United States Department of Labor
Employees' Compensation Appeals Board

H.L., Appellant	)	
and	)	**Docket No. 10-2073**
	)	**Issued: May 5, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Norwalk, CT, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 3, 2010 appellant filed a timely appeal from the July 14, 2010 merit decision of the Office of Workers' Compensation Programs. 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 this case.

ISSUE

The issue is whether appellant has greater than one percent impairment of the left upper extremity.

FACTUAL HISTORY

Appellant, then a 39-year-old letter carrier, has an accepted occupational disease claim for left radial styloid tenosynovitis (de Quervain's disease), which arose on or about

[1] 5 U.S.C. §§ 8101-8193.

June 1, 2006.[2] He underwent surgical release of the left first dorsal compartment on February 7, 2007.[3] Approximately one year following surgery, appellant filed a claim for a schedule award. He submitted a March 18, 2008 impairment rating from Dr. Edward M. Staub, a Board-certified orthopedic surgeon, who found five percent impairment of the left wrist.[4] However, other than noting some residual soreness in appellant's wrist, Dr. Staub did not clearly identify the basis for his impairment rating. After several unsuccessful attempts to obtain clarification, the Office referred appellant to Dr. Ira L. Spar, a Board-certified orthopedic surgeon. In an October 21, 2008 report, Dr. Spar indicated that "one cannot award any permanency on the basis of objective findings."[5] Upon reviewing Dr. Spar's report, the district medical adviser found there was no ratable impairment.

By decision dated October 8, 2009, the Office denied appellant's claim for a schedule award. However, the Branch of Hearings and Review subsequently set aside the October 8, 2009 decision, and remanded the case for further medical development. In a decision dated April 14, 2010, the hearing representative noted, *inter alia*, that Dr. Spar relied on the fifth edition of the A.M.A., *Guides* (2001), which was no longer in effect at the time the Office issued its October 8, 2009 decision.[6] Appellant had also submitted a recent impairment rating from Dr. Thomas P. Moran, a Board-certified orthopedic surgeon, who found three percent impairment of the left upper extremity under the sixth edition of the A.M.A., *Guides* (6th ed. 2008). Dr. Moran's January 15, 2010 report did not include a clear explanation of how he arrived at his three percent rating under the A.M.A., *Guides*.[7] Consequently, the hearing representative remanded the case for further medical development.

On remand, the Office referred appellant to Dr. Balazs B. Somogyi, a Board-certified orthopedic surgeon, who examined appellant on June 21, 2010. In a report dated June 23, 2010, Dr. Somogyi found one percent impairment of left upper extremity due to left wrist tendinitis. He applied the sixth edition of the A.M.A., *Guides* and noted that appellant reached MMI on April 6, 2007. Appellant's subjective complaints included persistent pain in the left wrist region and difficulty with range of motion of the thumb, including "locking of the thumb." On physical examination, the left wrist revealed full range of motion. There was no limitation of flexion or extension and no indication of radial or ulnar deviation. Appellant's left thumb revealed full

[2] Appellant also filed an occupational disease claim for bilateral carpal tunnel syndrome that allegedly arose on or about December 15, 2008. The Office has denied the claim and it is currently pending review by the Board (Docket No. 10-2011).

[3] Appellant resumed his regular duties on April 10, 2007.

[4] Dr. Staub indicated that appellant reached maximum medical improvement (MMI) on April 6, 2007.

[5] Dr. Staub referenced the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2001).

[6] As of May 1, 2009, schedule awards are determined in accordance with the A.M.A., *Guides* (6th ed. 2008). Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Example 1 (January 2010).

