

FACTUAL HISTORY

On October 24, 2008 appellant, then a 56-year-old tax examiner technician, filed an occupational claim (Form CA-2) alleging that she sustained carpal tunnel syndrome as a result of her federal employment. OWCP accepted the claim for bilateral carpal tunnel syndrome. Appellant received compensation for wage loss commencing January 5, 2009. She underwent right carpal tunnel surgery on April 28, 2009.

OWCP referred appellant for a second opinion examination regarding a continuing employment-related condition. In a report dated December 18, 2009, Dr. Barry Koffler, an orthopedic surgeon, noted that there was evidence of a positive Tinel's test in the right wrist, with little objective evidence of continuing carpal tunnel in the left wrist. He also diagnosed cervical degenerative disc disease, chronic pain and status post right shoulder manipulation for a frozen shoulder.

In a report dated January 25, 2010, an attending orthopedic surgeon, Dr. Charles Morris, stated that appellant was getting to the point of maximum medical improvement. On February 12, 2010 Dr. Jorge Alvear, an anesthesiologist, stated that a magnetic resonance imaging scan showed profound cervical degenerative disc disease. He stated that the degenerative condition preexisted the work injury and may not be a workers' compensation case, although he believed the repetitive work activity contributed to inflammation that aggravated the underlying condition.

OWCP referred the medical evidence to an OWCP medical adviser for an opinion as to any permanent impairment. In a report dated October 7, 2010, the medical adviser completed a worksheet for diagnosis-based impairments, identifying Table 15-23 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He assigned a default grade C impairment of two percent, with a grade modifier of 2 for functional history and 1 for physical examination. The medical adviser indicated that a grade modifier for clinical studies was not applicable, as it was used for the diagnosis. Applying a net adjustment formula he found no adjustment from the default impairment. The medical adviser reported a maximum medical improvement dated February 12, 2010.

By decision dated November 16, 2010, OWCP granted schedule awards for a two percent permanent impairment to each arm. The period of the awards was 12.48 weeks commencing May 9, 2010.

On March 21, 2011 appellant requested reconsideration of the claim. In a report dated March 18, 2011, Dr. Mark Cullen, an orthopedic surgeon, advised that she had undergone a functional capacity evaluation (FCE). He stated that the disability rating appellant had received from an OWCP medical adviser underrepresented her impairment. Dr. Cullen stated that the occupational therapist who performed the FCE had found a "right upper extremity whole person impairment" of 7 percent and a "left upper extremity whole person impairment" of 12 percent. The record contains an FCE dated February 7, 2011 with impairment ratings under the fifth edition of the A.M.A., *Guides*.

In a report dated March 30, 2011, OWCP's medical adviser noted that the impairment ratings in the FCE were based on the fifth edition of the A.M.A., *Guides*, whereas the sixth edition was currently in use. He stated that the electrodiagnostic studies referred to by the second opinion examiner did not agree with the FCE. The medical adviser opined that there was no basis to change the determination of a two percent bilateral arm impairment.

By decision dated April 20, 2011, OWCP reviewed the case and denied modification of the prior decision.

On June 24, 2011 appellant requested reconsideration. She submitted a May 24, 2011 report from a physical therapist with an opinion as to permanent impairment under the sixth edition of the A.M.A., *Guides*. Appellant also submitted additional reports from Dr. Cullen, including reports dated December 13, 2010, January 4, February 14, May 11 and 16, 2011. Dr. Cullen did not provide an opinion as to permanent impairment.

By decision dated July 15, 2011, OWCP found the application for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

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 the permanent impairment of the scheduled member or function.² 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.³ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁴

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.⁵ 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.⁶

² 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).

³ A. George Lampo, 45 ECAB 441 (1994).

⁴ FECA Bulletin No. 09-03 (March 15, 2009).

⁵ A.M.A., *Guides* 448-50.

⁶ *Id.*

ANALYSIS -- ISSUE 1

On reconsideration, appellant submitted a report dated March 18, 2011 from Dr. Cullen, who noted a February 7, 2011 FCE that provided an opinion regarding arm impairments under the fifth edition of the A.M.A., *Guides*. The FCE was prepared by an occupational therapist. The opinion of an occupational therapist is of no probative medical value as not being a physician under FECA.⁷ In addition, after May 1, 2009 a schedule award must be based on the sixth edition. Dr. Cullen did not himself provide an opinion as to the degree of permanent impairment under the sixth decision.

OWCP issued a November 16, 2010 schedule award for two percent permanent impairment to each arm based on the October 7, 2010 report of an OWCP medical adviser, but he did not provide a fully-rationalized opinion on the issue. The medical adviser identified Table 15-23, which has a specific process to determine the impairment. As noted, the evaluator determines a grade modifier for test findings, history and physical findings, applying the criteria as stated in Table 15-23. The grade modifiers are added and divided by three, and then rounded to determine the applicable final rating category. A default impairment is determined based on the final grade modifier and then this may be adjusted by application of a functional scale (0 to 80) using the Disabilities of the Arm, Shoulder and Hand functional assessment.⁸

OWCP's medical adviser used a worksheet applicable for a diagnosis-based regional grid, such as Table 15-21. These tables use different criteria for determining grade modifiers and utilize a specific adjustment formula based on the grade modifiers identified.⁹ The medical adviser did not refer to the specific criteria for assigning grade modifiers under Table 15-23, provide a grade modifier for test findings, provide an evaluation under the functional scale or otherwise explain his opinion with respect to the specific requirements of Table 15-23.¹⁰ The Board finds that he did not provide a rationalized medical opinion as to the permanent impairment.

The case will be remanded to OWCP for a proper medical opinion on the extent of permanent impairment.¹¹ After such further development as it deems necessary, an appropriate decision should be issued. In view of the Board's holding on the merit issue, it will not address the July 15, 2011 OWCP nonmerit decision.

⁷ *R.S.*, Docket No. 11-1085 (issued January 3, 2012); 5 U.S.C. § 8101(2).

⁸ A.M.A., *Guides* 482.

⁹ *Id.* at 387-444.

¹⁰ *Compare A.W.*, Docket No. 11-1421 (issued January 6, 2012); *R.D.*, Docket No. 11-1115 (issued January 4, 2012).

¹¹ *See D.N.*, 59 ECAB 376 (2008).

CONCLUSION

The Board finds that the case is not in posture for decision and requires further development of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 15 and April 20, 2011 are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: March 15, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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