

**United States Department of Labor
Employees' Compensation Appeals Board**

J.H., Appellant)	
)	
and)	Docket No. 12-516
)	Issued: August 6, 2012
DEPARTMENT OF THE ARMY, AVIATION & TROOP 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
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 10, 2012 appellant filed a timely appeal from a September 26, 2011 decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule award. Pursuant to the Federal Employees' Compensation Act¹ (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 has established that she sustained more than a 15 percent impairment of the right upper extremity and an 8 percent impairment of the left upper extremity, for which she received a schedule award.

On appeal, appellant asserts that OWCP erred in its September 26, 2011 decision by simultaneously vacating and affirming its February 10, 2011 decision.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on or before August 1, 1994 appellant, then a 42-year-old contract specialist, sustained bilateral carpal tunnel syndrome due to repetitive hand motions at work.²

On December 8, 1995 Dr. Susan E. MacKinnon, an attending neurosurgeon, performed a left median nerve release. On January 5, 1996 she performed a right median nerve release. Appellant received compensation for work absences.

By decision dated August 12, 1997, OWCP granted appellant a schedule award for a 15 percent permanent impairment of the right arm and an 8 percent permanent impairment of the left arm.

On March 18, 1998 appellant claimed an augmented schedule award as she had developed flexor synovitis of both thumbs.³ In support of her claim, she submitted an April 29, 1998 report from Dr. Kendall Black, an attending orthopedic surgeon, noting that x-rays showed calcium deposits in the dorsum of the right wrist. Dr. Black stated that, because he could not determine if appellant's bilateral trigger thumbs were related to the accepted carpal tunnel syndrome, she did not have additional ratable impairment. By decision dated June 24, 1998 and affirmed on November 12, 1998, OWCP denied her claim for an augmented schedule award as the medical evidence did not establish an increased percentage of impairment. Appellant continued under medical treatment for bilateral carpal tunnel syndrome through June 2010.⁴

Dr. John Walker, an attending Board-certified hand surgeon, performed a repeat left median nerve release on June 10, 2010 and a repeat right median nerve release on October 27, 2010.

On January 26, 2011 appellant claimed an increased schedule award. In support of her claim, she provided January 19, 2011 reports from Dr. Walker, who opined that she had reached maximum medical improvement and could resume work with permanent restrictions. Dr. Walker stated that appellant had a "zero percent" disability for work. He stated that, according to unspecified portions of the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), she had a 10 percent permanent impairment of each upper extremity.

By decision dated February 10, 2011, OWCP denied an augmented schedule award on the grounds that the medical evidence did not establish a ratable impairment of either upper extremity. It found that Dr. Walker calculated no permanent impairment.

² October 4, 1995 electromyogram and nerve conduction velocity studies showed bilateral carpal tunnel syndrome, worse on the right.

³ On June 4, 1998 appellant filed claims alleging that she sustained damage to the flexor tendons of both thumbs due to writing and keyboarding in the performance of duty on or before December 8, 1997. There are no final decisions of record regarding these claims.

⁴ In a July 23, 1999 report, Dr. Eric R. Beck, an attending Board-certified physiatrist, opined that, according to the fourth edition of the A.M.A., *Guides*, appellant had 10 percent impairment of each arm for median nerve entrapment.

In February 17 and June 3, 2011 letters, appellant requested reconsideration. She submitted a February 25, 2011 impairment rating from Dr. Walker, who found that, according to Table 15-23 of the sixth edition of the A.M.A., *Guides*,⁵ appellant had a grade 2 modifier for Clinical Studies (GMCS), a grade 2 modifier for Functional History (GMFH) and a grade 1 modifier for findings on Physical Examination (GMPE). Dr. Walker totaled the modifiers to equal 5 and averaged them to equal 1.66, which he rounded up to 2, equaling five percent impairment of each upper extremity. Using the Combined Values Chart, he found 10 percent impairment of each upper extremity.

