United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 11-2010**
	)	**Issued: April 13, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 7, 2011 appellant filed a timely appeal from the June 28, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied an increased schedule award. Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 is entitled to an increased schedule award.

FACTUAL HISTORY

On July 29, 2003 appellant, then a 45-year-old postal clerk, filed an occupational disease claim alleging that the duties of her position caused carpal tunnel syndrome. OWCP accepted her claim for bilateral carpal tunnel syndrome. Appellant underwent wrist surgeries in 2007. OWCP also accepted tenosynovitis.

[1] 5 U.S.C. § 8101 *et seq.*

On April 29, 2008 OWCP granted a schedule award for a 10 percent impairment of each upper extremity under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

Following further surgeries in 2009 and 2010, appellant claimed an increased schedule award. OWCP referred her to Dr. Sofia M. Weigel, a Board-certified physiatrist, for an evaluation of impairment. Using Table 15-23, page 449 of the A.M.A., *Guides* (6th ed. 2009), Dr. Weigel found that appellant had a five percent impairment of each upper extremity due to residual carpal tunnel syndrome, which she identified as the primary impairing diagnosis.

OWCP's medical adviser reviewed Dr. Weigel's calculations and agreed that appellant had a five percent impairment of each upper extremity.

In a decision dated November 30, 2010, OWCP denied appellant's claim for an increased schedule award. It noted that she had previously received compensation for a 10 percent impairment of each upper extremity and Dr. Weigel's evaluation did not establish greater impairment.

Appellant submitted an impairment evaluation from Dr. Emile Mathurin, Jr., a Board-certified physiatrist, who found that appellant had a six percent impairment of each upper extremity.

Another OWCP medical adviser reviewed Dr. Mathurin's calculations and found the six percent rating acceptable, but as before, appellant was compensated for a greater impairment.

In a decision dated June 28, 2011, OWCP denied appellant's claim for an increased schedule award. It explained that Dr. Mathurin's evaluation showed only a six percent impairment of each upper extremity. As this was less than her 10 percent rating, OWCP found that appellant was not entitled to additional compensation.

On appeal, appellant noted that her first evaluation was done under the fifth edition of the A.M.A., *Guides*, and the second evaluation was done under the sixth -- two different scales for two different losses. She states that the first surgeries were for bilateral carpal tunnel syndrome, while the second surgeries were for bilateral carpal tunnel syndrome and tenosynovitis. Appellant was diagnosed on January 26, 2011 with digital flexor tendinitis, for which she was now receiving treatment from Dr. Mathurin.

LEGAL PRECEDENT

FECA authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.[2] Such loss or loss of use is known as permanent

[2] 5 U.S.C. § 8107.

impairment. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[3]

ANALYSIS

OWCP accepted that appellant developed bilateral carpal tunnel syndrome in the performance of her duties. Under the fifth edition of the A.M.A., *Guides*, it issued a schedule award for a 10 percent impairment of each upper extremity due to the accepted medical condition.

Impairment ratings for carpal tunnel syndrome are now determined using Table 15-23, page 449 of the sixth edition of the A.M.A., *Guides*, which became effective May 1, 2009. Under Table 15-23, impairment ratings range from zero to nine percent of the upper extremity. Even the most severe carpal tunnel syndrome can never receive an impairment rating that is more than nine percent.

The practical effect of this limit is that appellant has already received the most compensation possible for her carpal tunnel syndrome. Evaluations from Dr. Weigel, the second-opinion physiatrist and Dr. Mathurin, the attending physiatrist, show that her current impairment is in the moderate range of five or six percent. This evidence does not establish that appellant is entitled to additional compensation for her carpal tunnel syndrome. Indeed, she has already received the maximum schedule award allowed. The Board will therefore affirm OWCP's June 28, 2011 decision denying appellant's claim for an increased award.

As OWCP procedures explain, if a claimant who has received a schedule award under a previous edition of the A.M.A., *Guides* is found, under the sixth edition, to have a lower impairment rating than was originally awarded, a finding should be made that the claimant has no more than the percent impairment originally awarded, that the evidence does not establish an increased impairment and that OWCP has no basis for declaring an overpayment.[4]

Appellant adds that her second wrist surgeries were for tenosynovitis in addition to carpal tunnel syndrome. Diagnosis-based impairment is the primary method of evaluation for the upper limbs. In most cases only one diagnosis will be appropriate. If a patient has two significant diagnoses, for instance, rotator cuff and biceps tendinitis, the examiner should use the diagnosis with the highest causally related impairment rating for the impairment calculation.[5] Selecting the optimal diagnosis requires judgment and experience. Typically one diagnosis will adequately characterize the impairment and its impact on activities of daily living.[6] Dr. Weigel identified appellant's carpal tunnel syndrome as the primary impairing condition. In that regard, the Board

[3] 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

[4] *Id.* at Chapter 2.808.7.b(4) (January 2010).

[5] A.M.A., *Guides* 387.

[6] *Id*. at 389.

notes that, under Table 15-3, page 395 of the A.M.A., *Guides*, the highest diagnosis-based rating a claimant may receive for wrist tendinitis is two percent.[7] Thus, it appears Dr. Weigel correctly identified the primary impairing condition.

As for the diagnosis of digital flexor tendinitis, OWCP has not accepted the diagnosis as causally related to appellant's federal employment. Dr. Mathurin mentioned giving her an injection for the trigger finger of the third digit, but he offered no impairment rating for digital stenosing tenosynovitis (trigger digit) under the digit regional grid at page 392 of the A.M.A., *Guides*. As the matter remains unadjudicated, the issue is not ripe for Board review.

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 is not entitled to an increased schedule award for her accepted carpal tunnel syndrome.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[7] A lacerated wrist or ruptured tendon maxes out at seven percent.