

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

B.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Springfield, IL, Employer**

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**Docket No. 10-2392
Issued: August 22, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 27, 2010 appellant filed an appeal from an April 8, 2010 decision of the Office of Workers' Compensation Programs (OWCP) concerning a 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 this case.

ISSUE

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

On appeal, appellant contends OWCP adjudicated her claim under the wrong edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed.) (A.M.A., *Guides*).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 28, 2006 appellant, then a 58-year-old mail processing/distribution clerk, filed an occupational disease claim alleging that on August 17, 2006 she first realized that her bilateral carpal tunnel syndrome was employment related. OWCP accepted the claim for bilateral carpal tunnel syndrome and authorized carpal tunnel release surgery, which occurred on February 2 and 27, 2007. On March 6 and December 12, 2008 appellant filed claims for schedule awards.

On August 2, 2009 Dr. Neil Ghodadra, OWCP's medical adviser, concluded appellant had four percent right upper extremity and four percent left upper extremity impairment. He utilized Table 15-23, page 449 of the A.M.A., *Guides*. Dr. Ghodadra related that grade modifier 2 for carpal tunnel entrapment resulted in a four percent impairment in each upper extremity. He listed February 7, 2008 as the date of maximum medical improvement.

By decision dated August 26, 2009 OWCP granted appellant schedule awards for four percent the right and left upper extremities. The period of the awards ran from February 7 to July 30, 2008.

On September 18, 2009 appellant requested an oral hearing before OWCP's hearing representative, which was held on December 7, 2009.

OWCP subsequently received a September 2, 2009 report from Dr. Mark Greatting, a treating Board-certified orthopedic surgeon, concluded that appellant had 13 percent impairment of the left upper extremity and 15 percent impairment of the right upper extremity using the fifth edition of the A.M.A., *Guides*.

In a December 23, 2009 report, Dr. Lisa Snyder, a Board-certified physiatrist of professorial rank, found that appellant had five percent permanent impairment to each upper extremity. Referring to Table 15-23, page 449² of the sixth edition of the A.M.A., *Guides*, she found a grade modifier 3 based on test findings; a grade modifier 2 based on history and a grade modifier 1 based on physical examination for each upper extremity. This resulted in an average grade 2 modifier or five percent impairment using Table 15-23, page 449. Dr. Snyder noted that the *QuickDASH* functional scale score of 50 which result in a grade modifier 2. She noted that a grade modifier 2 yielded five percent upper extremity impairment and that the *QuickDASH* modifier of 5 correlated with that determination. Dr. Snyder concluded that the *QuickDASH* modifier would not change the upper extremity impairment rating of five percent.

By decision dated February 1, 2010, OWCP's hearing representative set aside the August 26, 2009 and directed OWCP to refer Dr. Snyder's medical report for review by its medical adviser.

On February 7, 2010 Dr. Ghodadra reviewed Dr. Snyder's December 23, 2009 report and concurred with her impairment rating. Using Table 15-23, page 449 the *QuickDASH* score of 50

² Table 15-23, page 449 of the sixth edition of the A.M.A., *Guides* is entitled *Entrapment/Compression Neuropathy Impairment*.

and the motor nerve conduction block corresponded to five percent permanent impairment in each upper extremity.

By decision dated April 8, 2010, OWCP granted appellant a schedule award for an additional one percent impairment of the left and right upper extremities. The period of the award was for 6.24 weeks.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations⁴ 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 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.⁵ Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁶

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).⁷ Under the sixth edition, the evaluator identifies 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).⁸ The net adjustment formula is GMFH - CDX + GMPE - CDX + GMCS - CDX.⁹

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome and underwent carpal tunnel release surgery for the right hand on February 1, 2007 and the left hand on February 27, 2007. Appellant filed claims for a schedule award on March 6 and December 12, 2008.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* See *Billy B. Scoles*, 57 ECAB 258 (2005); *C.M.*, Docket No. 09-1268 (issued January 22, 2010).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claim*, Chapter 2.808.6.6(a) (January 2010); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁷ 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.

⁸ A.M.A., *Guides* (6th ed.), pp. 383-419.

⁹ *Id.* at page 411.

The Board finds that appellant did not submit sufficient medical evidence to show that she has more than a five percent permanent impairment of either her right or left arm. The weight of the medical evidence is represented by the December 23, 2009 report of Dr. Snyder, a Board-certified physiatrist of professorial rank and the February 7, 2010 report of Dr. Ghodadra, a Board-certified internist, who served as OWCP's medical adviser, showed that appellant had five percent permanent impairment of her right arm and five percent permanent impairment of her left arm.

In a December 23, 2009 report, Dr. Snyder properly applied the standards of Table 15-23 (Entrapment/Compression Neuropathy Impairment) on page 449 of the sixth edition of the A.M.A., *Guides*.¹⁰ With respect to the right upper extremity, she stated that for test findings appellant had a grade modifier 3 based on test results; that for history she had a grade modifier 2; and that for physical findings she had a grade modifier 1. The values of the grade modifiers were added resulting in a total of six. Dividing this value of six by the three modifier categories provided an average of two. Dr. Snyder correctly indicated that for right arm, appellant fell under grade 2 which offered a default impairment rating of five percent for the right upper extremity. Appellant's functional score for the right extremity (dictated by the *QuickDASH* score of 50) was consistent with the default rating and no additional impairment was assigned. The final rating for the right-sided carpal tunnel was five percent of the right upper extremity. Dr. Snyder provided similar calculations for the left upper extremity which properly yielded an impairment rating for the left upper extremity of five percent. In a February 7, 2010 report, Dr. Ghodadra indicated that he agreed with her assessment.

The Board finds that Dr. Snyder and OWCP's medical adviser properly applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides*. Dr. Greatting did not provide an impairment rating based on the sixth edition of the A.M.A., *Guides*. Therefore, OWCP properly relied on the reports of Dr. Snyder and OWCP's medical adviser's assessment of five percent impairment of the left upper extremity and five percent right upper extremity based on the sixth edition of the A.M.A., *Guides*.

On appeal, appellant argued that OWCP erred in failing to adjudicate her schedule claim in a timely manner pursuant to the fifth edition of the A.M.A., *Guides*.

In *Harry D. Butler*,¹¹ 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.¹² On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of OWCP should reflect use of the sixth edition of the A.M.A., *Guides*.¹³ The applicable date of the sixth

¹⁰ See A.M.A., *Guides* 449, Table 15-23.

¹¹ 43 ECAB 859 (1992).

¹² *Id.* at 866.

¹³ 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).

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.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has more than five percent permanent impairment of her right upper extremity and five percent permanent impairment of her left upper extremity, for which she received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 8, 2010 is affirmed.

Issued: August 22, 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