United States Department of Labor
Employees' Compensation Appeals Board

J.K., Appellant	)	
and	)	**Docket No. 12-652**
	)	**Issued: August 6, 2012**
U.S. POSTAL SERVICE, SACRAMENTO PERFORMANCE CLUSTER, Sacramento, CA, 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 30, 2012 appellant filed a timely appeal from the January 17, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding a 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 met her burden of proof to establish that she has more than 41 percent permanent impairment of her right arm, for which she received schedule awards.

FACTUAL HISTORY

OWCP accepted that on May 1, 1999 appellant, then a 42-year-old window clerk, sustained a right shoulder strain, right rotator cuff tear, right lateral epicondylitis, right wrist

[1] 5 U.S.C. §§ 8101-8193.

strain and right ulnar nerve lesion due to lifting a mail parcel in order to place it on a scale.[2] She underwent right lateral epicondyle release and curettage surgeries in January 2000 and September 2001. These procedures were authorized by OWCP.[3] Appellant received compensation for periods of partial and total disability.

OWCP also accepted that appellant sustained work-related right carpal tunnel syndrome due to her repetitive work duties. It authorized the performance of right carpal tunnel release surgery in October 2002. In August 2004, OWCP accepted that appellant sustained right shoulder impingement syndrome due to her work duties. In connection with this injury, appellant underwent OWCP-authorized right shoulder arthroscopic surgery in June 2005 and additional right shoulder surgery in February 2009, which included partial removal of the collar bone and right shoulder repair.

Appellant received schedule award compensation for a total permanent impairment of her right arm of 41 percent. She received: a schedule award for 10 percent impairment of her right arm on November 29, 2000; a schedule award for 14 percent impairment of her right arm on September 16, 2003; and a schedule award for 17 percent impairment of her right arm on April 13, 2006.

On October 7, 2009 appellant filed a Form CA-7, claim for compensation, for an additional schedule award due to her right arm injuries.

After appellant's attending physician declined a request to perform an impairment rating, OWCP referred her to Dr. Aubrey Swartz, a Board-certified orthopedic surgeon, to determine the degree of her right arm impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009).

In a January 7, 2010 report, Dr. Swartz detailed appellants' medical history and reported findings of the physical examination he performed on that date. He concluded that she had a 16 percent permanent impairment of her right arm under the standards of the sixth edition of the A.M.A., *Guides*. Dr. Swartz calculated impairment ratings associated with appellant's right shoulder elbow, ulnar nerve and median nerve.[4] On February 15, 2010 Dr. Ellen Pichey, a Board-certified occupational medicine physician who served as an OWCP medical adviser, reviewed his report and determined that appellant had 18 percent permanent impairment of her right arm under the sixth edition of the A.M.A., *Guides*.[5]

[2] OWCP later accepted that appellant sustained right middle trigger finger as a consequence of these injuries and OWCP-authorized surgery for this condition which was performed in March 2009.

[3] Appellant also underwent OWCP-authorized right cubital tunnel release surgery in August 2006 and right ulnar nerve decompression surgeries in August 2007 and March 2009.

[4] Dr. Swartz indicated that the medical evidence did not show any impairment of the right wrist and hand.

[5] Dr. Pichey found that the medical evidence showed that appellant had a higher right shoulder impairment than had been calculated by Dr. Swartz.

In a March 2, 2010 decision, OWCP found that appellant did not meet her burden of proof to establish that she has more than 41 percent permanent impairment of her right arm, for which she received schedule awards. It noted that the report of Dr. Pichey did not show that appellant was entitled to additional schedule award compensation.

Appellant continued to claim that she was entitled to receive additional schedule award compensation due to her right arm injuries. In a September 23, 2011 decision, OWCP again found that she did not meet her burden of proof to establish that she has more than 41 percent permanent impairment of her right arm.

Appellant submitted a December 1, 2011 report in which Dr. David E. Root, an attending Board-certified occupational medicine physician, concluded that she had 26 percent permanent impairment of her right arm under the standards of the fifth edition of the A.M.A., *Guides*. Dr. Root reported findings of his November 7, 2011 examination and calculated impairment ratings for limited motion related to the right fingers, wrist and elbow and for diminished right grip strength.

In a January 13, 2012 report, Dr. Pichey concluded that appellant had 18 percent permanent impairment of her right arm under the standards of the sixth edition of the A.M.A., *Guides*. She indicated that, under Table 15-5 on page 403, appellant's diagnosis-based estimate for right acromioclavicular joint injury fell under class 1 with a default value of 10 percent. Dr. Pichey provided grade modifier scores for Clinical Studies (GMCS) (grade modifier 4), Physical Examination (GMPE) (grade modifier 1) and Functional Capacity (GMFC) (grade modifier 1) and applied the net adjustment formula to find that the impairment rating would move two places to the right of the default value on Table 15-5 to equal a 12 percent impairment. She further indicated that, under Table 15-33, appellant's limited right elbow motion warranted a three percent impairment rating. Under Table 15-33 on page 449, calculations for impairment related to appellant's right cubital tunnel and right carpal tunnel equaled three percent. Dr. Pichey provided grade modifier scores in reaching her conclusions regarding the nerve entrapment/compression rating. She used the Combined Values Chart, starting on page 604, to combine the shoulder, elbow and nerve impairment ratings and concluded that appellant had 18 percent permanent impairment of her right arm. Dr. Pichey noted that Dr. Root's impairment rating was not valid as it was calculated under the fifth edition of the A.M.A., *Guides*.

