United States Department of Labor
Employees' Compensation Appeals Board

E.W., Appellant	)	
and	)	**Docket No. 11-1636**
	)	**Issued: March 7, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Clarksville, MD, Employer	)	

Appearances:
Lee Dora Rice, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 6, 2011 appellant, through her representative, filed a timely appeal from a May 6, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) finding that she was not entitled to an increased 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 has more than a 16 percent permanent impairment of the right arm, for which she received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. By decision dated February 19, 2009, the Board reversed the April 4 and May 23, 2008 OWCP decisions rescinding acceptance of appellant's claim for compensation for disability from April 13 through November 1, 2006.[2] On appeal for the second time, the Board, in an August 31, 2010 order remanding case, set aside an August 19, 2009 decision granting appellant a schedule award for a 16 percent impairment of the right arm.[3] It found that Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, who provided a second opinion examination, determined that she had a 16 percent permanent impairment of the right upper extremity using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). An OWCP medical adviser concurred with Dr. Hanley's determination, also using the fifth edition of the A.M.A., *Guides*. The Board concluded, however that as OWCP issued the schedule award decision after May 1, 2009, it should have based the schedule award on the sixth edition of the A.M.A., *Guides*. The Board remanded the case for recalculation of the extent of appellant's permanent impairment using the sixth edition of the A.M.A., *Guides*. The facts and the circumstances as set forth in the prior decision and order are hereby incorporated by reference.

On September 15, 2010 OWCP again referred appellant to Dr. Hanley for a second opinion examination. On September 29, 2010 Dr. Hanley noted that he had previously evaluated appellant on January 7, 2009. He found that she continued to experience the same symptoms of persistent discomfort, weakness, swelling and mild paresthesias of the right wrist. On examination Dr. Hanley found no loss of motion, a minimally positive Tinel's sign and a loss of two-point discrimination. He diagnosed surgically-treated right carpal tunnel syndrome. Applying Table 15-23 on page 449, Dr. Hanley found that appellant had a grade modifier of 1 for test findings, a grade modifier of 3 for her history of constant symptoms, a grade modifier of 2 for physical findings of decreased sensation and a grade modifier of 3 on the functional scale. He applied her *Quick*DASH (Disabilities of the Arm, Shoulder and Hand) score of 50 to find a five percent right upper extremity impairment. Dr. Hanley asserted that appellant's right arm impairment decreased from 16 percent to 5 percent due to the change in editions of the A.M.A., *Guides*.

On October 19, 2010 an OWCP medical adviser related that he did not see a preoperative electromyogram (EMG) or nerve conduction study (NCS) in the record and requested that it be forwarded for review. Applying Table 15-23 on page 449, he found that appellant had a three percent right upper extremity impairment.

At OWCP's request, appellant submitted August 3, 2006 diagnostic studies showing a distal motor latency of 3.6 for the right median nerve of the wrist over 8 centimeters of distance and a 3.6 sensory latency for the right median nerve of the wrist over a distance of 13 centimeters.

[2] Docket No. 08-1890 (issued February 19, 2009). OWCP accepted appellant's October 27, 2006 occupational disease claim for right carpal tunnel syndrome.

[3] Docket No. 09-2325 (issued August 31, 2010).

On November 17, 2010 an OWCP medical adviser found that appellant's preoperative electrodiagnostic studies did not meet the criteria for using Table 15-23 on page 449 to rate the impairment as the distal motor latency of the right median nerve was 3.6, less than the 4.5 milliseconds required and the distal peak sensory latency was 3.6, less than the 4.0 milliseconds required. He thus applied Table 15-21 on page 438, applicable to determining impairments due to peripheral neuropathy, to Dr. Hanley's clinical findings. The medical adviser found that appellant had a moderate sensory deficit based on abnormal two-point discrimination. He identified the diagnosis as a median nerve impairment below the midforearm, which he determined yielded a default value of four percent using Table 15-21 on page 438. The medical adviser applied grade modifiers of 2 for functional history and found that grade modifiers for physical examination and clinical studies were not applicable as they were previously used in classifying the impairment. He subtracted the grade modifier for functional history of 2 from the default value for the diagnosis class to find a net adjustment of 1, or a final default grade of D, which he determined yielded a four percent impairment of the right arm.

By decision dated January 5, 2011, OWCP found that appellant had no greater impairment than the 16 percent previously awarded.

On January 8, 2011 appellant requested a review of the written record by an OWCP hearing representative.

By decision dated May 6, 2011, the hearing representative affirmed the January 5, 2011 decision. She indicated that an overpayment existed due to the prior inaccurate award and directed OWCP to issue a preliminary overpayment determination upon return of the case record.

