

FACTUAL HISTORY

OWCP accepted that on or before June 5, 2001 appellant, then a 50-year-old clerk, sustained a cervical sprain, C4 disc displacement, C4-5 discogenic disease, a thoracic sprain, a lumbar sprain, L4 disc displacement, bilateral carpal tunnel syndrome and bilateral trigger fingers. It developed elements of these claims under File No. xxxxxx097. Appellant underwent a right median nerve release on March 9, 2005 and a left median nerve release with lysis of adhesions and injection of right fourth finger tendon sheath on August 31, 2005.

Appellant retired from the employing establishment effective October 3, 2006. From 2006 through April 14, 2008, she underwent a series of injections throughout her cervical and lumbar spine, and on May 10, 2007 she underwent left C3, C4, bilateral C5 and C6 medial branch rhizotomies.

In a September 11, 2008 report, Dr. Mike Shah, an attending Board-certified physiatrist, found a 21 percent right upper extremity impairment and an 8 percent left upper extremity impairment according to the fifth edition of the A.M.A., *Guides*. He opined that appellant had attained maximum medical improvement.

By decision dated January 22, 2010, under File No. xxxxxx097, OWCP granted appellant a schedule award for a 21 percent impairment to the right arm and 8 percent impairment to the left arm, based on Dr. Shah's September 11, 2008 opinion.

On July 13, 2010 appellant claimed an augmented schedule award. In support of her claim, she submitted a June 17, 2010 impairment rating from Dr. Shah. Referring to Table 15-23 of the sixth edition of the A.M.A., *Guides*,² Dr. Shah noted a class 1 diagnosis-based impairment (CDX) for the right upper extremity due to entrapment neuropathy of the median nerve at the wrist confirmed by electrodiagnostic studies,³ a grade modifier of 3 for Functional History (GMFH) due to constant symptoms and a grade modifier of 3 for Physical Examination (GMPE) for weakness. He totaled these modifiers to equal 7, then divided the total by 3 to equal an average of 2.3. Dr. Shah therefore selected a grade modifier of 2, with a default five percent upper extremity impairment. As appellant had a *QuickDASH* score of 77.27, equaling a grade modifier of 3, he raised the right upper extremity impairment to six percent. For the left arm, Dr. Shah found a class 1 CDX for entrapment neuropathy, a grade modifier for Clinical Studies (GMCS) of 1 a GMFH of 3 for constant symptoms, and a GMPE of 2. He totaled the modifiers to equal 6, then divided the total by 3 for an average of 2, equaling a five percent impairment of the left upper extremity, increased to six percent due to the *QuickDASH* score of 77.27.

In an August 24, 2010 report, OWCP's medical adviser reviewed Dr. Shah's June 17, 2010 report and concurred with his findings and calculations for both upper extremities. Regarding the right upper extremity, the medical adviser noted that OWCP previously granted

² Table 15-23, page 449 of the sixth edition of the A.M.A., *Guides* is entitled, "Entrapment/Compression Neuropathy Impairment."

³ May 19, 2010 nerve conduction velocity (NCV) studies showed mild bilateral median nerve neuropathy consistent with carpal tunnel syndrome, worse than in 2006 studies.

appellant a 21 percent impairment, 13 percent for a C5-6 compression deficit and 9 percent for restricted right shoulder motion. The medical adviser combined the 6 percent impairment for median nerve entrapment with the 21 percent previously awarded, resulting in 26 percent, or an additional 5 percent impairment to the right arm. For the left arm, the medical adviser noted that appellant was previously awarded an eight percent impairment due to C5-6 deficits. Combined with the additional 6 percent impairment for median nerve entrapment, the medical adviser found a total 14 percent impairment of the left upper extremity. The medical adviser noted that appellant was entitled to an additional six percent impairment for the left arm above the eight percent previously awarded.

In a November 29, 2010 worksheet, OWCP determined that the additional 11 percent upper extremity impairment to which appellant was entitled equaled 240.24 days or 34.32 weeks of compensation. In a December 1, 2010 payment plate, it authorized payment of a schedule award for the period June 17, 2010 to February 12, 2011, equal to 240.24 days or 34.32 weeks, for six percent impairment of the left arm and five percent impairment of the right arm.