In a January 17, 2012 decision, OWCP affirmed its September 23, 2011 decision. It again found that appellant did not meet her burden of proof to establish that she has more than a 41 percent permanent impairment of her right arm, for which she received schedule awards.

LEGAL PRECEDENT

The schedule award provision of FECA[6] and its implementing 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

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404 (1999).

specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates 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 the implementing regulations as the appropriate standard for evaluating schedule losses.[8] For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6th ed. 2009) is used for evaluating permanent impairment.[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 and elbow, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401 and Table 15-4 (Elbow Regional Grid) beginning on page 398. After the class of diagnosis is determined for either the shoulder or elbow (including identification of a default grade value), the net adjustment formula is applied using the grade modifiers for GMFH, GMPE and GMCS.[10]

Impairment due to entrapment/compression neuropathy 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 0 to 4) are described for the categories identified as 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.[12]

ANALYSIS

OWCP accepted that appellant sustained multiple injuries involving her right arm, including a shoulder strain, rotator cuff tear, lateral epicondylitis, wrist strain, ulnar nerve lesion, middle trigger finger, carpal tunnel syndrome and shoulder impingement syndrome. Appellant underwent numerous surgeries involving her right arm which were authorized by OWCP. She

[8] *Id*.

[9] *See* FECA Bulletin No. 9-03 (issued March 15, 2009). For OWCP decisions issued before May 1, 2009, the fifth edition of the A.M.A., *Guides* (5th ed. 2001) is used.

[10] *See* A.M.A., *Guides* (6th ed. 2009) 398-411. Under Table 15-3 and Table 15-5 impairment may alternatively be assessed using section 15.7 (range of motion impairment). Such a range of motion impairment stands alone and is not combined with a diagnosis-based impairment. *Id.* at 400, 405 and 459-78.

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

[12] A survey completed by a given claimant, known by the name *Quick*DASH, may be used to determine the Function Scale score. *Id.* at 448-49.

received schedule award compensation for a total permanent impairment of her right arm of 41 percent.[13]

The Board finds that appellant did not submit sufficient medical evidence to show that she has more than a 41 percent permanent impairment of her right arm, for which she received schedule awards.

The Board notes that the medical evidence, including a January 13, 2012 report of Dr. Pichey, a Board-certified occupational medicine physician who served as an OWCP medical adviser, shows that appellant does not have more than 41 percent permanent impairment of her right arm. In her report, Dr. Pichey concluded that appellant had 18 percent permanent impairment of her right arm under the standards of the sixth edition of the A.M.A., *Guides*. It was appropriate to apply the standards of the sixth edition of the A.M.A., *Guides* as this edition became effective May 1, 2009.[14] Dr. Pichey properly found that, under Table 15-5 on page 403, appellant's diagnosis-based condition of right acromioclavicular joint injury warranted 12 percent impairment. She further indicated that, under Table 15-33, appellant's limited right elbow motion warranted three percent impairment. Under Table 15-33 on page 449, calculations for impairment related to appellant's right cubital tunnel and right carpal tunnel equaled three percent. These values were properly combined to equal 18 percent using the Combined Values Chart.[15]

Appellant submitted a December 1, 2011 report in which Dr. Root, an attending Board-certified occupational medicine physician, concluded that she had a 26 percent permanent impairment of her right arm under the standards of the fifth edition of the A.M.A., *Guides*. As properly noted by Dr. Pichey, the impairment rating of Dr. Root is not valid as it was calculated under the fifth edition of the A.M.A., *Guides* rather than under the sixth edition, the relevant edition for the purposes of evaluating appellant's claim for entitlement to additional schedule award compensation.[16] Moreover, Dr. Root's 26 percent impairment rating is lower than the 41 percent right arm impairment for which appellant has already been compensated. Appellant did not submit any additional medical evidence addressing her right arm impairment and OWCP properly denied her claim for additional schedule award compensation.

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.

[13] On appeal, appellant alleged that she only received schedule award compensation for a total permanent impairment of her right arm of 31 percent. However, a review of the evidence of record does not support this assertion.

[14] *See supra* note 9.

[15] *See supra* notes 10 through 12. On appeal, appellant alleged that not all of her work-related conditions and surgeries were considered in assessing her right arm impairment. However, a review of the relevant medical evidence, including the opinion of Dr. Pichey, shows that all such conditions and surgeries were considered.

[16] *See supra* note 9.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has more than a 41 percent permanent impairment of her right arm, for which she received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2012 decision of the Office of Workers' Compensation Programs 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