United States Department of Labor
Employees' Compensation Appeals Board

G.L., Appellant	)	
and	)	**Docket No. 11-30**
	)	**Issued: October 13, 2011**
U.S. POSTAL SERVICE, FRANKFORD STATION, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 4, 2010 appellant, through her attorney, filed a timely appeal of the June 15, 2010 schedule award decision of the Office of Workers' Compensation Programs (OWCP). 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 more than three percent impairment of each upper extremity, for which she received schedule awards.

On appeal, appellant's attorney contends that there is a conflict in medical opinion between appellant's attending physician and an OWCP medical adviser regarding the percentage of impairment to appellant's right and left upper extremity. He further contends that OWCP improperly relied on the medical opinion of OWCP's medical adviser to resolve a conflict of

[1] 5 U.S.C. § 8101 *et seq.*

medical opinion. Lastly, counsel contends that the medical evidence establishes that appellant sustained a bilateral thumb condition causally related to her accepted employment injury.

FACTUAL HISTORY

The case was before the Board on a prior appeal with respect to the termination of appellant's compensation benefits.[2] In a September 5, 2008 decision, the Board affirmed an August 17, 2007 OWCP decision which terminated appellant's compensation benefits effective March 19, 2006.[3] The Board accorded weight to the medical opinion of Dr. Kevin F. Hanley, an OWCP referral physician, who found that appellant no longer had any residuals of her accepted condition and could return to her light-duty position. The Board accorded special weight to the medical opinion of Dr. Joseph A. Jelen, Jr., an impartial medical specialist, in resolving a conflict and establishing that appellant had no work-related residuals or disability after March 19, 2006. The facts and history relevant to the present appeal are hereafter set forth.

On April 9, 2009 appellant filed a claim for a schedule award. In a January 27, 2009 medical report, Dr. Arthur Becan, an orthopedic surgeon, obtained a history of the employment injury and appellant's medical treatment, family and social background. He reviewed the medical record which included a January 3, 2007 electromyogram/nerve conduction study (EMG/NCS) study which revealed mild bilateral wrist median nerve neuropathies. Dr. Becan noted appellant's complaints of daily constant pain and stiffness in her right and left wrist and hand. Appellant awakened at night with a pins and needles sensation in both hands. Changes in the weather exacerbated her pain. Appellant had difficulty with sleeping, grasping objects bilaterally, pulling, pushing and prolonged driving. She experienced clumsiness with both hands. Appellant could no longer ride her bicycle or make ceramic items. She rated her left hand pain as 5 out of 10 and her right hand pain as 6 out of 10. Dr. Becan stated that appellant had a *Quick*DASH score of 73. On physical examination of the right wrist, he reported a well-healed surgical incision measuring two centimeters in length along the palmar aspect. There was palmar wrist tenderness. No dorsal or extensor carpi ulnaris tenderness was noted. Tinel's, Phalen's ulnar abutment, carpal compression, triangular fibrocartilage complex load and Finkelstein tests were negative. Range of motion measurements included 0 to 70/75 degrees of dorsiflexion, 0 to 70/75 degrees of palmar flexion, 0 to 20/20 degrees of radial deviation and 0 to 30/35 degrees of ulnar deviation. On examination of the right hand, Dr. Becan found tenderness at the palmar aspect of the metacarpophalangeal joint of the right thumb. There was locking of the right thumb on active flexion and extension. On examination of the left wrist, hand and thumb, Dr. Becan reported the same findings related to tenderness, size of the surgical incision, test results, range of motion measurements and locking as the right wrist, hand and thumb. Grip strength testing with the Jamar Hand Dynamometer at Level III revealed four kilograms of force strength on the right versus three kilograms of force strength on the left. Pinch key testing

[2] Docket No. 08-742 (issued September 5, 2008).

[3] On October 10, 2003 appellant, then a 49-year-old letter carrier, filed an occupational disease claim alleging that the pins and needles sensation and numbness in her right and left hand were caused by her repetitive work duties. On July 26, 2004 OWCP accepted her claim for bilateral carpal tunnel syndrome and authorized right carpal tunnel release which was performed on December 8, 2003 and left carpal tunnel release which was performed on February 9, 2004.

revealed two kilograms in both the right and left hand. Lower arm circumference measurements included 21 centimeters on each hand. Semmes Weinstein monofilament testing revealed decreased sensation in the median nerve root distribution of the right and left hands with a limit of six milliseconds bilaterally. Dr. Beacon diagnosed cumulative and repetitive trauma disorder of the bilateral wrists and bilateral carpal tunnel syndrome and trigger thumbs. He stated that appellant was status post bilateral carpal tunnel release. Dr. Becan advised that the diagnosed conditions were due to the accepted employment injury.