By decision dated March 7, 2011, OWCP granted appellant an additional five percent impairment to the right upper extremity and an additional five percent impairment to the left upper extremity. It stated that the additional award was equivalent to 34.32 weeks of compensation. The award ran from June 17, 2010 to February 12, 2011.

In a June 16, 2011 report, Dr. Shah provided impairment ratings for both of appellant's lower extremities according to the sixth edition of the A.M.A., *Guides*. He found that appellant had attained maximum medial improvement. For the left leg, Dr. Shah found a class 1 S1 sensory deficit (CDX) according to Table 16-11,⁴ equaling one percent lower extremity impairment, and a class 1 mild motor deficit, equaling three percent impairment. He noted a GMPE of 1 according to Table 16-7,⁵ a GMCS of 1 according to Table 16-8⁶ and a GMFH of 2 according to Table 16-6.⁷ Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) or (2-1) + (1-1) + (1-1), Dr. Shah found a plus 1 adjustment to the default grade, resulting in five percent impairment of the left leg due to S1 nerve deficits. Regarding the left L5 nerve, using the same tables as for the S1 nerve rating, he determined a net adjustment formula of (2-1) + (1-1) + (1-1), adjusting the default grade of C to D, resulting in a sensory deficit of two percent and a motor deficit of seven percent, totaling 9 percent impairment of the left leg due to L5 nerve deficits. Combined with the 5 percent S1 nerve deficit, this resulted in 14 percent impairment to the left leg. For the right leg, Dr. Shah found nine percent impairment due to L5 nerve deficits and five percent impairment due to S1 nerve deficits, due to the same findings as observed in the left lower extremity, for a total of 14 percent.

⁴ Table 16-11, page 533 of the sixth edition of the A.M.A., *Guides* is entitled "Sensory and Motor Severity."

⁵ Table 16-7, page 517 of the sixth edition of the A.M.A., *Guides* is entitled "Physical Examination Adjustment -- Lower Extremities."

⁶ Table 16-8, page 519 of the sixth edition of the A.M.A., *Guides* is entitled "Clinical Studies Adjustment -- Lower Extremities."

⁷ Table 16-6, page 516 of the sixth edition of the A.M.A., *Guides* is entitled "Functional History Adjustment -- Lower Extremities."

In an August 10, 2011 report, OWCP's medical adviser concurred with Dr. Shah's assessment.

By decision dated October 7, 2011, OWCP granted appellant a schedule award for a 14 percent impairment of each lower extremity.

In a November 14, 2011 appeal form, appellant requested reconsideration of OWCP's March 7, 2011 schedule award determination. She submitted March 31 and July 21, 2011 reports from Dr. Shah discussing her neck, back and leg symptoms.

By decision dated December 21, 2011, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant to her claim. It found that her November 14, 2011 request for reconsideration did not set forth the basis for her disagreement with the March 7, 2011 schedule award or provide any new medical evidence.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA provide for compensation to employees sustaining impairment from loss or loss of use of specified members 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 sound 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. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁸ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.⁹

The sixth edition of the A.M.A., *Guides* provides a diagnosis based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).¹⁰ Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).¹¹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

⁸ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000). See 5 U.S.C. § 8107.

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* (6th ed. 2008), page 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

¹¹ *Id.* at (6th ed. 2008), pp. 494-531.

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a C4 and L4 disc displacement, C4-5 discogenic disc disease, lumbar and thoracic sprains, bilateral carpal tunnel syndrome and bilateral trigger fingers. On July 13, 2010 appellant claimed a schedule award for additional impairments.

