United States Department of Labor
Employees' Compensation Appeals Board

T.B., Appellant	)	
and	)	**Docket No. 10-2066**
	)	**Issued: July 13, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Dayton, OH, Employer	)	

Appearances:
Appellant, pro se
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 August 10, 2010 appellant filed a timely appeal from a May 19, 2010 merit 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 and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than a 19 percent impairment of his right upper extremity, for which he received a schedule award.

FACTUAL HISTORY

OWCP accepted that on June 15, 1998 appellant, then a 41-year-old human resource specialist, sustained the conditions of right carpal tunnel syndrome, right trigger thumb and right wrist strain. It paid appropriate benefits, including a right carpal tunnel release on August 27,

[1] 5 U.S.C. §§ 8101-8193.

2001, right trigger thumb release on February 28, 2003, and right wrist sprain/scaphoid lunate ligament surgery on June 30, 2008. Appellant returned to his full-time duties following each surgery. By decision dated November 16, 2004, OWCP granted appellant a schedule award for five percent right upper extremity impairment. The award ran for 15.6 weeks for the period April 28 to August 15, 2004. By decision dated September 2, 2005, OWCP granted appellant an additional 5 percent permanent impairment to the right arm, or a total impairment of 10 percent. The award ran 15.6 weeks' compensation for the period July 27 to November 13, 2005. Under claim number xxxxxx900, appellant received nine percent permanent impairment to the right arm due to shoulder impairment. Appellant has received schedule awards totaling 19 percent permanent impairment to the right upper extremity.

On August 31, 2009 appellant requested an additional schedule award for his right arm. In a September 15, 2009 letter, OWCP requested that he submit an impairment report from his physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a September 22, 2009 report, Dr. James F. Nappi, a Board-certified plastic and hand surgeon, opined that appellant reached maximum medical improvement with regard to the accepted right scapholunate ligament disruption. He set forth findings on examination and opined that appellant had 12 percent impairment of the right arm based on loss of motion plus an additional 10 percent impairment for pain and loss of grip strength.

In a December 28, 2009 report, OWCP's medical adviser reviewed appellant's medical records and a statement of accepted facts. He was unable to provide an impairment rating under the sixth edition of the A.M.A., *Guides* as Dr. Nappi failed to cite to any tables or figures or provide any detail as to how he arrived at his evaluation. The medical adviser requested that OWCP obtain an addendum report from Dr. Nappi which provided the detailed breakdown of how he rated impairment under the sixth edition of the A.M.A., *Guides.*

In a January 6, 2010 letter, OWCP requested Dr. Nappi to provide additional information regarding appellant's impairment evaluation. A copy of the medical adviser's December 28, 2009 report was provided. In a February 2, 2010 report, Dr. Nappi noted that he used the fifth edition of the A.M.A., *Guides* and cited to the tables and figures he used to obtain his impairment rating.

In a March 9, 2010 report, the medical adviser found that the additional information from Dr. Nappi was insufficient to determine appellant's impairment rating under the sixth edition of the A.M.A., *Guides.* He recommended appellant be referred to another examiner.

In a March 22, 2010 letter, OWCP referred appellant, together with a statement of accepted facts, list of questions, and the medical record, to Dr. E. Gregory Fisher, a Board-certified orthopedic surgeon, for a second opinion examination. In an April 20, 2010 report, Dr. Fisher reviewed the history of injury, medical records and statement of accepted facts. He found that appellant reached maximum medical improvement with regard to the accepted conditions by the date of his examination. For the right trigger thumb with surgical release, Dr. Fisher found on clinical examination a full range of motion in flexion, extension, abduction and adduction with no sensory deficit, normal circulation and no residual snapping or triggering

effect. Using the sixth edition of the A.M.A., *Guides,* he found that under Table 15-2, page 392 appellant's allowed right trigger thumb was a class 0 as there were no residual findings. Dr. Fisher advised that there was zero percent upper extremity impairment for the right trigger thumb.

For the right wrist strain with ligament tear of the scaphoid lunate joint, Dr. Fisher found a residual decrease in range of motion for flexion and extension, decreased radial and ulnar deviation and decreased hand grip. Under Table 15-3, page 396, he found appellant was class 1 for wrist strain with a history of carpal instability due to findings on magnetic resonance imaging (MRI) scan with a default grade C, eight percent impairment. Under Table 15-7, page 406, Dr. Fisher assigned a grade 1 modifier for Functional History (GMFH) adjustment for ongoing intermittent aches and discomfort over the right wrist without medications and the ability to perform self-care with the right wrist. Under Table 15-8, page 408, he assigned a grade 1 modifier for Physical Examination (GMPE) adjustment for decreased range of right wrist motion as noted on examination. Under Table 15-9, page 410, Dr. Fisher assigned a grade 1 modifier for Clinical Studies (GMCS) adjustment based on diagnostic evidence of the scaphoid lunate gap. He utilized the net adjustment formula of (GMFH - CDX) + (GMPE - DCX) + (GMCS - CDX) or (1-1) + (1-1) + (1-1) and found appellant remained at grade C with an impairment of eight percent due to the right wrist strain.