Dr. Becan found that under Table 15-23 (Entrapment/Compression Neuropathy Impairment) on page 449 of the sixth edition of the A.M.A., *Guides*, appellant's condition for each arm fell under grade modifier one for EMG test findings that confirmed carpal tunnel syndrome, grade modifier three for a severe functional history and grade modifier two for physical examination findings due to decreased sensation. The grade modifier total was six and averaged two which represented a default value of five percent impairment in each arm. Because appellant had a *Quick*DASH score of 73 in the right and left arms, Dr. Becan stated that it was appropriate to move one place to the right from the five percent default value which represented six percent impairment in each arm. He determined that under Table 15-2 on page 392 of the sixth edition of the A.M.A., *Guides*, which was the digit regional grid, appellant had a class 1 impairment that represented six percent impairment secondary to stenosing tenosynovitis of the right and left thumb. Under Table 15-7 on page 406, Dr. Becan selected a grade modifier of three for her functional history based on the *Quick*DASH score of 73. He selected a physical examination grade modifier of two based on Table 15-8 on page 408. A Clinical Studies (GMCS) grade modifier was not relevant. The class diagnosis (CDX) applied was one and the grade modifier applied was three for Functional History (GMFH) and two for Physical Examination (GMPE). The net adjustment formula was (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX). Since the GMFH was three and the GMPE was two, the formula resulted in 3-1 + 2-1 + 0-1 = 2 which moving two to the right of the default six percent class 1 impairment represented eight percent impairment in each thumb. Dr. Becan added this value and the 6 percent impairment for carpal tunnel syndrome to calculate 14 percent impairment in each arm. He concluded that appellant reached maximum medical improvement on January 27, 2009.

On December 15, 2009 Dr. Morley Slutsky, an OWCP medical adviser, reviewed the medical record, including Dr. Becan's January 27, 2009 findings. He determined that appellant had three percent impairment to each arm based on the sixth edition of the A.M.A., *Guides* as a result of her accepted bilateral carpal tunnel syndrome. Appellant reached maximum medical improvement on January 27, 2009. Dr. Slutsky stated that Dr. Becan failed to properly utilize the A.M.A., *Guides* in rating appellant's permanent impairment due to her accepted condition. The history grade modifier for each upper extremity was one and not three based on appellant's functional symptoms (A.M.A., *Guides* 449, Table 15-23). Citing page 433 of the A.M.A., *Guides* which addressed the selection of a grade modifier for history, Dr. Slutsky stated that there was no mention that she was unable to perform at least one of the activities of daily living (ADL). He related that Dr. Becan may have used the *Quick*DASH questionnaire results for the history grade modifier for each upper extremity which was incorrect. Dr. Slutsky noted that the *Quick*DASH score is used to adjust the final rating for the grade modifier under Table 15-23. It is not used in the assignment of a history grade modifier for carpal tunnel syndrome according to page 433 of the sixth edition of the A.M.A., *Guides*. Dr. Slutsky stated that use of the

*Quick*DASH score would be duplicative as it was used by Dr. Becan to adjust the final impairment for appellant.

Dr. Slutsky determined that the average of the grade modifier one for test findings, grade modifier one for functional history and grade modifier two for physical findings, was 1.33 rounded to the nearest integer equaled one. He stated that the default rating was two percent impairment for each upper extremity. The functional scale was severe. Dr. Slutsky stated that it was appropriate to adjust the two percent impairment rating to the right by one value for a final three percent impairment for each upper extremity. He noted that OWCP had not accepted appellant's claim for stenosing tenosynovitis and stated that this condition was not included in his upper extremity impairment ratings.

In a December 17, 2009 decision, OWCP granted appellant a schedule award for three percent impairment of each upper extremity for 18.72 weeks for the period January 27 through June 7, 2009.

