

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

M.D., Appellant)

and)

U.S. POSTAL SERVICE, PROCESSING &)
DELIVERY CENTER, Bellmawr, NJ, Employer)

Docket No. 11-1192
Issued: February 21, 2012

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 19, 2011 appellant filed a timely appeal from a January 3, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for an increased 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 the case.

ISSUE

The issue is whether appellant has more than a 23 percent impairment of the left arm for which she received a schedule award.

On appeal, appellant contends that the impartial medical examiner was unprofessional and not impartial. She alleged that he barked at his assistant in front of her, told her that he was paid "quite handsomely" for his services, accused her of being a liar, did not have a working blood pressure cuff, was rude and was biased.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. On April 20, 2005 appellant, then a 51-year-old mail processing clerk, filed an occupational disease claim alleging bilateral carpal tunnel syndrome and stenosing tenosynovitis of the right third and fourth fingers. On October 6, 2005 OWCP accepted her claim for bilateral carpal tunnel syndrome. Appellant underwent surgery for right carpal tunnel release on November 18, 2005. On January 6, 2006 she underwent surgery for left carpal tunnel release and exploration of the right palm. By decision dated May 28, 2008, OWCP granted appellant a schedule award for a 10 percent impairment of the right upper extremity and a 23 percent impairment of the left upper extremity. It denied her request for reconsideration on April 6, 2009, and she appealed this determination to the Board. In a decision dated August 18, 2010, the Board affirmed OWCP's determination that appellant had a 10 percent impairment of the right arm.² The Board found that there was an unresolved conflict in the medical evidence with regards to the impairment to her left arm. Dr. David Weiss, appellant's osteopath, determined that appellant had a 37 percent impairment of the left upper extremity while an OWCP medical adviser disagreed, finding a 23 percent impairment. Both Dr. Weiss and the medical adviser applied the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) in reaching their conclusions. The Board remanded the case to refer appellant to an impartial medical examiner. The facts as set forth in the Board's prior decision are hereby incorporated by reference.

On October 13, 2010 OWCP referred appellant to Dr. George P. Glenn, Jr., a Board-certified orthopedic surgeon, to resolve the conflict as to the impairment to her left arm. In an October 28, 2010 report, Dr. Glenn determined that her impairment rating was significantly lower than the 23 percent impairment to the left upper extremity for which she received a prior schedule award. He applied Table 15-23 of the sixth edition of the A.M.A., *Guides*,³ and found that, with respect to test findings, the electrodiagnostic studies would rate appellant a grade modifier of one as there was no evidence of motor conduction block or axon loss. In terms of history, Dr. Glenn noted that she described what would appear to be significant intermittent symptoms and that as a consequence would equate to a grade modifier of two. In terms of physical findings, he noted that appellant reported the isolated decreased sensation involving the index digit and that he graded as a modifier two. Dr. Glenn stated that the A.M.A., *Guides* instructed him to add the modifiers, which equaled 5 and divide that by 3, which would equal 1.6 which rounded up to 2. The A.M.A., *Guides* also provided that he should apply the functional scale, and that appellant's *QuickDash* score indicated severe involvement. Dr. Glenn noted that the numbers of the pain disability questionnaire and the *QuickDash* questionnaire were "off the chart." Based upon the physical examination, impairment to the left hand was significantly less than would be indicated by the two scores. Dr. Glenn noted that, even accepting appellant's functional score, this would place the upper extremity impairment value from the default impairment of five percent to six percent of the left upper extremity. He discussed the findings of Dr. Weiss and the medical adviser. Although Dr. Glenn was more in agreement with the

² Docket No. 09-1364 (issued August 18, 2010).

³ A.M.A., *Guides* 449.

opinion of the medical adviser, both Dr. Weiss and the medical adviser had applied the fifth edition of the A.M.A., *Guides*, while the sixth edition of the A.M.A., *Guides* was appropriate.

On December 9, 2010 OWCP referred the case for review by a new OWCP medical adviser. On December 13, 2010 its medical adviser agreed with Dr. Glenn's rating of six percent impairment of the left upper extremity.

By decision dated January 3, 2011, OWCP denied appellant an additional schedule award as the impartial medical examiner found that she had six percent impairment to left upper extremity, which was less than the 23 impairment rating previously received.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing federal regulations⁵ 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* is used to calculate schedule awards.⁷ For decisions issued after May 1, 2009, the sixth edition will be used.⁸

Section 15.4 of the sixth edition of the A.M.A., *Guides* describes the methods used for evaluation of upper extremity nerve impairments.⁹ Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.¹⁰ In Table 15-23, grade modifiers levels (ranging from 0 to 4) are described for the categories of 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.¹¹

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary

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.

⁸ FECA Bulletin 09-03 (issued March 15, 2009).

⁹ A.M.A., *Guides*, *supra* note 3 at 419-50.

¹⁰ *Supra* note 3.

¹¹ *Id.* at 448-50.

shall appoint a third physician who shall make the examination.¹² OWCP 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 OWCP's medical adviser providing rationale for the percentage of impairment specified.¹³ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁴

ANALYSIS

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome. The Board previously affirmed its determination that she had a 10 percent impairment to her right arm due to her accepted employment condition. However, the Board remanded the case for referral to an impartial medical examiner to resolve the conflict between appellant's treating physician, Dr. Weiss and OWCP's medical adviser with regards to the extent of impairment to appellant's left arm.

The Board notes that both Dr. Weiss and the first medical adviser applied the fifth edition of the A.M.A., *Guides*. However, for all decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. Accordingly, Dr. Glenn, when conducting the impartial medical examination, properly applied the sixth edition of the A.M.A., *Guides*. He properly applied Table 15-23 of the A.M.A., *Guides*.¹⁵ Dr. Glenn determined that, based on test findings, appellant had a grade modifier of one, that, based on history, she had a grade modifier of two and based on physical findings, she had a grade modifier of two and that the average of these modifiers was 1.6 or 2.0. Table 15-23 lists the default impairment grade for a grade modifier of two as five. Dr. Glenn modified this upward by two based upon appellant's functional scale, resulting in an impairment to her upper left extremity of six percent. He properly applied the A.M.A., *Guides* and explained his application thereof. The medical adviser concurred in Dr. Glenn's assessment. The calculations of the impartial medical examiner are entitled to special weight¹⁶ and establish that appellant had no more than a 23 percent impairment of the left upper extremity for which she received a schedule award.

The Board further notes that no physician found that appellant was entitled to a greater rating while applying the sixth edition of the A.M.A., *Guides*. Although appellant alleges irregularities in the conduct of the impartial medical examiner, the Board finds that her

¹² 5 U.S.C. § 8123(a); see *Geraldine Foster*, 54 ECAB 435 (2003).

¹³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹⁴ *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

¹⁵ *Supra* note 3.

¹⁶ *Jacqueline Brasch*, *supra* note 14.

unsupported allegations are insufficient to overcome the special weight given to the opinion of the impartial medical examiner.

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 she is entitled to a schedule award of greater than 23 percent 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 January 3, 2011 is affirmed.

Issued: February 21, 2012
Washington, DC

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

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

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