United States Department of Labor
Employees' Compensation Appeals Board

H.R., Appellant	)	
and	)	**Docket No. 12-448**
	)	**Issued: July 12, 2012**
DEPARTMENT OF VETERANS AFFAIRS, JACKSON VETERANS ADMINISTRATION MEDICAL CENTER, Jackson, MS, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 29, 2011 appellant filed a timely appeal from a November 1, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.

ISSUE

The issue is whether appellant established that she has more than a 9 percent impairment of the right upper extremity and a 19 percent impairment of the left upper extremity for which she received schedule awards.

On appeal, appellant asserts that she is entitled to an increased award based on her accepted conditions and that she is entitled to augmented compensation because she is the legal guardian of her granddaughter.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On February 20, 1997 appellant, then a 44-year-old licensed practical nurse, sustained a traumatic employment injury to her elbow/elbows.[2] The claim was adjudicated by OWCP under File No. xxxxxx181. On May 21, 2004 appellant filed an occupational disease claim alleging that employment duties caused a right rotator cuff tear. OWCP adjudicated the claim under File No. xxxxxx756 and accepted as employment-related right shoulder sprain/supraspinatus tear.[3] On May 6, 2005 Dr. William B. Geissler, a Board-certified orthopedic surgeon, performed arthroscopic decompression of a right rotator cuff tear. On August 29, 2005 appellant was granted a schedule award for a seven percent impairment of the left arm due to the accepted left lateral epicondylitis.

On May 31, 2006 appellant filed an occupational disease claim alleging that repetitive motion in performing her job duties caused trigger finger or carpal tunnel syndrome. She had stopped work on April 27, 2006. OWCP adjudicated this claim under File No. xxxxxx096 and accepted bilateral carpal tunnel syndrome. On October 2, 2006 Dr. Eric E. Wegener, Board-certified in plastic and hand surgery, performed left carpal tunnel and left long finger releases. On November 15, 2006 OWCP accepted bilateral trigger finger and on December 11, 2006, he performed right carpal tunnel and right long finger releases.

Appellant returned to modified duty on December 26, 2006. By decision dated March 14, 2007, OWCP determined that her actual earnings in the modified position fairly and reasonably represented her wage-earning capacity with zero loss.[4]

On June 30, 2008 Dr. Wegener performed release of the left index finger. On November 6, 2008 he advised that appellant could return to work without restrictions and she returned to modified duty.[5] On July 18, 2008 OWCP informed her that she was not eligible for augmented compensation because the child she claimed had not been legally adopted.

On March 10, 2009 appellant was granted a schedule award for a two percent loss of use of the right arm, for her right shoulder condition.

Appellant filed a schedule award claim on April 27, 2011. She submitted a Letter of Guardianship from Hinds County, the State of Mississippi, indicating that on June 18, 2009 she became the legal guardian of J.R., a minor. By letter dated June 14, 2011, OWCP noted that bilateral carpal tunnel syndrome and bilateral trigger finger were accepted conditions and asked Dr. Wegener to provide an impairment evaluation in accordance with the sixth edition of the

[2] It is unclear from the imaged record whether the accepted condition is left lateral epicondylitis or bilateral epicondylitis.

[3] The claim was initially denied in a July 21, 2004 decision.

[4] An overpayment of compensation in the amount of $1,667.21 was paid in full.

[5] The record does not indicate when appellant returned to work.

American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).[6]

In a July 19, 2011 letter, Dr. Wegener advised that appellant had been at maximum medical improvement for "quite awhile" and that, in accordance with the sixth edition of the A.M.A., *Guides*, she had 14 percent impairment of her right arm and 25 percent impairment of her left arm. On August 29, 2011 Dr. H.P. Hogshead, OWCP's medical adviser who is Board-certified in orthopedic surgery, advised that maximum medical improvement was reached on February 6, 2007. He indicated that since Dr. Wegener did not explain his rating with specific references to the A.M.A., *Guides*, a second opinion was necessary. On August 30, 2011 OWCP requested that Dr. Wegener provide an explanation of his impairment rating.