By letter dated December 23, 2009, appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

At the March 30, 2010 hearing, appellant's attorney argued that appellant's bilateral trigger thumb condition which was diagnosed by Dr. Hadley and Dr. Jelen should be accepted by OWCP.[4] Counsel contended that she sustained the diagnosed condition as a consequence of her accepted bilateral carpal tunnel syndrome. He further contended that appellant's impairment rating should be determined under the fifth edition rather than the sixth edition of the A.M.A., *Guides* as OWCP delayed the development of her schedule award claim. Counsel asserted that a conflict existed in the medical opinion evidence between Dr. Becan and Dr. Slutsky which required resolution by an impartial medical specialist.

In a June 15, 2010 decision, an OWCP hearing representative affirmed the December 17, 2009 schedule award decision.

LEGAL PRECEDENT

The schedule award provision of FECA[5] and its implementing regulations[6] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[7] However, neither FECA nor

[4] In a December 16, 2005 report, Dr. Hanley listed his findings on physical examination and advised that appellant had bilateral carpal tunnel syndrome and nonwork-related bilateral trigger finger. In a July 31, 2007 report, Dr. Jelen also listed his findings on physical examination and diagnosed resolved carpal tunnel syndrome and minimal flexor tendinitis in both hands. He stated that there was no clicking or triggering of the flexor tendons of either hand and the amount of discomfort in the hands and strength identified on physical examination would not limit appellant's performance of activities.

[5] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[6] 20 C.F.R. § 10.404.

[7] 5 U.S.C. § 8107(c)(19).

the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, OWCP adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[8] For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6th ed. 2009) is used for evaluating permanent impairment.[9]

Under the sixth edition of the A.M.A., *Guides*, impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[10] In Table 15-23, grade modifiers are described for test findings, history and physical findings. A survey completed by a given claimant, known by the name *Quick*DASH, is used to further modify the grade and to choose the appropriate numerical impairment rating.[11]

In some instances, OWCP's medical adviser's opinion can constitute the weight of the medical evidence. This occurs in schedule award cases where an opinion on the percentage of permanent impairment and a description of physical findings is on file from an examining physician, but the percentage estimate by this physician is not based on the A.M.A., *Guides*. In this instance, a detailed opinion by OWCP's medical adviser which gives a percentage based on reported findings and the A.M.A., *Guides* may constitute the weight of the medical evidence.[12]

ANALYSIS

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome and authorized her right and left carpal tunnel release surgeries performed on December 8, 2003 and February 9, 2004, respectively. Appellant later claimed entitlement to a schedule award due to her accepted condition. In a December 17, 2009 decision, OWCP granted her a schedule award for three percent permanent impairment of each arm. The Board finds that appellant has not met her burden of proof to establish that she has impairment greater than the three percent already awarded for each upper extremity.

In a January 27, 2009 report, Dr. Becan, found, based on the sixth edition of the A.M.A., *Guides*, that appellant had 14 percent impairment of each upper extremity secondary to the accepted bilateral carpal tunnel syndrome and bilateral thumb stenosing tenosynovitis. Regarding the right arm, Dr. Becan applied the standards of Table 15-23 (Entrapment/ Compression Neuropathy Impairment) on page 449 of the sixth edition of the A.M.A., *Guides*. He determined that for test findings appellant had a grade modifier one based on electrodiagnostic studies that confirmed carpal tunnel syndrome; that for functional history she

[8] *Supra* note 6.

[9] *Id.*

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

[11] *Id.* at 448.

[12] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.7(h) (April 1993).

had a grade modifier three for severe symptoms; and that for physical findings she had a grade modifier two for decreased sensation. The grade modifier values were added resulting in a total of six. Dividing this value of six by the three modifier categories provided an average of two which represented a default impairment rating of five percent. Dr. Becan stated that appellant's functional score for the right arm (dictated by the *Quick*DASH score of 73) required a move one place to the right of the default impairment rating which resulted in six percent impairment. He calculated an impairment rating for appellant's stenosing tenosynovitis of the right thumb. Dr. Becan determined that she had a class 1 impairment that represented six percent impairment (A.M.A., *Guides* 392, Table 15-2). He determined that for test findings appellant had a grade modifier three for functional history based on the *Quick*Dash score of 73 (A.M.A., *Guides* 406, Table 15-7) and for physical findings she had a grade modifier two (A.M.A., *Guides* 408, Table 15-8). The grade modifier values were added resulting in a total of two. Dr. Becan determined that moving two spaces to the right of the six percent class 1 impairment rating resulted in eight percent impairment due to stenosing tenosynovitis. He added this value to the 6 percent impairment rating for carpal tunnel syndrome to calculate 14 percent impairment of the right upper extremity. Dr. Becan provided the same calculations for the left arm which yielded 14 percent impairment rating for the left arm.

