United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 11-1240**
	)	**Issued: January 3, 2012**
DEPARTMENT OF DEFENSE,	)	
DLA-DISTRIBUTION REGION WEST,	)	
Tracy, CA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 26, 2011 appellant, through his representative, filed a timely appeal from the March 30, 2011 Office of Workers' Compensation Programs' (OWCP) merit decision which affirmed 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 schedule award decision.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained more than a five percent permanent impairment of his left arm, for which he received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 22, 2008 appellant, then a 52-year-old distribution process worker, filed a traumatic injury claim alleging that on October 1, 2008 he was placing boxes on the line and noticed pain in the left forearm after two hours in the performance of duty. He did not stop work. On March 11, 2009 OWCP accepted the claim for left elbow strain. It also accepted left medial epicondylitis and cubital tunnel syndrome. Appellant received compensation benefits.

On January 26, 2010 appellant filed a Form CA-7 claim for a schedule award.

By letter dated April 21, 2010, OWCP referred appellant for a second opinion, with a statement of accepted facts, a set of questions and the medical record, to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon.[2]

In a May 5, 2010 report, Dr. Swartz noted appellant's history of injury and medical treatment. On examination appellant had slightly decreased perception to pinwheel testing in the four fingers of the left hand compared to the right hand, a positive Froment sign in the left hand, decreased interosseous strength in the left hand, both in the adductor and abductor interossei which would be reflective of ulnar neuropathy. Dr. Swartz also found a negative Tinel's in the left elbow, a positive Phalen's test bilaterally, left more pronounced than the right, 5/5 thumb abduction strength in both hands, and a negative reverse Cozen's test. He determined that appellant had medial epicondylitis in addition to a cubital tunnel syndrome with a left upper extremity ulnar neuropathy. Dr. Swartz referred to Table 15-23[3] for entrapment/compression neuropathy impairment and noted that test findings which revealed the conduction delays over the ulnar nerve distribution would correlate to a grade modifier of 1. Regarding a functional history adjustment, he noted that appellant had aching and numbness in the left upper extremity which would rate a grade modifier of 1. Dr. Swartz noted that the physical examination adjustment corresponded to a grade modifier of 3, based on decreased sensation and atrophy in the left upper extremity. He averaged the modifiers and arrived at a grade modifier of 2. Dr. Swartz explained that he did not have a *Quick*Dash score on appellant, but he completed a functional capacities checklist, which revealed: pain with bathing; showering; washing his hair; shaving; difficulty lifting grocery bags; preparing meals and washing dishes; carrying garbage and difficulty using a manual shift while driving. He explained that this would place appellant into grade 2, which would qualify appellant for an impairment rating of five percent of his left upper extremity.

In an April 21, 2010 report, Dr. Donald Rossman, specializing in occupational medicine and a treating physician, utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) to determine that appellant had a four percent impairment of the left arm.

[2] Dr. Swartz previously examined appellant on July 22, 2009, at the request of OWCP, to determine the nature and the extent of appellant's employment-related condition.

[3] A.M.A., *Guides* 449.

In a June 10, 2010 report, an OWCP medical adviser reviewed appellant's history of injury and treatment. He referred to Table 15-23 of the A.M.A., *Guides*, (6th ed. 2009) and selected a grade modifier of 1, as the electrodiagnostic studies revealed conduction delays over the ulnar nerve distribution. The medical adviser advised that the functional history adjustment with aching and numbness of the left upper extremity would be a grade modifier of 1. Regarding a physical examination adjustment, he noted that appellant had decreased sensation and left upper extremity atrophy with a grade modifier of 3. The medical adviser advised that these values would average out to 1.7 or rounded off to 2 and the impairment would fit into a default rating of five percent noting Table 15-23, entrapment compression neuropathy impairment. He explained that activities of daily living would indicate a grade 2 and this would support the default rating of five percent, which would be the upper extremity impairment.

By decision dated June 22, 2010, OWCP issued appellant a schedule award for five percent permanent impairment of the left arm.

On July 19, 2010 appellant's representative requested a telephonic hearing, which was held on January 18, 2011. At the hearing, appellant testified regarding his symptoms and employment capabilities since his injury. His representative indicated that additional medical evidence would be submitted; however, no additional evidence was received.

By decision dated March 30, 2010, an OWCP hearing representative affirmed the June 22, 2010 decision.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing regulations[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 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. For decisions issued after May 1, 2009, the A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[6]

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).[7] The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] FECA Bulletin No. 09-03 (issued March 15, 2009). A.M.A., *Guides* (6th ed. 2008).

[7] A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

(GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[8] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[9]

ANALYSIS

Appellant's claim was accepted by OWCP for left elbow strain, left medial epicondylitis and cubital tunnel syndrome. On January 26, 2010 he filed a Form CA-7 claim for a schedule award. The Board finds that the medical evidence of record establishes five percent of the left upper extremity.

In an April 21, 2010 report, Dr. Rossman utilized the fifth edition of the A.M.A., *Guides*. For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is to be used in rating permanent impairment.[10] A medical opinion not based on the appropriate edition of the A.M.A., *Guides* has diminished probative value in determining the extent of a claimant's permanent impairment.[11] Thus, Dr. Rossman's April 21, 2010 report is of limited probative value. The Board also notes that Dr. Rossman found a lesser degree of impairment than did Dr. Swartz, OWCP's referral physician or the medical adviser.

Dr. Swartz and the medical adviser agreed as to the extent of appellant's impairment. They found that Table 15-23 (Entrapment/Compression Neuropathy Impairment)[12] was appropriate to rate appellant's cubital tunnel syndrome. Dr. Swartz and the medical adviser identified a grade modifier of 1 for test findings based upon conduction delays (sensory and/or motor).[13] For functional history, appellant had aching and numbness in the left upper extremity which corresponded to a grade modifier of 1. For physical findings, Dr Swartz found a grade modifier of 3 for decreased sensation and the medical adviser concurred in this. The Board notes that, when grade modifier values were added, they resulted in a total of five. Dividing this value of five by the three modifier categories provided an average of 1.7 which was rounded to two which represented a default impairment rating of five percent.[14] In determining whether to modify the default value of five percent, the physicians considered the impact of appellant's condition on his activities of daily living, and found it was reasonable to select a grade 2, which resulted in the default five percent rating for grade modifier 2 in Table 15-23.

The Board finds that OWCP's medical adviser and second opinion physician properly applied the A.M.A., *Guides* to rate impairment to appellant's left upper extremity. They reviewed the medical evidence and determined that appellant had five percent impairment under

[8] A.M.A., *Guides* 494-531.

[9] *Id.* at 521.

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

[11] *See Fritz A. Klein*, 53 ECAB 642 (2002).

[12] *See* A.M.A., *Guides* 449, Table 15-23.

[13] *Id.*

[14] *See id*. at 448-49.

the sixth edition of the A.M.A., *Guides*. There is no other medical evidence in conformance with the sixth edition of the A.M.A., *Guides* that supports any greater impairment.

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 met his burden of proof to establish that he has more than a five percent impairment of the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 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