

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

R.O., Appellant

and

DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, FEDERAL CORRECTIONS
COMPLEX, Lompac, CA, Employer

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**Docket No. 10-2143
Issued: August 15, 2011**

Appearances:
Appellant, pro se
Office of 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 25, 2010 appellant filed a timely appeal from the August 2, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding his schedule award claim. 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 this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than one percent impairment to his right upper extremity.

On appeal, appellant contends that he still experiences stiffness, inflammation and pain in his right wrist and forearm that prevent him from sleeping and that the immobility of his right wrist makes it difficult to do simple chores; that it was unfair that OWCP applied two different standards when his physician determined that he had 12 percent impairment to his right upper

¹ 5 U.S.C. § 8101 *et seq.*

extremity; and that during his recovery from surgery his supervisor offered to put him on light duty.

FACTUAL HISTORY

On January 29, 2008 appellant, then a 55-year-old sewage disposal plant operator, filed an occupational disease claim alleging that he sustained injuries to the back side of his wrist as a result of his federal duties which required him to operate and maintain all machines and equipment related to wastewater treatment and repair and maintain all ground water, sewer and gas piping systems. He noted that his work required the use of hand, electric and pneumatic tools. OWCP accepted appellant's claim for other tenosynovitis of hand and wrist and right and muscular calcification and ossification. On June 3, 2009 appellant had surgery on his right wrist.²

In a report dated October 8, 2009, Dr. Michael Behrman, appellant's treating Board-certified orthopedic surgeon with a subspecialty in surgery of the hand, listed appellant's diagnosis as extensor tenosynovitis and synovitis of the right wrist. He noted that appellant's current complaints were intermittent aching in the right wrist and decreased range of motion in the right wrist. Dr. Behrman indicated that appellant was permanent and stationary but that provision needed to be made for future medical care. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001), he noted that pursuant to Table 16-19 appellant's residual synovitis in his wrist joint rates a 20 percent impairment and that, as the wrist constitutes 60 percent of the upper extremity as per Table 16-18, this equates to a 12 percent upper extremity impairment rating pursuant to Table 16-3 of the A.M.A., *Guides*.

On February 6, 2010 appellant filed a claim for a schedule award.

By memorandum dated June 21, 2010, OWCP forwarded Dr. Behrman's report to OWCP's medical adviser and asked him to determine the extent and degree of permanent impairment under the sixth edition of the A.M.A., *Guides* and to explain his conclusion.

In a July 3, 2010 report, OWCP's medical adviser determined that appellant had a one percent upper extremity impairment for residual problem with right wrist tendinitis status post surgery, pursuant to the sixth edition A.M.A., *Guides*. He documented his conclusion by referencing Table 15-3 on page 395 of the A.M.A., *Guides* and noting that, pursuant to this table, appellant had "CDX 1C."

On August 2, 2010 OWCP issued a schedule award for one percent impairment of the right upper extremity.

² Appellant had the following procedures: (1) extensor tenosynovectomy right wrist; (2) synovectomy of the right wrist joint; (3) capsular debridement with capsulotomy right wrist; and (4) posterior interosseous nerve excision.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations,⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of schedule members or functions of the body. However, it 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.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

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).⁷ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through OWCP's 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.⁸

ANALYSIS

OWCP accepted appellant's claim for other tenosynovitis of the hand and wrist and right and muscular calcification and ossification. On June 3, 2009 appellant had surgery on his right wrist. Dr. Behrman, appellant's treating orthopedic surgeon, found that appellant reached maximum medical improvement as of his October 8, 2009 report. At that time Dr. Behrman noted that appellant had residual complaints of intermittent aching and decreased motion in the right wrist and found that appellant had a 12 percent impairment of the right upper extremity pursuant to the fifth edition of the A.M.A., *Guides*. However, as of May 1, 2009, OWCP applies the sixth edition of the A.M.A., *Guides* in determining impairment ratings.⁹ Accordingly, it properly referred appellant's case to OWCP's medical adviser for an impairment rating pursuant to the sixth edition of the A.M.A., *Guides*.¹⁰

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10404(a).

⁶ 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).

⁷ A.M.A., *Guides* 494-531.

⁸ *See* Federal (FECA) Procedure Manual, *supra* note 6 at Chapter 2.808.6(d) (August 2002).

⁹ *Supra* note 6.

¹⁰ *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

OWCP's medical adviser determined that appellant had one percent impairment to his right upper extremity. In reaching this conclusion, he noted that, pursuant to Table 15-3 of the sixth edition of the A.M.A., *Guides*, appellant had a CDX of class 1, level C.¹¹ The medical adviser failed, however, to explain how he reached his conclusion. The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation. It 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).¹² The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMC - CDX). OWCP's medical adviser identified only the table used without providing any explanation of the diagnosis category, class rating or evaluation of the grade modifiers. As discussed, grade modifiers should be considered for functional history, physical examination and clinical studies and these grade modifiers can change the extent of a given impairment rating.¹³ Consequently, the Board finds that the opinion of OWCP's medical adviser requires further clarification on the issue of appellant's right upper extremity impairment. The case is remanded for proper application of the A.M.A., *Guides* and, if necessary, further development of the evidence. Following such further development as OWCP deems necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹¹ A.M.A., *Guides* 395 (6th ed.).

¹² *Id.* at 405-12.

¹³ *Id.*; *T.T.*, Docket No. 10-880 (issued November 9, 2010).

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2010 merit decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 15, 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