

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

P.H., Appellant

and

**DEPARTMENT OF DEFENSE, DEFENSE
LOGISTICS AGENCY, Fort Belvoir, VA,
Employer**

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**Docket No. 12-418
Issued: July 10, 2012**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 21, 2011 appellant, through his attorney, filed a timely appeal from a November 15, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 has more than 14 percent left arm impairment.

FACTUAL HISTORY

On September 7, 2007 appellant, then a 56-year-old business analyst, filed an occupational disease claim (Form CA-2) alleging that he sustained carpal tunnel syndrome as a

¹ 5 U.S.C. § 8101 *et seq.*

result of his federal employment. OWCP accepted the claim for bilateral carpal tunnel syndrome.

In a report dated December 23, 2009, Dr. David Weiss, an osteopath, provided a history and results on examination.² He stated that appellant had a prior work injury to his left shoulder with diagnoses of rotator cuff tear and impingement syndrome.³ With respect to a permanent impairment in the left arm due to carpal tunnel syndrome, Dr. Weiss opined that appellant had a seven percent impairment. He identified Table 15-23 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), finding that appellant had grade modifiers of three for test findings and history and two for physical examination. According to Dr. Weiss, the default value of 8 percent was reduced by 1 percent for a *QuickDASH* score of 45 percent, resulting in a 7 percent arm impairment.⁴

By report dated March 7, 2011, an OWCP medical adviser concurred that the left arm impairment for carpal tunnel was seven percent. OWCP requested an additional report from the medical adviser, stating in a March 10, 2011 memorandum that appellant had previously received a schedule award in 2002 for the left rotator cuff tear. In a report dated March 15, 2011, the medical adviser stated that the 2002 impairment should be recalculated under the sixth edition of the A.M.A., *Guides* and then combined with the carpal tunnel impairment. The medical adviser opined that the shoulder impairment would be 6 percent under the sixth edition and combined with the 7 percent carpal tunnel impairment resulted in a 13 percent left arm impairment.

By decision dated March 21, 2011, OWCP issued a schedule award for a five percent right arm impairment based on carpal tunnel syndrome. With respect to the left arm, it found that appellant was not entitled to a schedule award, as 13 percent was less than the previously awarded 14 percent.

Appellant requested a hearing before an OWCP hearing representative, which was held on July 19, 2011. By decision dated October 5, 2011, the hearing representative remanded the case for further development. The hearing representative found that appellant's shoulder impairment should be determined based on Dr. Weiss' 2009 report.

In a report dated November 2, 2011, an OWCP medical adviser stated that appropriate calculations had been made in his prior report. By decision dated November 15, 2011, OWCP determined that appellant was not entitled to an additional schedule award for the left arm.

LEGAL PRECEDENT

Section 8107 of FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for

² The date of examination was apparently February 25, 2009 and Dr. Weiss indicated that his opinions as to permanent impairment had been "updated" December 23, 2009.

³ The record indicates that appellant has a separate claim for the left shoulder injury.

⁴ DASH is an acronym for Disabilities of the Arm, Shoulder and Hand, a functional assessment method.

the permanent impairment of the scheduled member or function.⁵ Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁷

It is well established that benefits payable under 5 U.S.C. § 8107(c) are reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.⁸

ANALYSIS

In the present case, OWCP accepted bilateral carpal tunnel syndrome. Appellant also had a prior injury to the left shoulder involving a torn rotator cuff and pursuant to that claim received a schedule award for a 14 percent permanent impairment to the left arm. With respect to left arm permanent impairment from the accepted carpal tunnel syndrome, appellant's physician and an OWCP medical adviser found a seven percent impairment. OWCP denied an additional schedule award on the grounds that the current shoulder impairment from the prior injury was 6 percent and the combined 13 percent was less than the 14 percent previously awarded.

In the October 5, 2011 decision, the hearing representative noted the regulation stating that the current impairment must in whole or in part duplicate the prior impairment from an earlier injury before the schedule award for the current impairment is reduced by the compensation paid for the prior impairment. But OWCP failed to explain how this regulation was applied in the present case. 20 C.F.R. § 10.404(c) does not provide that the current injury impairment is combined with an updated impairment from a prior injury to determine if a greater impairment than previously awarded has been established. The regulation indicates that the nature of the current impairment is evaluated and if it duplicates the prior award, then any current award is reduced to the extent of the duplication.

There was no medical evidence presented that established the current impairment for carpal tunnel syndrome "in whole or in part would duplicate" the prior impairment based on a torn rotator cuff for the left shoulder. The medical adviser was not asked nor provided a rationalized opinion on the issue. If the carpal tunnel impairment did not duplicate the shoulder impairment then appellant would be entitled to a schedule award for an impairment based on the

⁵ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁶ A. *George Lampo*, 45 ECAB 441 (1994).

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

⁸ 20 C.F.R. § 10.404(c).

carpal tunnel syndrome, even if it involved the same member of the body as the prior schedule award.⁹

The case will be remanded to OWCP for proper application of 20 C.F.R. § 10.404(c) and appropriate findings on the issue presented. After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case must be remanded to OWCP for further development on the issue presented.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 15, 2011 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: July 10, 2012
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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

⁹ See *R.H.*, Docket No. 11-1754 (issued April 24, 2010) (the medical adviser found a carpal tunnel impairment did not duplicate a prior impairment based on lateral epicondylitis); *T.S.*, Docket No. 09-1308 (issued December 22, 2009) (OWCP did not explain whether current impairment for right medial and lateral meniscectomy duplicated a prior schedule award to the right leg).