On March 15, 2011 OWCP asked an OWCP medical adviser to review Dr. Walker's reports and the medical record and provide an impairment rating for each upper extremity. In a March 15, 2011 report, the medical adviser found that appellant reached maximum medical improvement on January 19, 2011. The medical adviser used the entrapment neuropathy rating method using Table 15-23. He found a GMFH of zero as appellant had no residuals, a GMPE of zero as she had normal findings on examination and a GMCS of 1 due to sensory delay on electrodiagnostic testing. The medical adviser totaled the three modifiers to equal one, and then averaged them by dividing by three, equaling a default impairment of zero percent. He therefore concluded that appellant had no ratable impairment of either upper extremity. The medical adviser stated that Dr. Walker misapplied the A.M.A., *Guides*.

In an August 25, 2011 letter, OWCP noted that it failed to advise appellant of the evidence needed to establish her January 26, 2011 claim for an augmented schedule award. It advised her to submit an impairment rating from her attending physician referring to the sixth edition of the A.M.A., *Guides*. Appellant responded in a September 14, 2011 letter that Dr. Walker submitted an impairment rating referencing the sixth edition of the A.M.A., *Guides* on February 25, 2011.

By decision dated September 26, 2011, OWCP vacated its February 10, 2011 decision on the grounds that it was "issued prematurely since no due process was provided." It found that Dr. Walker's February 25, 2011 report did not establish greater percentages of impairment than those previously awarded.

LEGAL PRECEDENT

The schedule award provisions of FECA⁶ 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

⁵ Table 15-23, page 449 of the sixth edition of the A.M.A., *Guides* is entitled "Entrapment/Compression Neuropathy Impairment"

⁶ 5 U.S.C. § 8107.

has concurred in such adoption.⁷ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.⁸

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).⁹ 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).¹⁰ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). The A.M.A., *Guides* divide the upper extremity into regions for rating purposes. The hand is one of the designated regions.¹¹

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome. Appellant had a left median nerve release on December 8, 1995 and a right median nerve release on January 5, 1996. On August 12, 1997 OWCP granted her a schedule award for 15 percent impairment of the right arm and 8 percent permanent impairment of the left arm. On June 10, 2010 Dr. Walker, an attending Board-certified hand surgeon, performed repeat left median nerve release and a repeat right median nerve release on October 27, 2010.

Appellant claimed a schedule award on January 26, 2011. In support of her claim, she submitted January 19, 2011 reports from Dr. Walker, who found that she had reached maximum medical improvement. OWCP denied the claim on February 10, 2011. On reconsideration, appellant submitted a February 25, 2011 impairment rating from Dr. Walker, who noted grade modifiers for unspecified clinical findings and test results. Dr. Walker averaged and adjusted the grade modifiers to find a 10 percent impairment of each upper extremity. An OWCP medical adviser noted that Dr. Walker misapplied the A.M.A., *Guides* and did not specify the physical findings or test results warranting grade modifiers. Referring to Table 15-23, the medical adviser found a grade modifier for clinical studies of 1 due to sensory delay, noting that Dr. Walker reported no objective physical findings or residuals. The medical adviser therefore found that appellant did not have a ratable impairment of either upper extremity.

The Board finds that the medical adviser applied the appropriate tables and grading schemes of the A.M.A., *Guides* in determining that appellant had no ratable impairment of either upper extremity. Therefore, OWCP properly issued the September 26, 2011 decision finding that she did not establish entitlement to an augmented schedule award.

⁷ Bernard A. Babcock, Jr., 52 ECAB 143 (2000).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁹ 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."

¹⁰ *Id.* at 494-531.

¹¹ *Id.* at 384, Figure 15-1, "Upper Extremity Regions."

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.

On appeal, appellant asserts that OWCP erred in its September 26, 2011 decision by simultaneously vacating and affirming its February 10, 2011 decision. The September 26, 2011 decision vacates OWCP's February 10, 2011 decision on procedural grounds, but finds that the evidence submitted on reconsideration did not establish an increased percentage of permanent impairment. Thus, the September 26, 2011 decision reaches the same conclusion as the February 10, 2011 decision, but for different reasons.

CONCLUSION

The Board finds that appellant has not established that she sustained more than a 15 percent impairment of the right upper extremity and an 8 percent impairment of the left upper extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 26, 2011 is affirmed.

Issued: August 6, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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