On appeal appellant argues that her condition had not changed since the March 2005 decision and that she would have to have surgery in the future. She disagreed that any overpayment of compensation arose.

LEGAL PRECEDENT

The schedule award provision of FECA,[4] and its implementing federal 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id*. at § 10.404(a).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

The sixth edition requires identifying 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).[8] The net adjustment formula is (GMFH-CDX) + (GMPE-DCX) + (GMCS-CDX).

For evaluating impairment related to dysfunction of the median nerves, the sixth edition of the A.M.A., *Guides* contains Appendix 15-B (Electrodiagnostic Evaluation of Entrapment Syndromes). It provides that the criteria for carpal tunnel syndrome include distal motor latency longer than 4.5 milliseconds for an 8-centimeter study; distal peak sensory latency longer than 4.0 centimeters for a 14-centimeter distance; and distal peak compound nerve latency of longer than 2.4 milliseconds for a transcarpal or midpalmar study of 8 centimeters. If different distances were used in testing, correction to the above-stated distances could be accomplished by assuming each one centimeter of distance required 0.2 milliseconds.[9]

If carpal tunnel syndrome is found under the standards of Appendix 15-B, the impairment is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[10] In Table 15-23, grade modifiers are described for test findings, history and physical findings. A survey completed by a given claimant, known by the name *Quick*DASH, is used to further modify the grade and to choose the appropriate numerical impairment rating.[11] If carpal tunnel syndrome is not found under the standards of Appendix 15-B, impairment due to median nerve dysfunction is evaluated under the scheme found in Table 15-21 (Peripheral Nerve Impairment: Upper Extremity Impairments).[12] Under Table 15-21, observed conditions are placed into classes (ranging from class 0 to class 4) based on diagnosis and the severity of the condition. After the class is identified, the precise degree of the impairment can be modified by various factors, including functional history, physical examination and clinical studies.[13]

ANALYSIS

OWCP accepted that appellant sustained right carpal tunnel syndrome due to factors of her federal employment. It granted her a schedule award for 16 percent impairment of the right arm. The Board, however, found that OWCP should have applied the sixth edition of the A.M.A., *Guides* to determine the extent of her permanent impairment and remanded the case for application of the proper edition of the A.M.A., *Guides*.

In a September 29, 2010 impairment evaluation, Dr. Hanley found that appellant had no loss of motion of the wrist, a mildly positive Tinel's sign and a loss of two-point discrimination.

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

[9] *Id*. at 487, Appendix 15-B.

[10] *See id*. at 449, Table 15-23.

[11] *Id*. at 448.

[12] *Id*. at 437-40, Table 15-21 (portion relating to median nerves).

[13] *Id*. at 406-09.

He applied Table 15-23 of the A.M.A., *Guides* and found that she had a five percent right arm impairment.

On November 17, 2010 an OWCP medical adviser reviewed Dr. Hanley's report. He determined that Dr. Hanley incorrectly used Table 15-23 as appellant's preoperative diagnostic tests results did not meet the criteria. As discussed, with respect to evaluating impairment due to dysfunction of the median nerves, Appendix 15-B (Electrodiagnostic Evaluation of Entrapment Syndromes) contains criteria for evaluating whether carpal tunnel syndrome is present. If carpal tunnel syndrome is found under the standards of Appendix 15-B, the impairment is evaluated under the schedule found in Table 15-23. If carpal tunnel syndrome is not found under the standards of Appendix 15-B, impairment due to median nerve dysfunction is evaluated under the scheme found in Table 15-21. The medical adviser opined that, as appellant's distal motor latency and distal peak sensory latency results were 3.6, she did not meet the criteria for evaluation under Table 15-23.[14] He thus applied Table 15-21 to Dr. Hanley's clinical findings. The medical adviser utilized the diagnosis of a median nerve impairment below the midforearm. He found that appellant had a moderate sensory impairment which yielded a default value of four percent under Table 15-21. However, Table 15-21 provides that a moderate sensory deficit, if objectively verified, yields a default impairment of 17 percent rather than 4 percent. Accordingly, the Board will remand the case for the medical adviser to recalculate the extent of appellant's right arm impairment. After such further development as deemed necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

[14] Appellant had a distal motor latency of 3.6 for the right median nerve of the wrist over 8 centimeters of distance and a 3.6 sensory latency for the right median nerve of the wrist over a distance of 13 centimeters. The test for sensory latency occurred over 13 rather than the 14 centimeters provided by Appendix 15-B. If different distances were used in testing, correction to the above-stated distances is accomplished by assuming each one centimeter of distance required 0.2 milliseconds. *Id*. at 487, Appendix 15-B.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: March 7, 2012
Washington, DC

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

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

James A. Haynes, Alternate Judge
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