For the right carpal tunnel syndrome/nerve entrapment, Dr. Fisher opined that appellant had one percent arm impairment. Under Table 15-23, page 449, he found appellant was grade modifier 1 for GMCS adjustment based on EMG and a grade modifier of 0 for GMPE adjustment. Under Table 15-7, page 406, Dr. Fisher opined that appellant was a grade modifier 0 for GMFH adjustment that was consistent with a *Quick*DASH score of 0 to 20. He utilized the net adjustment formula and found appellant had one percent upper extremity impairment for the right carpal tunnel syndrome. Dr. Fisher combined the zero percent rating for the right trigger thumb, eight percent for the right wrist sprain, and one percent for the right carpal tunnel syndrome totaled nine percent right arm impairment.

In a May 13, 2010 report, the medical adviser reviewed Dr. Fisher's examination findings under the sixth edition of the A.M.A., *Guides* and agreed that appellant had nine percent total right upper extremity impairment.

By decision dated May 19, 2010, OWCP denied appellant's claim for an increased schedule award. It found that the medical evidence did not establish that he had more than the 19 percent impairment previously awarded.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA[2] 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

[2] 5 U.S.C. § 8107.

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.[3] Schedule award decisions issued between February 1, 2001 and April 30, 2009 utilized the fifth edition of the A.M.A., *Guides*.[4] Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides*,[5] published in 2008, as the appropriate edition for all awards issued after that date.[6]

For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.[7] 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).[8] 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.[9] 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 an medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*.[10]

OWCP procedures state that any previous impairment to the member under consideration is included in calculating the percentage of loss, except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.[11]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained the conditions of right carpal tunnel syndrome, right trigger thumb and right wrist strain/scaphoid lunate ligament due to a work-related injury

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

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

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

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

[7] *See supra* note 6.

[8] 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.

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

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

[11] *Id.* at Chapter 2.808.7.a(2) (November 1998).

sustained June 15, 1998. As noted, appellant previously received schedule awards totaling 19 percent right upper extremity impairment.

Appellant filed a claim for an increased impairment and submitted medical reports from Dr. Nappi who rated 22 percent right arm impairment. Dr. Nappi, however, advised that his impairment rating was based on the fifth edition of the A.M.A., *Guides.* It is well established that, when the examining physician does not provide an estimate of impairment conforming to the proper edition of the A.M.A., *Guides,* OWCP may rely on the impairment rating provided by a medical adviser.[12] 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. The medical adviser found that Dr. Nappi's reports failed to provide adequate information to rate impairment under the sixth edition of the A.M.A, *Guides*. Therefore, appellant was referred to Dr. Fisher for a second opinion impairment evaluation.

Dr. Fisher determined that appellant had a total impairment of nine percent to the right upper extremity. This rating combined: zero percent impairment for the right trigger thumb; eight percent impairment for right wrist sprain with scaphoid lunate ligament tear and carpal instability; and one percent impairment for right carpal tunnel syndrome. For the right trigger thumb, Dr. Fisher determined that appellant was class 0 under Table 15-2, page 392, which was zero percent impairment. For the right wrist sprain with scaphoid lunate ligament tear and carpal instability, he determined under Table 15-3, page 396 that appellant was class 1. Dr. Fisher properly applied the grade modifiers of one for functional history; a modifier of one for physical examination; and a modifier of one for clinical studies. He applied the applicable formula to determine that appellant had a net adjustment of zero.[13] Dr. Fisher properly found that, as the default value was eight percent and, as there was zero net adjustment, appellant had eight percent right arm impairment. For right carpal tunnel syndrome, he properly utilized Table 15-23, page 449 to find one percent upper extremity impairment. Dr. Fisher found grade modifier one for clinical studies and grade modifier zero for physical findings and history. He totaled the grade modifiers, averaged them and rounded to the nearest integer, one, with a default of two percent. However, as the functional scale score was grade 0, Dr. Fisher properly selected the lowest upper extremity impairment for grade modifier one, which is one percent upper extremity impairment.[14] He properly utilized the combined values chart to find a total right arm impairment of nine percent. OWCP's medical adviser reviewed Dr. Fisher's findings under the A.M.A, *Guides* and agreed with his calculations.

The medical evidence of record does not establish greater impairment in accordance with the sixth edition of the A.M.A., *Guides.* Appellant has not established more than the 19 percent right upper extremity impairment previously awarded. He asserts on appeal that his physician's report supports additional impairment. As noted, the report of Dr. Nappi was found insufficient

[12] *See J.Q.*, 59 ECAB 366 (2008).

[13] GMFH - CDX (1-1=0). GMPE-CDX (1-1=0). GMCS-CDX (1-1=0). Adding zero plus zero plus zero yielded a net adjustment of zero.

[14] A.M.A., *Guides*, page 448-49.

to establish any greater impairment as he did not evaluate her in accordance with the sixth edition of the A.M.A, *Guides.*

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 19 percent right upper extremity impairment, which was previously awarded.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 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