United States Department of Labor
Employees' Compensation Appeals Board

A.R., Appellant	)	
and	)	**Docket No. 12-792**
	)	**Issued: August 15, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Phoenix, AZ, 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 27, 2012 appellant filed a timely appeal from a January 26, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule award. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained more than a 31 percent impairment of the left upper extremity, for which he received schedule awards.

FACTUAL HISTORY

This case has previously been before the Board. By decision and order issued September 1, 2010,[2] the Board set aside OWCP's September 25, 2009 schedule award

[1] 5 U.S.C. § 8101 *et seq.*

[2] Docket No. 10-395 (issued September 1, 2010).

determination and remanded the case for further development regarding the percentage of permanent impairment of the left arm due to the accepted carpal tunnel syndrome. OWCP previously granted appellant a schedule award for a 31 percent left arm impairment. The law and the facts of the case as set forth in the Board's prior decision are incorporated by reference.

In a September 30, 2010 letter, OWCP advised appellant to submit an impairment rating from his attending physician according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*) then in effect. Appellant submitted the November 24, 2010 and March 28, 2011 chart notes from Dr. David A. Suber, an attending Board-certified neurologist, noting continued left carpal tunnel syndrome with minimal weakness. Dr. Suber obtained an electromyogram (EMG) on December 20, 2010 demonstrating left carpal tunnel syndrome unchanged since an April 2008 study.[3]

In a December 22, 2010 letter, OWCP requested an impairment rating directly from Dr. Suber. As Dr. Suber did not provide the requested report, on February 26, 2011, OWCP referred appellant, the medical record and a statement of accepted facts to Dr. Ronald M. Lampert, a Board-certified orthopedic surgeon, for a second opinion impairment rating. Dr. Lampert submitted a March 11, 2011 report reviewing the medical record and statement of accepted facts. On examination, he found negative Tinel's and Phalen's signs, no atrophy of the left thenar eminence, full range of left wrist motion and good grip strength. Dr. Lampert stated that, according to the sixth edition of the A.M.A., *Guides*, he required an updated EMG study to determine the percentage of permanent impairment. OWCP authorized April 12, 2011 EMG and nerve conduction velocity (NCV) studies, showing moderate left median neuropathy at the wrist, correlating with clinical findings of left carpal tunnel syndrome.

In a May 2, 2011 report, Dr. Lampert opined that appellant had reached maximum medical improvement as of March 11, 2011. He opined that, according to Table 15-23 of the A.M.A., *Guides*,[4] appellant had two percent impairment of the left upper extremity due to a class 1 diagnosis-based impairment (CDX) for carpal tunnel syndrome with mild motor and sensory involvement.

In an August 18, 2011 report, an OWCP medical adviser reviewed Dr. Lampert's impairment rating. While Dr. Lampert used the appropriate methodology for rating carpal tunnel syndrome according to the A.M.A., *Guides*, the default rating for grade 1 carpal tunnel syndrome was only one percent as there was no evidence of any functional impairment.

By decision dated January 26, 2012, OWCP denied appellant's claim for an augmented schedule award on the grounds that the medical evidence did not establish that he sustained more than the 31 percent impairment of the left upper extremity for which he received prior schedule awards.

[3] Dr. Suber submitted chart notes from June 28 to December 28, 2011 finding appellant's condition unchanged.

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

LEGAL PRECEDENT

The schedule award provisions of FECA[5] 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 mater which rests in the sound discretion of the 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.[6] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.[7]

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).[8] 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).[9]

ANALYSIS

OWCP accepted that appellant sustained left carpal tunnel syndrome and awarded him a total 31 percent impairment to the left arm. Following the prior appeal, it obtained a second opinion from Dr. Lampert, a Board-certified orthopedic surgeon, who opined on May 2, 2011 that appellant had two percent impairment of the left upper extremity due to mild carpal tunnel syndrome. An OWCP medical adviser noted that, while Dr. Lampert used the correct elements of the A.M.A., *Guides*, appellant had only one percent impairment of the left arm as there was no evidence of functional impairment. On January 26, 2011 OWCP denied appellant's claim for an additional schedule award as the medical evidence did not demonstrate a greater percentage of impairment to the left arm than the 31 percent previously awarded.

The Board finds that OWCP properly relied on Dr. Lampert's clinical findings, as interpreted by OWCP's medical adviser, in finding that appellant had one percent impairment of the left upper extremity. Dr. Lampert based his opinion on a thorough clinical examination, a review of the medical record and a statement of accepted facts. OWCP's medical adviser applied the correct methodology of the A.M.A., *Guides* in determining the one percent left upper extremity impairment. Therefore, OWCP's January 26, 2011 decision finding that appellant had

[5] 5 U.S.C. § 8107.

[6] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

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

[8] 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."

[9] A.M.A., *Guides* 494-531 (6th ed., 2008).

not sustained an additional percentage of permanent impairment beyond the 31 percent previously awarded was proper under the law and facts of this case.

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 not established that he sustained more than a 31 percent impairment of the left upper extremity, for which he received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 26, 2012 is affirmed.

Issued: August 15, 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