United States Department of Labor
Employees' Compensation Appeals Board

E.A., Appellant	)	
	)	
and	)	**Docket No. 11-2038**
	)	**Issued: April 19, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 September 13, 2011 appellant, through her attorney, filed a timely appeal from a June 16, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 schedule award decision.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] On appeal, appellant's attorney only challenges the right upper extremity award of 25 percent. He does not challenge the left upper extremity award of 10 percent. As such, the Board will only adjudicate this aspect of appellant's case. *See* 20 C.F.R. § 501.3.

ISSUE

The issue is whether appellant is entitled to an additional schedule award for right arm impairment.[3]

FACTUAL HISTORY

This case has previously been before the Board. In a decision dated September 10, 2009, the Board set aside a November 30, 2007 schedule award decision finding that appellant had no more than a 25 percent permanent impairment of the right upper extremity and a 10 percent permanent impairment of the left upper extremity for which she had received schedule awards.[4] The Board determined that the impartial medical examiner, Dr. David A. Bundens, a Board-certified orthopedic surgeon, failed to properly apply the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001) in reaching his impairment rating. The Board remanded the case for OWCP to refer appellant to a second impartial medical examiner.[5]

By letter dated December 9, 2009, OWCP referred appellant to Dr. Roy Friedenthal, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated March 9, 2010, Dr. Friedenthal discussed her complaints of right shoulder pain when reaching overhead, occasional left shoulder pain and bilateral numbness of the hand. On examination of the shoulders, he found no crepitus, impingement sign, effusion or atrophy. Dr. Friedenthal measured symmetrical shoulder motion bilaterally with internal rotation to L1, passive abduction to 95 degrees, passive external rotation to 80 degrees and shoulder extension to 30 degrees. He found normal two-point discrimination, unreliable Tinel's testing and Phalen's testing that "produces complaints of paresthesias throughout both hands with nonanatomic pattern." Dr. Friedenthal noted that a January 23, 2002 electromyogram showed severe compression neuropathy bilaterally and that a July 6, 2003 magnetic resonance imaging (MRI) scan study of the right shoulder revealed a full thickness supraspinatus tendon tear. He diagnosed status post right rotator cuff tear and repair, resolved tenosynovitis and status post bilateral carpal tunnel releases. Dr. Friedenthal stated:

> "Examination at the present time reveals complaints of pain in the right shoulder and evidence of prior surgery. There is restoration of satisfactory rotator cuff function with restoration of range of motion within normal limits except for limitation of internal rotation bilaterally, as noted. [Appellant] shows no relative muscle atrophy. Residual of rotator cuff repair and decompression would provide for loss of stamina and residual mild weakness and sensitivity for particularly

[3] OWCP also found that appellant had no more than a 10 percent permanent impairment of the left upper extremity. Appellant's attorney, however, has appealed only the denial of an increased schedule award for the right upper extremity.

[4] Docket No. 09-266 (issued September 10, 2009). OWCP accepted that appellant sustained right shoulder supraspinatus tendinitis and bilateral carpal tunnel syndrome due to factors of her federal employment. Appellant underwent arthroscopic surgery of the right shoulder and bilateral carpal tunnel releases.

[5] The Board noted that OWCP had previously sought clarification from the impartial medical examiner.

> strenuous or repetitive activities. [Appellant's] surgical result appears quite satisfactory at the present time and appears stable, with symmetric loss of active internal rotation as noted.
>
> "[Appellant] shows satisfactory recovery from carpal tunnel release. She does report loss of sensation into the left middle finger, but subjective clinical findings are so variable and paradoxical that they are deemed unreliable for assessment. The objective data reveals full range of motion, absence of muscle atrophy and with the small exception of noted restoration of two-point discrimination. [Appellant's] status appears to be stable without objective evidence of any loss of median nerve function since satisfactory release."

Dr. Friedenthal utilized Table 15-23 on page 449 of the sixth edition of the A.M.A., *Guides* to evaluate appellant's impairment due to carpal tunnel syndrome. He determined that prior positive diagnostic studies yielded a grade 1 modifier and that intact physical findings without atrophy also yielded a grade 1 modifier and thus found a two percent impairment due to right carpal tunnel syndrome. For the right shoulder, Dr. Friedenthal determined that appellant had a class 1 impairment of the right shoulder due to her full thickness rotator cuff tear using the shoulder regional grid set forth at Table 15-5 on page 403. He found that grade modifiers for physical examination and functional history did not change the default grade and thus concluded that she had a five percent right upper extremity impairment due to the rotator cuff tear.

On July 22, 2010 an OWCP medical adviser reviewed Dr. Friedenthal's March 9, 2010 report. He found that Dr. Friedenthal properly utilized Table 15-23 of the A.M.A., *Guides* to evaluate appellant's carpal tunnel syndrome based on her positive diagnostic studies. The medical adviser concurred with his finding of a two percent impairment due to carpal tunnel syndrome. For the right shoulder, he noted that Dr. Friedenthal found no alteration after applying grade modifiers. The medical adviser found that Dr. Friedenthal thus determined that appellant had a grade modifier of one for functional history and physical examination and that a grade modifier for clinical studies was inapplicable. Applying the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) or (1-1) + (1-1) = 0, yielded no alteration from the five percent default value for a right rotator cuff tear. The medical adviser combined the two percent impairment due to carpal tunnel syndrome with the five percent shoulder impairment to find a seven percent right upper extremity impairment.

