United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 10-1051**
	)	**Issued: February 14, 2011**
DEPARTMENT OF DEFENSE, DIA-DEFENSE DISTRIBUTION REGION -- EAST, New Cumberland, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 8, 2010 appellant filed a timely appeal from a February 22, 2010 merit decision of the Office of Workers' Compensation Programs concerning schedule award compensation.[1] Pursuant to 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 eight percent impairment of his right arm, for which he received a schedule award.

[1] Appellant did not appeal from the Office's November 4 and October 19, 2009 decisions and the Board will not review those decisions.

FACTUAL HISTORY

On December 11, 2007 appellant, then a 44-year-old distribution process worker, injured his lower back and right wrist after pulling carts. The Office initially accepted a lumbar sprain and right wrist sprain and subsequently accepted a right scapholunate tear. Appellant stopped work for intermittent periods and returned to work at limited-duty full time.

On November 10, 2009 appellant filed a claim for a schedule award. In a September 2, 2009 report, Dr. James J. Sullivan, an osteopath and Board-certified physiatrist, reviewed appellant's history and treatment and provided findings on examination. He noted that July 29, 2008 wrist x-rays were negative while an October 20, 2008 right wrist magnetic resonance imaging (MRI) scan showed complete disruption of the scapholunate ligament with widening of the scapholunate interval, "mild tendinopathy of the ECU tendon" and "mild tenosynovitis of the ECR tendons." He diagnosed chronic right wrist pain and decreased function secondary to the work injury. Appellant had reached maximum medical improvement with seven percent impairment of the right arm under the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (hereinafter A.M.A., *Guides*). Dr. Sullivan evaluated appellant's wrist condition under Table 15-3 (Wrist Regional Grid) on pages 395-97. He found appellant met the criteria for "ruptured muscle/tendon" under Class 1 since he had residual functional loss with normal motion. Under functional history adjustment for the upper extremities, Dr. Sullivan found the *Quick*DASH score of 89 corresponded to Grade Modifier 4 or a "very severe problem" under Table 15-7, page 406. He advised that appellant had a Grade Modifier 2, which constituted a moderate problem, as he was able to perform activities of daily living independently with some element of discomfort. Dr. Sullivan indicated that the Grade Modifier 4 would be disregarded as page 411 of the A.M.A., *Guides* allows a grade modifier that is either unreliable or inconsistent to be disregarded and eliminated from the calculation. Under physical examination adjustment for the upper extremities, he found that appellant had a Grade Modifier 2 under Table 15-8, page 408 as moderate palpatory findings were consistently documented and there was 1.5 centimeter atrophy of right forearm and 2 centimeter atrophy of the right upper arm on examination. Under clinical studies adjustment, Dr. Sullivan found appellant had a Grade Modifier 2 under Table 15-9, page 410, as the clinical studies identified moderate pathology consistent with the diagnosis of "complete disruption of the scapholunate ligament" by MRI scan. He applied the net adjustment formula under page 411. Dr. Sullivan found that (Grade modifier for physical examination -- class of diagnosis) + (Grade modifier for clinical studies -- class of diagnosis) equaled (2-1) + (2-1) which equaled +2. He noted that the default value (Grade C) for ruptured muscle/tendon of the wrist under Table 15-3, page 395 was five percent impairment and since the net adjustment was + 2, this totaled a Grade E or seven percent impairment. In an October 16, 2009 addendum, Dr. Sullivan reviewed additional records and stated his impairment rating and rationale were unchanged.

The Office referred the medical record, to Dr. Craig Uejo, a Board-certified occupational medicine physician and an Office medical adviser, for evaluation of appellant's right arm impairment.

In a February 5, 2010 report, Dr. Uejo reviewed the medical evidence and found that appellant reached maximum medical improvement on September 1, 2009, the date of Dr. Sullivan's evaluation. He found that appellant had eight percent permanent impairment of

the right arm under the A.M.A., *Guides*. Dr. Uejo agreed with Dr. Sullivan's use of Table 15-3 of the A.M.A., *Guides*, but disagreed with the diagnosis used. He stated the correct diagnosis was "wrist sprain," with an eight percent default rating, as the injury was associated with a ligament disruption, not a tendon rupture. Dr. Uejo noted that the injury was to the scapholunate ligament and not the tendon. While tendinopathy was noted, there was no disruption of a tendon supported on wrist imaging. Dr. Uejo stated that, while Dr. Sullivan did not provide specifics regarding carpal instability on radiographic reporting, he gave the benefit of doubt, and accorded a Class 1 rating for "mild" instability at the wrist based on the MRI scan finding of complete scapholunate ligament disruption. Under functional history adjustment Table 15-7 and section 15.3a on page 406, he agreed with Dr. Sullivan that appellant's *Quick*Dash score was unreliable, based on the fact the grade modifier score differed by two or more grades from that defined by the physical examination and clinical studies. For the physical examination adjustment, Dr. Uejo found that under Table 15-8, page 408 appellant had a Grade Modifier 1 as the physical examination revealed "mild" motion loss of the wrist and 1.5 centimeter forearm atrophy. He excluded the reported upper arm atrophy as the injury involved the wrist. Under clinical studies adjustment, Dr. Uejo found under Table 15-09, page 410-11 that appellant had a Grade 1 modifier as the diagnostic study used to confirm the diagnosis showed mild pathology since no specific degree of wrist instability was noted and there was normal range of motion (ROM) in the wrist. Dr. Uejo found that the adjustment for function history grade modified was not applicable; there was physical examination adjustment of 1, and clinical studies adjustment of 1. He stated that the net adjustment compared to Diagnosis Class 1 was zero, which was a Grade C or eight percent upper extremity impairment. Dr. Uejo noted that a ROM impairment could not be considered as a stand alone rating since there was no ratable impairment for motion loss when compared to motion measurements in the opposite or normal left wrist.

