United States Department of Labor
Employees' Compensation Appeals Board

L.S., Appellant	)	
and	)	**Docket No. 11-248**
	)	**Issued: September 6, 2011**
DEPARTMENT OF THE ARMY, HUMAN RESOURCES COMMAND, St. Louis, 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
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 8, 2010 appellant filed a timely appeal from a September 24, 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 the schedule award decision.

ISSUE

The issue is whether appellant has established that she has more than a six percent impairment of the right upper extremity and a five percent impairment of the left upper extremity for which she received a schedule award.

On appeal, appellant asserts that OWCP's medical adviser erred in calculating the degree of impairment, and that the opinion of her physician should be given greater weight.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On April 22, 2008 appellant, then a 50-year-old information technology specialist, filed an occupational disease claim alleging that she sustained employment-related bilateral carpal tunnel syndrome. A March 7, 2008 electromyographic (EMG) study demonstrated mild carpal tunnel syndrome bilaterally, worse on the left. OWCP accepted the claimed condition on July 21, 2008. Appellant underwent left surgical release on April 21, 2009, and release on the right on June 3, 2009.

On May 19, 2010 appellant filed a schedule award claim and submitted a May 11, 2010 report in which Dr. John W. Ellis, a Board-certified family physician, reported the history of injury, noted his review of medical records, and provided physical examination findings. Dr. Ellis diagnosed bilateral carpal tunnel syndrome with median nerve impairment and advised that she reached maximum medical improvement on July 20, 2009. He attached a number of worksheets in which he rated appellant's impairment. Dr. Ellis indicated that she had a *Quick*DASH score of 66 for each upper extremity, and that in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[2] she had a nine percent impairment of each upper extremity.

In a September 5, 2010 report, Dr. Daniel D. Zimmerman, OWCP's medical adviser who is Board-certified in internal medicine, noted his review of Dr. Ellis' report, who advised that maximum medical improvement was reached on May 11, 2010, the date of the report. OWCP's medical adviser stated that Dr. Ellis did not correctly determine the impairment rating, and advised that, in accordance with Table 15-23 of the sixth edition of the A.M.A., *Guides*, appellant had a six percent impairment of the right upper extremity. He further noted that appellant had previously received a schedule award for a 14 percent impairment of the left shoulder which must be combined with the 6 percent to which she was entitled for left wrist impairment, and this yielded a 19 percent left upper extremity impairment.[3] OWCP's medical adviser then subtracted the 14 percent previously received, finding that appellant was entitled to an additional 5 percent impairment of the left upper extremity.

By decision dated September 24, 2010, appellant was granted a schedule award for a six percent impairment of the right upper extremity and five percent impairment on the left. The award was for 34.32 weeks, to run from May 11, 2010 to January 6, 2011.

LEGAL PRECEDENT

The schedule award provision of FECA,[4] and its implementing federal regulations,[5] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However,

[2] A.M.A., *Guides* (6th ed. 2008).

[3] On June 7, 2007 appellant was granted a schedule award for a 14 percent impairment of the left arm (shoulder).

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[6] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7] For decisions issued after May 1, 2009, the sixth edition will be used.[8]

Section 15.4 of the sixth edition of the A.M.A., *Guides* describes the methods used for evaluation of upper extremity nerve impairments.[9] 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 levels (ranging from 0 to 4) are described for the categories of test findings, history and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down by one percent based on functional scale, an assessment of impact on daily living activities.[11]

Section 8123(a) of FECA provides that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[12] OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.[13]

ANALYSIS

The Board finds that this case is not in posture for decision as a conflict in medical evidence has been created between the opinions of Dr. Ellis, appellant's physician, and Dr. Zimmerman, OWCP's medical adviser, regarding the degree of impairment of appellant's upper extremities. The claim was accepted for bilateral carpal tunnel syndrome and, as noted above, Table 15-23 of the sixth edition of the A.M.A., *Guides* is to be used in rating entrapment/compression neuropathy impairment.[14] Appellant provided a comprehensive report

[6] 20 C.F.R. § 10.404(a).

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

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

[9] A.M.A., *Guides*, *supra* note 2 at 419-450.

[10] *Id*. at 449.

[11] *Id*. at 448-50.

[12] 5 U.S.C. § 8123(a); *see Geraldine Foster*, 54 ECAB 435 (2003).

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

[14] *Supra* note 10.

from Dr. Ellis, who reported her complaints of pain in both wrists and fingers with numbness in the thumb, index and middle fingers. Physical examination findings included diminished grip strength and diminished wrist range of motion. Dr. Ellis' report included a number of worksheets in which he analyzed appellant's upper extremity impairment. He provided analysis under 15-32 for wrist range of motion and under Table 15-23 for entrapment neuropathy, finding a nine percent impairment of each arm under both methods. Regarding Dr. Ellis' determination in accordance with Table 15-23, the preferred method for rating entrapment neuropathies such as carpal tunnel syndrome, he found a grade 2 modifier for test findings, circling "a motor conduction block" on the worksheet; a grade 3 modifier for history, circling "constant symptoms;" and a grade 3 modifier for physical findings, circling "weakness" for each wrist. He then properly averaged the ratings and rounded the finding to three and concluded that appellant had a nine percent impairment of each arm.

Dr. Zimmerman, OWCP's medical adviser, did not agree with Dr. Ellis' conclusion. He indicated that, in regards to test findings, the March 7, 2008 EMG demonstrated mild findings for a grade 1 modifier. OWCP's medical adviser agreed with Dr. Ellis' conclusion that appellant had a grade 3 modifier for history but found that a grade modifier of 2 for physical findings was more appropriate, stating that Dr. Ellis did not report atrophy, and appellant's grip strength testing "was better than would be expected in an individual whose job description is sedentary." OWCP's medical adviser then averaged the three modifiers, finding a modifier of two, and concluded that appellant had a five percent impairment of each upper extremity, in accordance with Table 15-23. He increased the impairment to a bilateral six percent impairment, based on appellant's *Quick*DASH scores.

As previously noted, if there is disagreement between OWCP physician and the employee's physician, OWCP will appoint a third physician who shall make an examination.[15] For a conflict to arise, the opposing physician's viewpoints must be of virtually equal weight and rationale.[16] The Board finds the opinions of Dr. Ellis and Dr. Zimmerman to be of equal weight and thus a conflict in medical opinion evidence has been created regarding the extent of appellant's upper extremity impairments. The Board will set aside the September 24, 2010 schedule award decision and remand the case for OWCP to refer appellant to an impartial medical specialist to resolve the conflict. After such further development as it deems necessary, OWCP shall issue a decision regarding the extent of permanent impairment to appellant's upper extremities.[17]

CONCLUSION

The Board finds that this case is not in posture for decision as a conflict in medical evidence has been created regarding the extent of impairment of appellant's right and left arms.

[15] *Supra* note 12.

[16] *Darlene R. Kennedy*, 57 ECAB 414 (2006).

[17] The Board notes that appellant submitted additional evidence with her appeal to the Board. The Board cannot consider this evidence as its review of the case is limited to the evidence that was before OWCP at the time it issued its final decision. 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2010 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: September 6, 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