United States Department of Labor
Employees' Compensation Appeals Board

W.M., Appellant	)	
and	)	**Docket No. 11-1156**
	)	**Issued: January 27, 2012**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Forest City, AK, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 13, 2011 appellant, through his attorney, filed a timely appeal from the February 28, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) granting 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 his burden of proof to establish that he has more than a five percent permanent impairment of his right arm, for which he received a schedule award.

FACTUAL HISTORY

OWCP accepted that on June 14, 2008 appellant, then a 35-year-old utility system repairer, sustained a partial distal biceps tendon rupture of his right elbow when he pulled a

[1] 20 C.F.R. § 8101 *et seq.*

circuit breaker out of a switch gear. Appellant received compensation for periods of disability and filed a claim for a schedule award due to his accepted condition.[2]

In a March 14, 2010 report, Dr. William N. Grant, an attending Board-certified internist, discussed appellant's June 14, 2008 work injury and indicated that appellant reported having pain with normal activity in his right elbow. He indicated that appellant reached maximum medical improvement as of the date of his examination, March 14, 2010. Under the category "[f]unctional [a]ssessment," Dr. Grant stated that appellant had a *Quick*DASH score of 30 and, under the category "[p]hysical [e]xamination," he noted that appellant's right biceps was tender to palpation and that there was normal range of motion of the right elbow. He indicated that appellant fell within the class 1 diagnostic category of distal biceps tendon rupture under Table 15-4 on page 399 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). Appellant fell under the default value of five percent on this table. Dr. Grant indicated that under Table 15-7 on page 406 appellant fell under grade modifier 2 for functional history due to pain with normal activity. Under Table 15-8 on page 408, he fell under grade modifier 1 for physical examination due to mild muscle atrophy. Dr. Grant found that, due to these grade modifier scores, appellant moved one place to the right of the default value on Table 15-4 (five percent) to an impairment rating of six percent. He concluded that appellant had a six percent permanent impairment of his right arm under the sixth edition of the A.M.A., *Guides*.

On April 30, 2010 Dr. Daniel D. Zimmerman, a Board-certified internist serving as an OWCP medical adviser, reviewed and evaluated the March 14, 2010 impairment rating of Dr. Grant. He agreed that appellant fell within the class 1 diagnostic category of distal biceps tendon rupture under Table 15-4 and that he came under the default value of five percent on this table. Dr. Zimmerman provided an opinion that Dr. Grant had not justified his opinion that appellant's grade modifier scores warranted his moving one place to the right of the default value on Table 15-4 to an impairment rating of six percent. He indicated that, with respect to the functional history grade modifier, Dr. Grant did not provide a copy of appellant's completed *Quick*DASH survey and that it did not appear that he compared this score with that of a completed Activities of Daily Living Questionnaire to ensure accuracy. With respect to the physical examination grade modifier, Dr. Zimmerman indicated that Dr. Grant did not provide a specific atrophy measurement or indicate that a measurement was taken with a tape measure. He concluded that, under these circumstances, appellant had no more than a five percent impairment of his right arm, *i.e.*, the default value of the class 1 diagnostic category of distal biceps tendon rupture.

In a May 26, 2010 decision, OWCP granted appellant a schedule award for a five percent permanent impairment of his right arm. The award ran for 15.6 weeks from March 14 to July 1, 2010. It was based on the April 30, 2010 impairment evaluation of Dr. Zimmerman.

Appellant requested reconsideration of his claim and submitted a July 11, 2010 report of Dr. Grant. In this report, Dr. Grant stated that he did not examine appellant but rather reviewed unspecified documents in the office of appellant's counsel. He noted that, under Table 15-20 on

[2] Appellant did not seek surgical treatment for his right arm condition.

page 434, appellant fell under a class 2 diagnostic category for brachial plexus peripheral neuropathy because he also had complex regional pain syndrome. Dr. Grant indicated that grade modifiers for functional history grade 3 and physical examination grade 3 meant that appellant moved two places to the right from the default value on Table 15-20. He concluded that, therefore, appellant had 25 percent permanent impairment of his right arm under the sixth edition of the A.M.A., *Guides*.