On September 15, 2011 Dr. Wegener forwarded a July 13, 2011 impairment evaluation, completed by P. Claypool, an occupational therapist, who noted that appellant was left-handed, and advised that, in accordance with Table 15-23, Entrapment/Compression Neuropathy Impairment, she had impairments of five percent on the right and seven percent on the left due to carpal tunnel syndrome. Mr. Claypool further found that, based on diminished digit range of motion, under Figure 15-13, appellant had 9 percent right arm impairment and 19 percent left arm impairment which, when combined with the impairments for carpal tunnel syndrome, yielded impairments of 14 percent on the right and 25 percent on the left.

On September 19, 2011 Dr. Hogshead, OWCP's medical adviser, reviewed the July 13, 2011 evaluation and indicated that maximum medical improvement occurred that day. He advised that range of motion was a standalone rating and could not be combined with a diagnosis-based impairment. The medical adviser concluded that appellant had a 10 percent impairment of the right hand and a 21 percent impairment of the left hand. OWCP asked Dr. Wegener to review the medical adviser's report and in an October 4, 2011 response, he advised that the medical adviser was incorrect in his assumptions and that he stood by his previous rating. In an October 28, 2011 report, Dr. Hogshead advised that appellant had 9 percent right upper extremity impairment and 19 percent left upper extremity impairment.

A November 1, 2011 memorandum indicated that appellant previously received a schedule award for a two percent impairment of the right arm under File No. xxxxxx756 and a schedule award for a seven percent impairment of the left arm under File No. xxxxxx181.

By decision dated November 1, 2011, OWCP noted appellant's previous upper extremity schedule awards and granted her awards for an additional 7 percent impairment of the right arm, for a total 9 percent right arm impairment and an additional 12 percent impairment on the left, for a total 19 percent left arm impairment.

[6] A.M.A., *Guides* (6th ed. 2008).

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing federal regulations[7] 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.[8] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[9]

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).[10] Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[11] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12]

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[13] 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.[14]

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 the medical adviser providing rationale for the percentage of impairment specified.[15]

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[7] 20 C.F.R. § 10.404.

[8] *Id*. at § 10.404(a).

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

[10] *Supra* note 6 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

[11] *Id*. at 385-419.

[12] *Id*. at 411.

[13] *Id*. at 449.

[14] *Id*. at 448-50.

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

ANALYSIS

The Board initially finds that appellant is not entitled to augmented compensation for her claimed granddaughter. The record contains a legal document from Hinds County, in the State of Mississippi that indicates that appellant is the guardian of J.R., a minor. Appellant has identified J.R. as her granddaughter on OWCP claim forms. A grandchild, however, is not among the categories of persons included in the term "child" under FECA. Section 8110 of FECA defines the class of persons who qualify as "dependents" and thereby come within the scope of FECA for purposes of augmented compensation.[16] This section makes provision that only a member of the class of children specifically defined as a "child" of the injured employee will entitle the latter to augmented compensation for dependents.[17] The term "grandchild" is separately defined under section 8101(10) of FECA and appears only in section 8133 of FECA, which provides for those classes of persons as specifically defined who are eligible for death benefits.[18] Congress allowed grandchildren as a class of persons eligible for death benefits under section 8133, Congress did not include a grandchild in the definition of dependents for purposes of augmented compensation under section 8110.[19] While FECA defines an adopted child in its definition of "child,"[20] there is no indication in this case that appellant formally adopted J.R., as defined in FECA. Appellant would thus not be entitled to augmented compensation for her granddaughter.

