United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 10-2165**
	)	**Issued: September 16, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Kansas City, MO, Employer	)	

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 24, 2010 appellant filed a timely appeal of a June 4, 2010 Office of Workers' Compensation Programs' (OWCP) decision granting 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 to consider the merits of the schedule award case.

ISSUE

The issue is whether appellant has more than 15 percent impairment of her right upper extremity and 8 percent impairment of her left upper extremity for which she has received schedule awards.

FACTUAL HISTORY

This case has previously been before the Board on appeal. On June 2, 1996 appellant, then a 49-year-old human resources specialist, filed an occupational disease claim alleging that

[1] 5 U.S.C. § 8101 *et seq.*

she developed carpal tunnel syndrome due to factors of her federal employment. OWCP accepted her claim for right carpal tunnel syndrome on July 30, 1996. Appellant underwent a right carpal tunnel release on May 22, 1997 and left carpal tunnel release on July 7, 1997. OWCP granted her a schedule award for 15 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity on November 25, 1998. It terminated appellant's wage-loss compensation on January 14, 1999. The Branch of Hearings and Review affirmed this decision on June 24, 1999. Appellant filed a notice of recurrence of disability on May 13, 1999. OWCP authorized medical treatment for bilateral carpal tunnel syndrome on May 10, 2000. Appellant requested an increased schedule award. In a decision and order dated September 18, 2008,[2] the Board found that the case was not in posture for decision as appellant's physician had not provided her full impairment rating in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[3] and as OWCP's medical adviser had failed to consider or to apply the A.M.A., *Guides* to the rating for sensory deficit provided by appellant's physician. On remand the Board directed OWCP to refer appellant to an appropriate physician to determine whether she had any additional entitlement to a schedule award.

OWCP referred appellant to Dr. William O. Hopkins, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Hopkins examined appellant on November 11, 2008 and noted her 1997 carpal tunnel releases. He noted that her repeat electromyogram (EMG) dated December 20, 2005 supported carpal tunnel syndrome on the right. Dr. Hopkins provided appellant's wrist range of motion and performed sensory testing. He noted that she had moderate hypoesthesia in the left thumb and mild hypoesthesia in her index, middle, ring and little finger on her left hand. Dr. Hopkins noted marked thenar atrophy on the right and moderate thenar atrophy on the left. He found thumb abduction was 4/5 on the right and 3/5 on the left as well as normal finger flexion strength on manual muscle testing and also provided grip and pinch strength measurements. Dr. Hopkins noted that appellant's grip strength testing demonstrated inconsistency. He stated that in accordance with Table 16-16 of the A.M.A., *Guides* appellant had a bilateral motor deficit of 10 percent bilaterally. Dr. Hopkins found that her degenerative changes in her right wrist in the radial carpal joint and radial carpal degenerative arthritis in the left wrist were due to a triangular ligament tear. He found appellant had one percent impairment due to loss of left wrist flexion of 55 degrees and one percent impairment due to loss of left wrist radial deviation of 19 degrees and no loss of range of motion on the right. Dr. Hopkins found no sensory deficit in either hand. He found that any loss of grip and pinch strength was not ratable. Dr. Hopkins found that appellant's motor deficit due to her carpal tunnel syndrome entitled her to 10 percent impairment. He concluded that she had 10 percent impairment of her right upper extremity and 10 percent impairment of the left upper extremity.

The district medical adviser reviewed this report on November 28, 2008 and found that Dr. Hopkins failed to correctly apply the A.M.A., *Guides*. He found that he did not apply the appropriate table in determining appellant's loss of motor strength. The district medical adviser further noted that Dr. Hopkins stated that appellant's grip and pinch strength testing was

[2] Docket No. 08-1044 (issued September 18, 2008).

[3] A.M.A., *Guides* (5th ed. 2001).

inconsistent. He concluded that there was no established motor deficit in the record and that Dr. Hopkins did not provide any physical findings supportive of sensory deficit. The district medical adviser noted that Dr. Hopkins found loss of range of motion of one percent of the left upper extremity.

