United States Department of Labor
Employees' Compensation Appeals Board

M.P., Appellant	)	
and	)	**Docket No. 11-1702**
	)	**Issued: March 2, 2012**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Chamblee, GA, 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
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 18, 2011 appellant timely appealed the April 11, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which granted a schedule award for bilateral upper extremity impairment. 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.[2]

ISSUE

The issue is whether appellant has greater than two percent impairment of both the right and left upper extremity.

[1] 5 U.S.C. §§ 8101-8193.

[2] The record on appeal includes evidence received after OWCP issued its April 11, 2011 decision. The Board's appellate review is limited to evidence that was in the case record at the time OWCP issued its final decision. 20 C.F.R. § 501.2(c)(1) (2011). Accordingly, any new evidence received after the April 11, 2011 decision will not be considered on appeal.

FACTUAL HISTORY

Appellant, a 41-year-old former contact representative, has an accepted occupational disease claim for bilateral carpal tunnel syndrome (CTS), which arose on or about January 8, 2007. On February 16, 2009 Dr. John G. Seiler, III, a Board-certified orthopedic surgeon, performed a right carpal tunnel release, which OWCP authorized.[3] Appellant received appropriate wage-loss compensation. Unable to resume her regular duties, she returned to work on August 16, 2010 as a customer service representative, with no loss in pay.[4]

On February 7, 2011 appellant filed a claim for a schedule award (Form CA-7). However, she did not submit an impairment rating. On February 10, 2011 OWCP advised appellant of the need for additional medical evidence in support of her claim for a schedule award. The request was also directed to her surgeon, Dr. Seiler. OWCP advised Dr. Seiler to prepare an upper extremity rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2008).

Dr. Seiler did not provide an impairment rating as requested, but instead submitted follow-up treatment notes dated February 10 and March 17, 2011. In his February 10, 2011 treatment notes, he diagnosed bilateral CTS consistent with past electrodiagnostic studies. Dr. Seiler noted excellent range of motion, mild tenderness, and positive Tinel's signs. He also noted that two-point discrimination was 5/5 in all fingers and thumbs. Appellant reportedly preferred to continue nonsurgical treatment strategies and had recently received a new keyboard at work that was helping a bit. Dr. Seiler refilled appellant's prescription for anti-inflammatory medication and advised her to follow up in four to six weeks.

When Dr. Seiler next saw appellant on March 17, 2011, she reported doing fairly well overall. There were no other new problems and she estimated her condition had improved 25 to 30 percent. Bilateral upper extremity physical examination of the skin, subcutaneous tissues, and vascular system were essentially normal. Dr. Seiler's neurological examination revealed 5/5 two-point discrimination in all fingers and thumbs bilaterally. He also noted that Tinel's signs were +/-. Dr. Seiler's impression was that overall appellant seemed to be doing fairly well with nonsurgical treatment. He noted that she believed she had improved with ergonomic worksite evaluation and modifications and nonsurgical treatment. Dr. Seiler planned to continue with this treatment regimen and advised appellant to return in four to six weeks.

The district medical adviser, Dr. James W. Dyer, a Board-certified orthopedic surgeon, reviewed the case record on April 1, 2011. He reported that appellant bad bilateral CTS, greater on the right side, which required surgical release on February 16, 2009. Dr. Dyer characterized the surgical result as "good." As to the left side, he noted that appellant had been treated nonsurgically with splints, anti-inflammatory medication and activity modification. Applying

[3] Dr. Seiler is also certified in the subspecialties of hand surgery and orthopedic sports medicine.

[4] By decision dated November 18, 2010, OWCP determined that appellant's position as a customer service representative fairly and reasonably represented her wage-earning capacity. Because her earnings as a customer service representative equaled or exceeded the current wages of her date-of-injury position, appellant had zero loss in wage-earning capacity.

Table 15-23 (Entrapment/Compression Neuropathy Impairment), A.M.A., *Guides* 449 (6th ed. 2008), Dr. Dyer noted that appellant's grade modifiers (test findings, history & physical findings) totaled 3, and averaged 1. With a grade modifier of 1, the default upper extremity impairment rating was two percent under Table 15-23. Because Dr. Seiler had not provided a *Quick*DASH (Disabilities of the Arm, Shoulder and Hand) score, there was no basis for adjustment for functional scale.[5] Dr. Dyer, therefore, found that appellant had two percent upper extremity impairment on both the left and right side. Additionally, he indicated that appellant had reached maximum medical improvement as of February 10, 2011.

By decision dated April 11, 2011, OWCP granted a schedule award for two percent impairment of the right upper extremity and two percent impairment of the left upper extremity. The award covered a period of 12.48 weeks, beginning February 10, 2011.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[6] FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[7] Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).[8]

ANALYSIS

Appellant challenges OWCP's award of two (2) percent impairment of both the left and right upper extremity. However, she has not submitted any probative medical evidence indicating that she has a greater impairment than previously awarded. OWCP provided appellant an opportunity to submit an impairment rating from her attending physician, Dr. Seiler, but he did not submit a rating under the A.M.A., *Guides* (6th ed. 2008). While Dr. Seiler did not provide a specific rating, his recent treatment notes included sufficient information upon which

[5] The *Quick*DASH consists of 11 questions regarding one's upper extremity symptoms (pain/tingling/difficulty sleeping) and the ability to perform certain activities such as opening a tight or new jar or using a knife to cut food. *See* Table 15-39, A.M.A., *Guides* 485 (6th ed. 2008). Based on the individual responses, a score is calculated from 0 to 100. The *Quick*DASH score is then used to determine what, if any, additional modification should be made based on functional scale. Table 15-23, A.M.A., *Guides* 449 (6th ed. 2008).

[6] For a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

[7] 20 C.F.R. § 10.404 (2011).

[8] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *id.* Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

to rate appellant's upper extremity impairment.[9] OWCP, therefore, referred the case to Dr. Dyer for review and an appropriate rating under the A.M.A., *Guides*.

Dr. Dyer reviewed the record, including Dr. Seiler's recent treatment notes from February and March 2011, and found that appellant had two percent impairment of both the left and right upper extremity. He explained that, under Table 15-23, A.M.A., *Guides* 449 (6th ed. 2008), appellant's grade modifiers for test findings, history and physical findings totaled 3, which represented an average grade modifier of 1. A grade 1 modifier corresponds to a default upper extremity impairment rating of two percent and because Dr. Seiler had not provided a *Quick*DASH score, there was no basis for further adjustment under Table 15-23. Thus, the default rating of two percent represented appellant's upper extremity impairment of both the left and right side. Dr. Dyer's April 1, 2011 impairment rating conforms to the A.M.A., *Guides* (6th ed. 2008) and is consistent with Dr. Seiler's recent examination findings. Accordingly, his finding represents the weight of the medical evidence regarding the extent of appellant's bilateral upper extremity impairment.

CONCLUSION

Appellant failed to establish she has greater than two percent impairment of both the left and right upper extremity.

[9] The attending physician should describe the impairment in sufficient detail to permit clear visualization of the impairment and the restrictions and limitations which have resulted. The description should include the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, disturbance of sensation, or other pertinent description of the impairment. Under the sixth edition of the A.M.A., *Guides* (2008), clinical history is also important in the diagnosis-based grid that ranks impairment within classes of severity. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3a(2) (January 2010).

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 2, 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