By decision dated February 22, 2010, the Office granted appellant a schedule award for eight percent impairment of the right arm. The award ran for 24.96 weeks from September 1, 2009 to February 22, 2010.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] provides for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, 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 matter which rests in the sound discretion of the Office. 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 the Office as a standard for evaluation of schedule losses and the Board has concurred in such

[2] 5 U.S.C. §§ 8101-8193.

adoption.[3] Effective May 1, 2009, the Office adopted the sixth edition of the A.M.A., *Guides*,[4] published in 2008, as the appropriate edition for all awards issued after that date.[5]

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).[6] 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).[7] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides.*[8]

ANALYSIS

The Office accepted that appellant sustained a lumbar sprain, a right wrist sprain and a right scapholunate tear. On November 10, 2009 appellant filed a claim for a schedule award.

Dr. Sullivan found that appellant had seven percent impairment of the right upper extremity. Under Table 15-3, page 395, he identified the impairment class of the diagnosed condition (CDX) as ruptured muscle/tendon. The Office medical adviser reviewed Dr. Sullivan's report and stated that the correct diagnosis was wrist sprain as the injury was associated with a ligament disruption not a tendon rupture. He explained the injury was to the scapholunate ligament and not a tendon. The October 20, 2008 right wrist MRI scan showed a complete disruption of the scapholunate ligament. While a mild tendinopathy was also noted on MRI scan, no disruption of any tendon was reported. As the medical evidence does not support a ruptured tendon, the Office medical adviser properly explained his basis for rating impairment and not relying on that of Dr. Sullivan. The Office medical adviser's calculation resulted in a finding of greater impairment than that calculated by Dr. Sullivan.

Based on Dr. Sullivan's physical examination, an Office medical adviser applied the sixth edition of the A.M.A., *Guides* to rate eight percent impairment of the right arm. Under Table 15-3, he identified the impairment class for the diagnosed condition (CDX) as wrist sprain/strain

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

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

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

[6] 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.*

[7] *Id*. at 494-531 (6th ed. 2008).

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

and assigned a Class 1 rating for mild instability at the wrist based on the finding of complete scapholunate ligament disruption on MRI scan. The Office medical adviser agreed with Dr. Sullivan that under Table 15-7 and section 15.3 a Grade Modifier 4 for functional history (GMFH) was unreliable as the grade modifier score differed by two or more grades from that defined by the physical examination and clinical studies. Under Table 15-9, page 410-11, he found Grade Modifier 1 for clinical studies (GMCS) as the diagnostic study used to confirm the diagnosis showed mild pathology as no specific degree of wrist instability was noted and the wrist had normal ROM. Under Table 15-8, page 408, the Office medical adviser found that a Grade Modifier 1 for mild loss of motion of the wrist and 1.5 centimeter forearm atrophy on physical examination (GMPE). He then utilized the net adjustment formula and found that there was zero net adjustment. Thus, the Office medical adviser properly concluded that appellant had a Grade C or eight percent upper extremity impairment.

The Board finds that the Office medical adviser's report establishes that appellant has eight percent impairment of the right arm. The record does not contain any probative medical evidence to establish greater impairment under the sixth edition of the A.M.A., *Guides.* On appeal, appellant's attorney argued that the Office medical adviser erred in discounting right upper arm atrophy as noted by Dr. Sullivan on physical examination. The Board noted that Dr. Uejo explained that as the injury was to the wrist, the upper arm atrophy was excluded. There is no evidence of record to support that the right upper arm atrophy was caused or contributed by the accepted wrist injury. Appellant appears to argue that all impairing conditions should be combined, the Board has noted that the A.M.A., *Guides* provide for rating the most impairing condition and only in rare cases should multiple impairments be combined.[9] The medical evidence establishes eight percent right arm impairment due to the accepted right wrist injury.

CONCLUSION

The Board finds that appellant has no greater than eight percent right upper extremity impairment.

[9] *H.P.*, 62 ECAB ___ (Docket No. 10-962, issued November 10, 2010).

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board