OWCP's procedures state that an OWCP medical adviser must review the report to verify correct application of the A.M.A., *Guides* and confirm the percentage of permanent impairment as well as specify his reasons for assigning a certain percentage of loss of use to the measurements or factors provided by an examining physician.[13] In this case, the Board finds that Dr. Slutsky properly determined that appellant had no more than three percent impairment of each upper extremity. Dr. Slutsky also properly noted that Dr. Becan incorrectly determined the functional history grade modifier for each upper extremity due to the accepted employment injury. Regarding the right upper extremity, he found that appellant had a grade modifier of one rather than three for functional history as there was no evidence that she could not perform at least one of the ADLs (A.M.A., *Guides* 433).[14] Dr. Slutsky correctly noted that it appeared that Dr. Becan included the *Quick*DASH score in his grade modifier assessment for functional history and again when he adjusted appellant's final impairment. He explained that a *Quick*DASH score was not used in the assignment of a history grade modifier, but was used to adjust the final rating (A.M.A., *Guides* 433). Dr. Slutsky agreed with Dr. Becan's assessments of the grade modifier for test and physical findings. He calculated a net adjustment of 1.33 which he rounded to one

[13] *R.S.*, Docket No. 09-1331 (issued April 5, 2010); Federal (FECA) Procedure Manual, *supra* note 12 at Chapter 2.810.7(c) (April 1993).

[14] Page 433 of the A.M.A., *Guides* provides: Diagnosis, History, Physical Findings and Functional Scale -- "Significant, intermittent symptoms means that pain or numbness is not constant, but the individual is unable to perform at least one of the ADLs. Someone else consistently does the activity for the individual, and the individual's failure to function in this role makes sense to the examiner (the entrapment is severe enough to make the failure to function in the specific ADL "believable"). This criterion may be met by inability to perform any single ADL; however, the examiner should verify the stated inability by direct observation of the activity or a similar activity. The activity the individual is unable to do must be stated in the report, along with the examiner's validation of this history.

Constant symptoms means that pain or numbness is constantly present and at least conduction block if not axon loss must be present on electrodiagnostic testing to substantiate the symptom severity.

resulting in a default impairment rating of two percent. As the functional scale was severe, Dr. Slutsky adjusted this value by one to the right for a final three percent impairment rating for the right upper extremity. He provided the same calculations for the left arm which resulted in three percent impairment. Dr. Slutsky properly concluded that appellant was not entitled to an additional schedule award for bilateral stenosing tenosynovitis as this condition had not been accepted by OWCP.

Further, there is no medical evidence establishing that the diagnosed condition was employment related; the burden of proof is on appellant to prove such. Dr. Hanley found that appellant's bilateral trigger finger condition was not work related based on his examination findings. Additionally, Dr. Jelen did not find that appellant had bilateral trigger finger. He diagnosed resolved carpal tunnel syndrome and minimal flexor tendinitis in both hands. Dr. Jelen advised that there was no clicking or triggering of the flexor tendons of either hand and the amount of discomfort in the hands and strength identified on physical examination would not limit appellant's performance of activities. Appellant had the burden of proof to establish that her bilateral trigger finger condition resulted from the accepted employment-related injury.[15] As she failed to submit any rationalized medical evidence establishing her claimed condition, the Board finds that she did not meet her burden of proof.

As Dr. Slutsky utilized Dr. Becan's objective clinical findings to compare them with impairment criteria listed in the sixth edition of the A.M.A., *Guides*, the Board finds that appellant has no more than three percent impairment of each upper extremity, for which he received schedule awards.

On appeal, appellant's attorney alleged that there was an unresolved conflict of medical opinion evidence. The Board finds that Dr. Becan's report does not fully comport with the protocols of the A.M.A., *Guides*. Dr. Slutsky's opinion is entitled to the weight of the medical evidence.[16]

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 failed to establish that she has more than three percent impairment of each upper extremity for which she received schedule awards.

[15] *See Charlene R. Herrera*, 44 ECAB 361 (1993).

[16] *See supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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