By decision dated December 24, 2008, OWCP denied appellant's claim for a schedule award. Appellant appealed this decision to the Board. By decision dated February 3, 2010,[4] the Board found that OWCP had failed to pursue the medical evidence after the second opinion physician did not properly apply the A.M.A., *Guides* and further that the district medical adviser did not attempt to ascertain the appropriate calculations based on this report. The Board remanded the case for OWCP to provide Dr. Hopkins with the appropriate citations to the A.M.A., *Guides* and ask him to apply his findings to these provisions. The facts and circumstances of the case as set out in the Board's prior decisions are adopted herein by reference.

On remand, OWCP referred appellant for a second examination with Dr. Hopkins on April 12, 2010. In a report dated April 27, 2010, Dr. Hopkins described her continued pain in her upper extremities bilaterally. He examined appellant's right upper extremity and found that she was unable to grasp, she experienced a burning sensation in her thumb and index finger as well as the base of her right thumb with loss of pinch strength. In regards to appellant's left upper extremity, Dr. Hopkins reported weakness and difficulty holding objects due to loss of sensation in her thumb and index finger. Appellant described increasing pain and burning sensations in her thumbs, palms and first fingers. Dr. Hopkins noted that an EMG on February 3, 2003 demonstrated right carpal tunnel syndrome while the left upper extremity was normal. He found no atrophy of the arm or forearm, but significant and severe atrophy of the thenar musculature of the right thumb and the dorsal interosseous muscles of both hands. Dr. Hopkins found mild loss of range of motion of the wrists and limited flexion in the thumb. He also reported weakness of thumb abduction greater on the right than left. Dr. Hopkins found positive Phalen's test and positive Tinel's sign at both wrists as well as numbness and tingling to the thumb and index fingers. He diagnosed bilateral carpal tunnel syndrome. Dr. Hopkins applied the sixth edition of the A.M.A., *Guides*, noting that appellant had an axon loss or grade modifier 3.[5] Appellant had a history of constant symptoms, also grade modifier 3.[6] Regarding her physical findings, Dr. Hopkins noted atrophy and weakness as well as sensory loss for an average upper extremity impairment of nine. He found a *Quick*DASH score of 41 regarding activities of daily living a moderate or two, one grade lower than the grade assigned the condition of nine, resulting in an upper extremity impairment rating of eight. Dr. Hopkins determined that appellant had 16 percent impairment of both her right and left upper extremities.

Dr. William Zimmerman, an OWCP medical adviser, reviewed this report on May 31, 2010. He found that appellant had reached maximum medical improvement on April 27, 2010, the date of Dr. Hopkins' report. Dr. Zimmerman found that Dr. Hopkins'

[4] Docket No. 09-1164 (issued February 3, 2010).

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

[6] *Id.*

impairment rating of eight percent of each of appellant's upper extremities was appropriate under the sixth edition of the A.M.A., *Guides*.[7] He noted that appellant had already received schedule awards for 15 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity. Dr. Zimmerman concluded that she was not entitled to an additional schedule award for her right upper extremity, but was entitled to an additional four percent impairment for her left upper extremity.

By decision dated June 4, 2010, OWCP granted appellant a schedule award for an additional four percent impairment of the left upper extremity. It noted that she had no additional right upper extremity impairment.

LEGAL PRECEDENT

The schedule award provision of FECA[8] and its implementing regulations[9] set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss or loss of use of scheduled members or functions 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 matter which rests in the discretion of OWCP. 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[10]

The A.M.A., *Guides* provide a specific rating process for entrapment neuropathies such as carpal tunnel.[11] This rating process requires that the diagnosis of a focal neuropathy syndrome be documented by sensory or motor nerve conduction studies or EMG.[12] The A.M.A., *Guides* do not allow additional impairment values for decreased grip strength, loss of motion or pain.[13] Table 15-23 provides a compilation of the grade modifiers for test findings, history, physical findings which are averaged and rounded to the nearest whole number. This table also provides the range of impairment values as well as the function scale modifier which determines the impairment value within the impairment scale.[14]

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[7] *Id.*

[8] 5 U.S.C. §§ 8101-8193, 8107.

