairment for the partial tear of the triangular fibrocartilage complex by using the next adjustment of zero to determine that appellant had an impairment of eight percent. OWCP's medical adviser concurred in this determination.

Both Dr. Adibe and OWCP's medical adviser also determined consistent with the A.M.A., *Guides* that appellant had one percent impairment as a result of the carpal tunnel syndrome; however, they differed in their approach of arriving at such impairment. Utilizing Table 15-23, page 449, Dr. Adibe indicated that test findings of mild conduction delay resulted in grade modifier 1, history was grade modifier 2, and normal physical findings were grade modifier 1. He found the grade modifiers totaled 4, with an average of 1.33. Dr. Adibe rounded the average of 1.33 up to the nearest whole number of 2, while OWCP's medical adviser rounded the average of 1.33 down to the nearest whole number 1. In rounding to the nearest whole number, fractions are rounded up from .50.[22] Thus, OWCP's medical adviser properly rounded the average of 1.33 down to the nearest whole number of 1, to find grade 1 as the final rating category.[23] As Dr. Adibe found appellant's carpal tunnel condition had resolved, the medical adviser properly modified the default or middle value of upper extremity impairment of two percent of the grade 1 modifier to find the one percent impairment. Table 15-23, page 449 reflects a normal or resolved carpal tunnel condition from the functional scale score is a zero, which would be one grade lower than the two percent grade assigned to the condition. Thus, the lower grade or one percent would be the more appropriate impairment rating.

---

[19] *See I.F.*, Docket No. 08-2321 (issued May 21, 2009) (an opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of diminished probative value in determining the extent of permanent impairment).

[20] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

[21] Dr. Adibe did not identify a modifier for functional history. The A.M.A., *Guides* 406 indicates that functional history grade modifier should be applied only to the single, highest diagnosed based impairment, for each diagnosed based impairment or not considered at all as a grade modifier.

[22] *See J.P.*, Docket No. 08-832 (issued November 13, 2008).

[23] The Board notes that Dr. Adibe properly selected the default impairment value of two percent for a final rating category of grade 1. As appellant's carpal tunnel condition had resolved, he properly modified this value and selected the one percent final impairment rating as the appropriate rating.

The Board finds impairment values of eight percent for partial tear of the triangular fibrocartilage complex and one percent for carpal tunnel syndrome, or nine percent total left upper extremity impairment under the Combined Values Chart page 604.[24]

The record does not contain any medical evidence that establishes greater impairment in accordance with the sixth edition of the A.M.A., *Guides.* Additionally, as previously noted, Dr. Becan's report is insufficiently rationalized and thus is of no probative value; accordingly; it may not create a conflict in medical opinion with regards to appellant's upper extremity impairment. Thus, the Board finds that appellant has not established more than nine percent upper extremity impairment to her left arm.

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 not established that she has more than nine percent left upper extremity impairment.

[24] Section 15.4, page 419 A.M.A., *Guides* allows peripheral nerve impairments to be combined with diagnosed based impairments at the upper extremity level so long as the diagnosed based impairment does not encompass the nerve impairment.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the May 5, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board