By decision dated December 2, 2010, OWCP determined that appellant was not entitled to an additional schedule award. It noted that she had previously received an award for a 25 percent permanent impairment of the right upper extremity and a 10 percent permanent impairment of the left upper extremity. OWCP concluded that, as Dr. Friedenthal found that appellant had a seven percent right upper extremity and a five percent left upper extremity under the sixth edition of the A.M.A., *Guides*, she was not entitled to an increased award.

On December 7, 2010 appellant, through her attorney, requested an oral hearing. At the hearing, held on April 12, 2011, counsel challenged the right upper extremity impairment, arguing that Dr. Friedenthal did not adequately measure range of motion of the shoulder. He further maintained that Dr. Friedenthal did not address whether appellant underwent resection arthroplasty of the shoulder.

By decision dated June 16, 2011, the hearing representative affirmed the December 2, 2010 decision.

On appeal, appellant's attorney argues that Dr. Friedenthal's opinion is insufficient to resolve the conflict in medical opinion regarding the right upper extremity as he failed to fully measure range of motion of the right shoulder and did not provide a rating for appellant's shoulder surgery.

LEGAL PRECEDENT

The schedule award provision of FECA[6] and its implementing federal regulations[7] 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, 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.[8] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[9]

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the shoulder, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the class of diagnosis (CDX) is determined from the Shoulder Regional Grid (including identification of a default grade value), the impairment class is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[11] In Table 15-23, grade modifier levels (ranging from zero to four) are described for the categories of test findings, history and physical findings. The grade modifiers are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value.

When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id*. at § 10.404(a).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[10] A.M.A., *Guides* at 494-531.

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

opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[12]

ANALYSIS

OWCP accepted that appellant sustained right shoulder supraspinatus tendinitis and bilateral carpal tunnel syndrome due to factors of her federal employment. She underwent a right rotator cuff repair with subacromial and acromioclavicular decompression and bilateral carpal tunnel releases. On prior appeal, the Board determined that the opinion of the impartial medical examiner, Dr. Bundens, was insufficient to resolve the conflict in medical evidence regarding the extent of appellant's permanent impairment of the right and left upper extremity. The Board remanded the case for OWCP to refer her to a second medical examiner. Based on the report of Dr. Friedenthal, the new impartial medical examiner, OWCP denied appellant's claim for an additional schedule award after finding that she had no more than the previously awarded 25 percent permanent impairment of the right upper extremity and 10 percent permanent impairment of the left upper extremity.

In a report dated March 9, 2010, Dr. Friedenthal noted that appellant experienced right shoulder pain with overhead reaching and bilateral numbness of the hand. On examination of the shoulder, he found no atrophy, crepitus, impingement sign or joint effusion. Dr. Friedenthal determined that appellant had full range of motion of the shoulder except for a bilateral loss of internal rotation. For the wrists he found no loss of motion or atrophy or evidence of objective loss of median nerve function and a nonanatomic pattern of paresthesias on Phalen's testing.

When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[13] The Board finds that Dr. Friedenthal's opinion is entitled to special weight as the impartial medical examiner. 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 (DBI) provides that DBI is the primary method of evaluation of the upper limb.[14] The initial step in the evaluation process is to identify the impairment class by using the corresponding diagnosis-based regional grid. Dr. Friedenthal utilized the shoulder regional grade at Table 15-5 and identified a class 1 impairment due to a full thickness rotator cuff tear, which yielded a default value of five. He determined that grade modifiers for functional history and physical examination did not modify the default value. An OWCP medical adviser reviewed Dr. Friedenthal's finding and concurred with his conclusion that appellant had no more than a five percent upper extremity impairment of the right arm due to her shoulder impairment. He noted that Dr. Friedenthal found that grade modifiers did not alter the default value, which yielded a grade modifier of one for functional history and physical examination. The grade modifier for clinical studies was not applicable as an MRI scan study

[12] *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

[13] *Supra* note 2.

[14] A.M.A., *Guides*. at 387, section 15.2

was used in making the diagnosis of a full thickness rotator cuff tear.[15] The net adjustment formula, (GMFH - CDX) + (GMPE - CDX) or (1-1) + (1-1) = 0, did not change the default value of five percent.

As appellant had electrodiagnostic evidence of severe compression neuropathy, Dr. Friedenthal properly applied Table 15-23 to determine her impairment of the right arm due to carpal tunnel syndrome.[16] He found a grade 1 modifier for test findings and physical findings, which yielded a two percent impairment. An OWCP medical adviser agreed with Dr. Friedenthal's rating of a two percent right arm impairment due to carpal tunnel syndrome. The medical adviser combined the five percent right arm impairment due to the shoulder and the two percent impairment due to carpal tunnel syndrome to find a seven percent right arm impairment. As this was less than the 25 percent previously awarded, OWCP properly found that appellant was not entitled to an increased schedule award.

On appeal, appellant's attorney argues that Dr. Friedenthal's opinion is of little weight as he failed to fully measure range of motion of the right shoulder. As discussed, however, the sixth edition of the A.M.A., *Guides* emphasizes that the diagnosed-based impairment is the primarily method of evaluation for the upper limb.[17] Counsel also maintains that Dr. Friedenthal should have also provided an impairment rating based on appellant's right shoulder surgery. The A.M.A., *Guides*, however, states that typically only one diagnosis is used per region to determine impairment.[18]

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 additional schedule award for the right arm impairment.

[15] *Id*. at 407.

[16] *Id*. at 448; *see A.W.*, Docket No. 11-1421 (issued January 6, 2012).

[17] *Id*. at 461.

[18] *Id*. at 389, 499.

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2012
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