In a February 6, 2011 report, Dr. Zimmerman indicated that Dr. Grant's July 11, 2010 impairment rating was of little probative value because there was no indication in the record that appellant had work-related brachial plexus peripheral neuropathy or complex regional pain syndrome. He concluded that there was no reason to change his prior assessment that appellant had a five percent permanent impairment of his right arm, for which he already received a schedule award.

In a February 28, 2011 decision, OWCP affirmed its May 26, 2010 schedule award determination. It indicated that Dr. Grant's July 11, 2010 impairment rating was not adequately supported by the medical findings of record.

LEGAL PRECEDENT

The schedule award provision of FECA[3] and its implementing regulations[4] 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.[5] 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.[6]

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 elbow, the relevant portion of the arm for the present case, reference is made to Table 15-4 (Elbow Regional Grid) on pages 398 through 400. After the Class of Diagnosis (CDX) is determined from the Elbow Regional Grid (including identification of a default grade value), the Net Adjustment Formula is applied using the Grade Modifier for Functional History (GMFH), Grade Modifier for Physical Examination (GMPE)

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *Id*.

[6] *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.

and Grade Modifier for Clinical Studies (GMCS).[7] The Net Adjustment Formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[8] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[9]

ANALYSIS

OWCP accepted that on June 14, 2008 appellant sustained a partial distal biceps tendon rupture of his right elbow when he pulled a circuit breaker out of a switch gear. Appellant received a schedule award for a five percent permanent impairment of his right arm. The award was based on the opinion of Dr. Zimmerman, a Board-certified internist serving as an OWCP medical adviser, who reviewed and evaluated assessments of Dr. Grant, an attending Board-certified internist.

The Board finds that OWCP properly found that appellant did not meet his burden of proof to establish that he has more than a five percent permanent impairment of his right arm, for which he received a schedule award. OWCP properly relied on the well-rationalized opinion of Dr. Zimmerman in making its schedule award determinations.

In an April 30, 2010 report, Dr. Zimmerman indicated that he agreed with the March 14, 2010 assessment of Dr. Grant that appellant fell within the class 1 diagnostic category of distal biceps tendon rupture under Table 15-4 and that he came under the default value of five percent on this table. The Board notes that, given appellant's accepted condition and symptoms, this diagnostic category rating is appropriate. Dr. Zimmerman also properly pointed out that Dr. Grant had not justified his opinion that appellant's grade modifier scores warranted his moving one place to the right of the default value on Table 15-4 to an impairment rating of six percent. Given appellant's apparent *Quick*DASH score of 30 and the fact that Dr. Grant did not report a specific measurement for atrophy, Dr. Grant did not justify his opinion that grade modifier scores warranted a movement from the default value of five percent.[10] Therefore, Dr. Zimmerman properly concluded that appellant had a five percent impairment of his right arm.

Dr. Grant later produced a July 11, 2010 report in which he concluded that appellant had a 25 percent permanent impairment of his right arm under the sixth edition of the A.M.A., *Guides*. He noted that, under Table 15-20 on page 434, appellant fell under a class 2 diagnostic category for brachial plexus peripheral neuropathy because he also had complex regional pain

[7] The *Quick*DASH form contains survey questions asking a given claimant to specify his or her ability to carry out various activities and the symptoms that he or she experiences while performing them. The DASH in *Quick*DASH stands for disabilities of the arm, shoulder and hand. A completed *Quick*DASH form may be used as part of the assessment of functional history. In order to ensure accuracy, a completed *Quick*DASH survey may be compared to a completed Activities of Daily Living Questionnaire. *See* A.M.A., *Guides* (6th ed. 2009) 482-86.

[8] *Id.* at 398-400, 405-11.

[9] *Id.* at 23-28.

[10] *See* A.M.A., *Guides* 406, 408, Table 15-7 and Table 15-8.

syndrome. Dr. Zimmerman properly found, in a February 6, 2011 report, that Dr. Grant's July 11, 2010 impairment rating was of little probative value because there was no indication in the record that appellant had work-related brachial plexus peripheral neuropathy or complex regional pain syndrome. He concluded that there was no reason to change his prior assessment that appellant had a five percent permanent impairment of his right arm, for which he already received a schedule award.

For these reasons, appellant did not meet his burden of proof to establish that he has more than a five percent permanent impairment of his right arm.

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 his burden of proof to establish that he has more than a five percent permanent impairment of his right arm, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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