Dr. Shah, an attending Board-certified physiatrist, provided a June 16, 2011 impairment rating for both lower extremities, utilizing the sixth edition of the A.M.A., *Guides*. Regarding the left leg, Dr. Shah found class 1 S1 motor and sensory deficits CDX according to Table 16-11, equaling a four percent lower extremity impairment. He found a GMPE of 1, a GMCS of 1 and a GMFH of 2. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) or (2-1) + (1-1) + (1-1), Dr. Shah found a plus 1 adjustment to the default grade, resulting in five percent impairment of the left leg due to S1 nerve deficits. He used the same tables and formula to assess the left L5 nerve, calculating a sensory deficit of two percent and a motor deficit of seven percent, totaling nine percent impairment of the left leg. Dr. Shah combined the 9 and 5 percent impairments to equal 14 percent. For the right leg, he found nine percent impairment due to L5 nerve deficits and five percent impairment due to S1 nerve impairments, due to equivalent findings as in the left leg. OWCP's medical adviser concurred with Dr. Shah's assessment. On October 7, 2011 OWCP granted appellant a schedule award for a 14 percent impairment of each leg.

The Board finds that Dr. Shah used the proper tables and grading schemes in determining the appropriate percentage of bilateral lower extremity impairment. Therefore, OWCP properly awarded appellant a schedule award for a 14 percent impairment of each leg.

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.

LEGAL PRECEDENT -- ISSUE 2

To require the office to reopen a case for merit review under section 8128(a) of FECA,¹² section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant must: (1) show OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) submit relevant and pertinent new evidence not previously considered by OWCP.¹³ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁴

¹² 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.606(b)(2).

¹⁴ *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

In support of a request for reconsideration, appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.¹⁵ Appellant need only submit relevant, pertinent evidence not previously considered by OWCP.¹⁶ When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹⁷

ANALYSIS -- ISSUE 2

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome, trigger fingers in both hands and cervical disc pathologies. She underwent bilateral median nerve releases and C3-6 median branch rhizotomies. OWCP granted appellant schedule awards for 21 percent right upper extremity impairment and 8 percent left upper extremity impairment. Appellant claimed an additional schedule award on July 13, 2010. She submitted a June 17, 2010 impairment rating from Dr. Shah utilizing the sixth edition of the A.M.A., *Guides*, finding a six percent impairment of each upper extremity due to median nerve entrapment.

On August 24, 2010 OWCP's medical adviser concurred with Dr. Shah's impairment rating. He combined the 21 and 6 percent right upper extremity impairments to equal 26 percent, a net 5 percent increase. The medical adviser combined the 8 and 6 percent left upper extremity impairments to equal 14 percent. A November 29, 2010 OWCP worksheet notes that an additional 11 percent impairment equaled 34.32 weeks of compensation. A December 1, 2010 payment authorization confirmed appellant's entitlement to 34.32 weeks of compensation for six percent left arm and five percent right arm impairments. By March 7, 2011 decision, OWCP granted appellant an additional five percent right upper extremity impairment and an additional five percent left upper extremity impairment, equivalent to an additional 34.32 weeks of compensation.

In a November 14, 2011 appeal form, appellant requested reconsideration of the March 7, 2011 decision. She submitted March 31 and July 21, 2011 chart notes from Dr. Shah that did not address the upper extremities. Appellant did not provide her reasons for disagreement with the March 7, 2011 decision. OWCP denied reconsideration by decision dated December 21, 2011, finding that she did not submit evidence or argument in support of her request.

The critical issue at the time of the March 7, 2011 schedule award was the appropriate percentage of permanent impairment to both upper extremities. However, appellant did not submit any evidence or argument in support of her November 14, 2011 reconsideration request addressing the upper extremities. She did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent evidence not previously considered. Accordingly, the Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2).

¹⁵ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

¹⁶ *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

¹⁷ *Annette Louise*, 54 ECAB 783 (2003).

Pursuant to 20 C.F.R. § 10.608, OWCP properly issued its December 21, 2011 decision denying merit review.

On appeal, appellant contends that OWCP's March 7, 2011 schedule award determination granted only a five percent additional impairment of the left upper extremity, whereas the medical record supported her entitlement to an additional six percent impairment. As stated above, the Board does not have merit jurisdiction over the March 7, 2011 schedule award, only over the nonmerit denial of reconsideration.

CONCLUSION

The Board finds that appellant has not established that she sustained more than a 14 percent impairment to each lower extremity, for which she received a schedule award. The Board further finds that OWCP properly denied her request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 21 and October 7, 2011 are affirmed.

Issued: August 21, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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