

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

_____)	
R.P., Appellant)	
)	
and)	Docket No. 11-1115
)	Issued: January 4, 2012
U.S. POSTAL SERVICE, BALTIMORE)	
PERFORMANCE CLUSTER, Baltimore, MD,)	
Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 5, 2011 appellant filed a timely appeal from the March 22, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) granting 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 met her burden of proof to establish that she has more than an eight percent permanent impairment of her right arm or an eight percent permanent impairment of her left arm, for which she received schedule awards.

¹ 20 C.F.R. § 8101 *et seq.*

FACTUAL HISTORY

In April 1985 OWCP accepted that appellant, then a 31-year-old letter sorting machine operator, sustained bilateral carpal tunnel syndrome due to the repetitive duties of her job over time. It authorized the performance of bilateral carpal tunnel release surgeries in 1985. Appellant stopped work in July 2003 and retired from the employing establishment in February 2009.

Appellant filed a claim for a schedule award due to her accepted work injuries. Electromyogram (EMG) and nerve conduction velocity (NCV) testing from June 2007 revealed severe right and moderate-to-severe left median nerve compression at the wrists.

In a July 14, 2009 report, Dr. Raymond A. Wittstadt, an attending Board-certified hand surgeon, reported his findings on examination and noted that appellant could not make quite a full fist, that her fingertips did not touch her palms and that there was a positive Phalen's test with paresthesias and a negative Tinel's test. Both hands had similar findings on examination and the median nerve distal latency was over five milliseconds on both sides, which indicated the existence of moderately severe carpal tunnel syndrome. Dr. Wittstadt recommended that surgery be conducted, but appellant refused the surgery. He did not utilize the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009), but rather recommended a 15 percent permanent impairment of the right hand and a 15 percent permanent impairment of the left hand under the fifth edition of the A.M.A., *Guides* (5th ed. 2001).

In an August 16, 2009 report, Dr. Arnold T. Berman, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, indicated that he had reviewed the medical evidence of record, including the findings of Dr. Wittstadt, and noted that he was providing an impairment rating under the standards of the sixth edition of the A.M.A., *Guides*. Dr. Berman stated that a June 2007 EMG study demonstrated axonal loss for each arm which, with respect to test findings, would place each arm under a grade modifier 3 of Table 15-23 (Entrapment Compression Neuropathy Impairment) on page 449. He indicated that appellant's condition also warranted a grade modifier 3 for the history category and a grade modifier 3 for the physical findings category for each arm. Dr. Berman averaged the three individual grade modifier 3 scores to equal a total score of grade modifier 3. The default value for a grade modifier 3 constitutes an eight percent impairment rating under Table 15-23. Dr. Berman indicated that appellant's functional score for each arm was severe and fell under a grade modifier 3 and therefore there was no adjustment of the default value of eight percent.² He concluded that she had an eight percent permanent impairment of her right arm and an eight percent permanent impairment of her left arm under the sixth edition of the A.M.A., *Guides*.

² Dr. Berman made reference to other portions of the sixth edition of the A.M.A., *Guides*, including Table 15-7 through Table 15-9, but his calculation was principally made under Table 15-23.

In a March 22, 2011 decision, OWCP granted appellant a schedule award for an eight percent permanent impairment of her right arm and an eight percent permanent impairment of her left arm. The award ran for 49.92 weeks from April 11, 2010 to March 26, 2011.³

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing 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 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.⁶ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁷

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.⁸ In Table 15-23, grade modifiers levels (ranging from 0 to 4) are described for the categories 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.⁹

ANALYSIS

OWCP accepted that appellant sustained work-related bilateral carpal tunnel syndrome and authorized the performance of bilateral carpal tunnel releases surgeries. Appellant filed a claim for a schedule award due to her work injuries.

In an August 16, 2009 report, Dr. Berman, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, discussed his review of the medical records and provided an

³ Information included with OWCP's March 22, 2011 decision advised appellant that she might qualify for a lump-sum payment of her schedule award compensation if she was currently working or receiving retirement benefits from the Office of Personnel Management (OPM). Appellant was provided instructions for making such a request.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *Id.*

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁸ *See* A.M.A., *Guides* 449, Table 15-23.

⁹ A survey completed by a given claimant, known by the name *QuickDASH*, may be used to determine the function scale score. *Id.* at 448-49.

opinion that appellant had an eight percent permanent impairment of her right arm and an eight percent permanent impairment of her left arm under the standards of the sixth edition of the A.M.A., *Guides*.¹⁰ Dr. Berman properly applied these standards to reach his conclusion about appellant's permanent arm impairment.

Dr. Berman properly made reference to Table 15-23 (Entrapment/Compression Neuropathy Impairment) on page 449 of the sixth edition of the A.M.A., *Guides*.¹¹ He chose grade modifiers for the various relevant categories and determined that appellant fell under grade modifier 3 which had a default value equaling an eight percent impairment rating. Dr. Berman determined that appellant's functional score in each arm did not require this default value to be adjusted. The Board notes that there is no probative medical evidence of record showing that appellant has more than an eight percent permanent impairment of her right arm and an eight percent permanent impairment of her left arm, for which she received a schedule award.¹² For these reasons, OWCP properly declined to award appellant additional schedule award compensation.

On appeal, appellant asserted that OWCP improperly failed to pay her schedule award in a lump-sum payment. However, there is no indication in the record that he made a request with OWCP for a lump-sum payment of her schedule award.¹³ Moreover, appellant has already received all the schedule awards' monies to which she was entitled.

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 did not meet her burden of proof to establish that she has more than an eight percent permanent impairment of her right arm and an eight percent permanent impairment of her left arm, for which she received a schedule award.

¹⁰ OWCP's decision regarding impairment was not issued until after May 1, 2009 and therefore evaluation of appellant's impairment under the sixth edition of the A.M.A., *Guides* was appropriate. *See supra* note 7. The medical evidence reviewed by Dr. Berman included a July 14, 2009 report of Dr. Wittstadt, an attending Board-certified hand surgeon.

¹¹ A.M.A., *Guides* 449, Table 15-23 (6th ed 2009).

¹² In his July 14, 2009 report, Dr. Wittstadt determined that appellant had a 15 percent permanent impairment of her right hand and a 15 percent permanent impairment of her left hand under the fifth edition of the A.M.A., *Guides*. However, this rating is of no probative value because it was not made under the relevant standards for the present case, *i.e.*, the sixth edition of the A.M.A., *Guides*. *See supra* note 7.

¹³ Information included with OWCP's March 22, 2011 decision advised appellant that she might qualify for a lump-sum payment of her schedule award compensation if she was currently working or receiving retirement benefits from OPM. Appellant was provided instructions for making such a request.

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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