The Board, however, finds this case is not in posture for decision regarding the degree of appellant's upper extremity impairments. Appellant has accepted upper extremity conditions under three OWCP file numbers. Under File No. xxxxxx181, OWCP accepted lateral epicondylitis, an elbow condition,[21] and she was granted a schedule award for a seven percent impairment of left upper extremity under that claim. Under File No. xxxxxx756, a right shoulder sprain and supraspinatus tear were accepted, and she was granted a schedule award for a two percent right upper extremity impairment due to her right shoulder condition. Under File No. xxxxxx096, OWCP accepted bilateral carpal tunnel syndrome and bilateral trigger finger.

On April 27, 2011 appellant filed a schedule award claim under claim File No. xxxxxx096. On June 14, 2011 OWCP asked Dr. Wegener, an attending hand surgeon, to provide an impairment analysis. It informed him that bilateral carpal tunnel syndrome and bilateral trigger finger were accepted conditions. OWCP, however, did not inform Dr. Wegener of the additional accepted conditions of appellant's upper extremities. In an impairment evaluation, forwarded by Dr. Wegener on September 15, 2011, appellant's upper extremity impairments were evaluated only in regards to her carpal tunnel and trigger finger conditions. In asking

[16] 5 U.S.C. § 8110.

[17] *Id.* at § 8101(1); *see Barbara J. Hill*, 50 ECAB 358 (1999).

[18] 5 U.S.C. § 8133.

[19] *Barbara J. Hill*, *supra* note 17.

[20] 5 U.S.C. § 8101(9); *see Jacqueline S. Harris*, 56 ECAB 252 (2005).

[21] As noted previously, *supra* note 2, it is unclear from the imaged record whether the accepted condition is left lateral epicondylitis or bilateral epicondylitis.

Dr. Hogshead, OWCP's medical adviser, to review appellant's upper extremity impairment, OWCP merely informed the medical adviser that bilateral carpal tunnel syndrome and bilateral trigger finger were accepted conditions, and did not refer to her additional upper extremity claims or accepted conditions. Dr. Hogshead advised that appellant had a 9 percent right upper extremity impairment and a 19 percent left upper extremity impairment due to the accepted carpal tunnel and trigger finger conditions. In granting the November 1, 2011 schedule award, OWCP noted that she had previously received a two percent schedule award for the right upper extremity and subtracted this from the nine percent found by Dr. Hogshead, yielding an additional seven percent right upper extremity impairment. In that decision, it also noted that appellant had previously received a schedule award for a 7 percent left upper extremity impairment and subtracted this from the 19 percent found by Dr. Hogshead, yielding an additional 12 percent impairment on the left. Appellant was granted schedule awards for an additional 7 percent right upper extremity impairment and an additional 12 percent left upper extremity impairment on November 1, 2011.

The A.M.A., *Guides* indicates that the steps to be used in performing an impairment rating for upper extremities include that a diagnosis for each part of the upper limb is to be rated.[22] Section 15.2a indicates that the regions to be assessed separately include thumb/finger/hand, wrist, elbow and shoulder.[23] In this case, appellant has accepted conditions of the fingers, wrist, elbow and shoulder. OWCP did not follow the analysis outlined in the A.M.A., *Guides* in developing the medical evidence before granting the schedule award on November 1, 2011. It merely subtracted appellant's previous awards granted for her left elbow and right shoulder condition from her current impairment due to bilateral carpal tunnel syndrome and bilateral trigger finger. The case must therefore be remanded to OWCP for a proper impairment analysis of her upper extremities as provided by section 15.2a of the A.M.A., *Guides*. On remand OWCP should combine appellant's three files that include accepted upper extremity conditions, to be followed by further development of the medical record in accordance with the A.M.A., *Guides*. OWCP shall then issue a merit decision regarding whether appellant is entitled to an increased schedule award for her upper extremity conditions.

CONCLUSION

The Board finds that this case is not in posture for decision regarding the degree of appellant's upper extremity impairments.

[22] *Supra* note 6 at 389.

[23] *Id*. at 390.

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2011 decision of the Office of Workers' Compensation Programs be set aside and the case remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: July 12, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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