[7] When he examined appellant on January 15, 2010, Dr. Moran diagnosed advanced cubital tunnel syndrome and mild carpal tunnel syndrome. In a supplemental report dated April 21, 2010, he indicated that appellant had three percent left upper extremity impairment due to peripheral nerve impairment involving the ulnar nerve (above mid-forearm). Dr. Moran referenced Table 15-21, A.M.A., *Guides* 443 (6th ed. 2008).

extension with limitation of flexion. Dr. Somogyi indicated that it was difficult to determine if appellant provided optimal effort during the evaluation. Tinel's sign and Phalen's test revealed no evidence of abnormalities. Finkelstein's sign was negative. Dr. Somogyi also noted there was no instability of the wrist or left thumb. Neurological examination revealed normal motor, sensory and deep tendon reflexes. Lastly, Dr. Somogyi noted that appellant's left wrist was negative, and a December 23, 2009 electromyography and nerve conduction study revealed moderate to severe left cubital tunnel syndrome and mild bilateral carpal tunnel syndrome.

On July 5, 2010 the district medical adviser, Dr. David I. Krohn, reviewed Dr. Somogyi's report and concurred with the finding of one percent impairment of the left upper extremity.[8]

By decision dated July 14, 2010, the Office granted a schedule award for one percent impairment of the left upper extremity. The award covered a period of 3.12 weeks from April 10 to May 1, 2007.

LEGAL PRECEDENT

Section 8107 of the Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[9] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[10] Effective May 1, 2009, schedule awards are determined in accordance with the A.M.A., *Guides* (6th ed. 2008).[11]

ANALYSIS

Under the sixth edition of the A.M.A., *Guides*, impairments of the upper extremities are covered by Chapter 15. Section 15-2, entitled *Diagnosis-Based Impairment*, indicates that "diagnosis-based impairment is the primary method of evaluation of the upper limb."[12] The initial step in the evaluation process is to identify the impairment class by using the corresponding diagnosis-based regional grid. Dr. Somogyi utilized the "Wrist Regional Grid," Table 15-3, A.M.A., *Guides* 395, and identified a class 1 impairment based on "wrist sprain/strain," which includes de Quervain's disease. Once the impairment class has been determined based on the diagnosis, the grade is initially assigned the default value, "C." Under

[8] Dr. Krohn is a Board-certified internist.

[9] For a total loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

[10] 20 C.F.R. § 10.404.

[11] *Supra* note 6.

[12] Section 15.2, A.M.A., *Guides* 387.

Table 15-3, the default grade, C, for a class 1 wrist sprain/strain is one percent upper extremity impairment.[13] Dr. Somogyi appropriately identified one percent impairment as the default value.

After determining the impairment class and default grade, the next step in the process is to determine if there are any applicable grade adjustments for so-called "nonkey" factors or modifiers. These include adjustments for functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS). The grade modifiers are used in the Net Adjustment Formula to calculate a net adjustment.[14] The final impairment grade is determined by adjusting the grade up or down from the default value C by the calculated net adjustment.

Dr. Somogyi identified two modifiers: one based on GMFH and the other based on GMPE. He assigned a grade modifier of one for both functional history and physical examination.[15] Applying the net adjustment formula resulted in no adjustment from the default grade of C or one percent impairment of the upper extremity.[16]

The Board finds that Dr. Somogyi's June 23, 2010 impairment rating conforms to the A.M.A., *Guides* (6th ed. 2008), and thus, represents the weight of the medical evidence regarding the extent of appellant's left upper extremity impairment. Appellant has not submitted any credible medical evidence indicating he has greater than one percent impairment of the left upper extremity. Although Dr. Moran provided a three percent rating for peripheral nerve impairment, the current claim has not been accepted for an entrapment neuropathy such as cubital tunnel syndrome or carpal tunnel syndrome. Moreover, he did not indicate that appellant's impairment of the ulnar nerve was causally related to his preexisting radial styloid tenosynovitis (de Quervain's disease).

CONCLUSION

Appellant has not established that he has greater than one percent impairment of the left upper extremity.

[13] The grades range from A to E, with A representing zero percent upper extremity impairment, B and C representing one percent and D and E representing two percent upper extremity impairment. Table 15-3, A.M.A., *Guides* 395.

[14] Net Adjustment = (GMFH – CDX) + (GMPE – CDX) + (GMCS – CDX). Section 15.3d, A.M.A., *Guides* 411.

[15] Table 15-7, A.M.A., *Guides* 406; Table 15-8, A.M.A., *Guides* 408.

[16] Table 15-3, A.M.A., *Guides* 395.

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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