United States Department of Labor
Employees' Compensation Appeals Board

C.T., Appellant	)	
and	)	**Docket No. 12-720**
	)	**Issued: August 10, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Bolingbrook, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 13, 2012 appellant filed a timely appeal from a December 20, 2011 schedule award 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 merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she has greater than 12 percent right upper extremity impairment.

On appeal, appellant asserts that the opinion of the attending physician who examined her should be credited regarding her degree of right upper extremity impairment.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On July 18, 1994 appellant, then a 34-year-old sorting machine operator, filed an occupational disease claim alleging that repetitive keying at work caused bilateral wrist tendinitis. The claim was adjudicated under OWCP file number xxxxxx660 and it accepted bilateral tenosynovitis of the hand and wrist. OWCP also accepted that appellant sustained a fracture of the left humerus and subsequent left shoulder tendinitis when she slipped and fell at work on October 20, 2008. Appellant stopped work that day and did not return. OWCP adjudicated the left upper extremity claim under file number xxxxxx052 and she receives wage-loss compensation for this claim on the periodic rolls.

On April 8, 2010 appellant filed a schedule award claim under file number xxxxxx660. In a July 19, 2010 report, Dr. Samuel J. Chmell, an attending Board-certified orthopedic surgeon, noted appellant's complaints of diminished strength and swelling in both wrists with physical examination findings of clicking, popping, crepitus and tenderness of the extensor and flexor tendons of both wrists. He diagnosed bilateral wrist tenosynovitis and advised that maximum medical improvement was reached on January 14, 2010. Regarding appellant's right wrist impairment, Dr. Chmell advised that in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[2] under Table 15-32, Wrist Range of Motion, she had flexion of 45 degrees for a 3 percent impairment, extension of 56 degrees for a 3 percent impairment, radial deviation of 10 degrees for a 2 percent impairment and ulnar deviation of 10 degrees for a 4 percent impairment, for a total range of motion impairment of 12 percent. He also advised that, under Table 15-8, Physical Examination Adjustment, appellant had a 4 percent impairment due to a strength deficit and a 7 percent impairment due to additional findings of clicking, popping, crepitus and tenderness, for a total right upper extremity impairment of 23 percent.

In an August 8, 2010 report, an OWCP medical adviser, Dr. Neil Ghodadra, an orthopedic surgeon, reviewed the medical record including Dr. Chmell's report. He agreed with Dr. Chmell that maximum medical improvement was reached on January 14, 2010 and that appellant had 12 percent impairment due to loss of wrist range of motion. Dr. Ghodadra differed with Dr. Chmell regarding appellant's entitlement to greater impairment, noting that he could find no basis in the sixth edition for an additional impairment due to crepitus and a popping sensation.

By decision dated July 6, 2011, OWCP granted appellant a schedule award for a 12 percent loss of use of the right upper extremity, with January 14, 2010 as the date of maximum medical improvement. The award was for 29.28 weeks, to run from January 14 to August 6, 2010 and was based on a weekly pay rate of $1,010.12 at the augmented compensation rate of 75 percent or a weekly compensation rate of $757.59.

On August 18, 2011 appellant requested reconsideration and submitted an August 2, 2011 report in which Dr. Chmell advised that he disagreed with Dr. Ghodadra. Dr. Chmell stated that Table 15-8 of the sixth edition of the A.M.A., *Guides* clearly indicated that physical examination

[2] A.M.A., *Guides* (6th ed. 2008).

findings of clicking provided a grade modifier 2 which yielded a 7 to 10 percent impairment. He further indicated that, while he initially stated that appellant had a 7 percent impairment under Table 15-8, upon further consideration, she had a 10 percent impairment.

A second OWCP medical adviser, Dr. David H. Garelick, Board-certified in orthopedic surgery, reviewed the medical record. He agreed with Dr. Ghodadra's report regarding the right upper extremity and provided additional findings regarding appellant's left upper extremity.[3]

In a December 20, 2011 letter, OWCP informed appellant that she would not be granted a schedule award for the left upper extremity because of ongoing left upper extremity problems attributable to the 2008 employment injury, adjudicated under file number xxxxxx052. Regarding the right upper extremity, it informed her that she was underpaid in the July 6, 2011 schedule award decision because the weekly pay rate did not include night differential or Sunday premium. Further, the number of weeks granted was based on a right hand impairment rather than a right arm impairment.

By decision dated December 20, 2011, a new schedule award was issued to reflect a 12 percent right upper extremity impairment, for 37.44 weeks or 262.08 days, to run from January 14 to October 3, 2010, based on a weekly rate of $1,101.10 for an augmented weekly compensation rate of $825.83, that included night differential and Sunday premium pay.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing federal regulation[5] 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.[6] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.[7] For decisions issued after May 1, 2009, the sixth edition is used.[8]

[3] Drs. Chmell, Ghodadra and Garelick also provided impairment analysis regarding appellant's left upper extremity, not at issue in this case.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id*. at § 10.404(a).

[7] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[8] FECA Bulletin No. 09-03 (issued March 15, 2009).

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, for upper extremity impairments 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).[11]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[12]

ANALYSIS

The Board finds that appellant has a 12 percent impairment of the right arm. Under the sixth edition of the A.M.A., *Guides*, for upper extremity impairment the evaluator is to first identify an impairment class for the diagnosed condition which is then adjusted by grade modifiers based on functional history, physical examination and clinical studies.[13] The evaluator is to then apply the net adjustment formula.[14] Section 15.2a of the sixth edition provides that the first step in determining an impairment rating is to choose the diagnosis that is most applicable for the region being assessed, to be followed by assessment in accordance with Table 15-7 through Table 15-9.[15] It further provides that, under specific circumstances, range of motion may be selected as an alternative approach in rating impairment and cautions that an impairment rating that is calculated using range of motion stands alone and may not be combined with a diagnosis-based impairment.[16] Section 15.2 indicates that wrist impairment is to be evaluated under Table 15-3, Wrist Regional Grid, to be followed by the adjustment modifiers in Table 15-7 to Table 15-9.[17]

[9] A.M.A., *Guides*, *supra* note 2 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

[10] *Id*. at 385-419.

[11] *Id*. at 411.

[12] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

[13] A.M.A., *Guides*, *supra* note 10 at 385-419.

[14] *Id*. at 411.

[15] *Id*. at 389-90.

[16] *Id*. at 390.

[17] *Id*.

Dr. Chmell utilized range of motion findings found in Table 15-32, which he modified using Table 15-8, the physical examination modifier table. As noted above, this is an incorrect application of the A.M.A., *Guides*. While it is preferred that a diagnosis-based impairment be utilized under the sixth edition, Dr. Chmell did not provide a diagnosis under Table 15-3 but merely utilized Table 15-8 to find an additional impairment of 11 percent, which he identified as "strength," for 4 percent and "clicking/popping/crepitus/tenderness" for 7 percent. Section 15.3b describes the correct application for utilizing Table 15-8. While it indicates that range of motion can be part of the grading process, this is merely to modify the diagnosis identified under Table 15-3 and used in the net adjustment formula. Dr. Chmell did none of these things. Therefore, his rating of impairment is not in accordance with the sixth edition of the A.M.A., *Guides*.

Both Dr. Ghodadra and Dr. Garelick agreed with Dr. Chmell's findings with regard to his range of motion measurements of appellant's right wrist and his finding that she had 12 percent impairment due to loss of wrist motion. The medical evidence establishes that appellant has 12 percent impairment of the right upper extremity, for which she received a schedule award.

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 has a 12 percent impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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