[9] 20 C.F.R. § 10.404.

[10] For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[11] A.M.A., *Guides* 432-50.

[12] *Id*. at 445.

[13] *Id.* at 433.

[14] *Id*. at 448, 449, Table 15-23.

ANALYSIS

Appellant received a diagnosis of bilateral carpal tunnel syndrome which was accepted by OWCP and for which she underwent bilateral surgical releases. She has previously received schedule awards of 15 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity.

Dr. Hopkins initially examined appellant on November 11, 2008 relating the medical history including her 1997 carpal tunnel releases and December 20, 2005 EMG which established continued carpal tunnel syndrome on the right. He provided findings on examination including her wrist range of motion and performed sensory testing noting that she had moderate hypoesthesia in the left thumb and mild hypoesthesia in her index, middle, ring and little finger on her left hand. Dr. Hopkins noted marked thenar atrophy on the right and moderate thenar atrophy on the left. He also found reduced thumb abduction bilaterally, 4/5 on the right and 3/5 on the left and also provide grip and pinch strength measurements. Dr. Hopkins found a triangular ligament tear. On remand from the Board, he examined appellant's right upper extremity and found that she was unable to grasp, experienced a burning sensation in her thumb and index finger as well as the base of her right thumb with loss of pinch strength. Dr. Hopkins reported weakness and difficulty holding objects due to loss of sensation in her thumb and index finger in the left upper extremity. He found no atrophy of the arm or forearm, but significant and severe atrophy of the thenar musculature of the right thumb and the dorsal interosseous muscles of both hands. Dr. Hopkins found positive Phalen's test and positive Tinel's sign at both wrists as well as numbness and tingling to the thumb and index fingers and diagnosed bilateral carpal tunnel syndrome.

Dr. Hopkins applied the appropriate formula of the sixth edition of the A.M.A., *Guides*, noting that appellant had an axon loss or grade modifier 3 due to test findings.[15] Appellant had a history of constant symptoms, also grade modifier 3.[16] Regarding her physical findings, Dr. Hopkins noted atrophy and weakness as well as sensory loss for a grade modifier 3. Based on the A.M.A., *Guides*, appellant's final rating category is the average of these, three.[17] The upper extremity impairment default impairment value is eight due to average grade modifiers of 3.[18] The A.M.A., *Guides* provide that the default impairment value is modified up or down based on the functional scale grade modifier. Dr. Hopkins found a *Quick*DASH score of 41 regarding activities of daily living a moderate or a grade 2 functional scale modifier. Appellant's functional scale modifier is 1 grade lower and the appropriate impairment rating is seven.[19] Dr. Hopkins found that appellant had 8 percent impairment of each upper extremity or 16 percent impairment for the right and left upper extremities. Dr. Zimmerman, an OWCP medical adviser,

[15] A.M.A., *Guides* 449, Table 15-23. The Board notes that these findings relate only to appellant's right upper extremity, the EMG did not demonstrate positive findings on the left upper extremity.

[16] *Id.*

[17] A.M.A., *Guides* 448.

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

[19] A.M.A., *Guides* 449.

reviewed this report on May 31, 2010 and concurred with Dr. Hopkins' findings and conclusions without providing a detailed analysis. He concluded that appellant was entitled to no more than the 15 percent impairment of the right upper extremity and that she was entitled to an additionally 4 percent impairment for her left upper extremity. The Board finds that the weight of the medical evidence in the record establishes that appellant has no more than eight percent impairment of her left upper extremity and 15 percent impairment of her right upper extremity, for which she has received schedule awards.

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 no more than 8 percent impairment of her left upper extremity and 15 percent impairment of her right upper extremity, for which she has received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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