United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 12-1170**
	)	**Issued: November 9, 2012**
U.S. POSTAL SERVICE, MEMPHIS BULK MAIL CENTER, Memphis, TN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 3, 2012 appellant filed a timely appeal from the February 8, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) granting a 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 merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than an eight percent permanent impairment of his right arm and an eight percent permanent impairment of his left arm, for which he received a schedule award.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

In late 1993, OWCP accepted that appellant, then a 34-year-old mail handler and sack sorter keyer, sustained bilateral carpal tunnel syndrome, bilateral ulnar nerve lesions and brachial neuritis/radiculitis due to the repetitive duties of his job.[2]

Appellant underwent left carpal tunnel release on May 1, 2000, right carpal tunnel release on November 16, 2001, decompression and transposition of the left ulnar nerve and neurolysis on January 7, 2003, decompression and transposition of the right ulnar nerve on May 14, 2003, exploration of the left ulnar nerve and neurolysis with loupe assistance and partial medial condylectomy on November 16, 2004 and exploration of the right ulnar nerve and neurolysis with loupe magnification and partial medial epicondylectomy on May 4, 2005. These surgical procedures were authorized by OWCP.

OWCP also accepted that on February 21, 2007 appellant sustained a right shoulder strain and contusions of his right shoulder and elbow when he was struck by a mail cart at work. Appellant worked intermittently after first experiencing arm problems in the early 1990s and has been off work continuously since May 13, 2007.

In November 2011, OWCP referred appellant to Dr. James T. Galyon, a Board-certified orthopedic surgeon, for a second opinion examination and an opinion on the permanent impairment of his arms under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009).[3]

In a November 9, 2011 report, Dr. Galyon reported appellant's medical history, including findings on diagnostic testing, which showed prolonged responses in the median and ulnar nerves in each arm. He reported the findings of his physical examination noting that appellant exaggerated his pain responses on mild tapping over various tendons and that he did not exert full effort on hand strength testing. Dr. Galyon stated that he was evaluating appellant's arm impairment under Table 15-23 on page 449 of the sixth edition of the A.M.A., *Guides.* He determined that appellant's compression neuropathy due to carpal tunnel syndrome in each arm fell under grade modifier 2 due to the presence of motor conduction block, significant intermittent symptoms and decreased sensation. Dr. Galyon indicated that appellant fell under the mild category for the Functional Scale and posited that he had five percent impairment in each due to carpal tunnel syndrome. He noted that appellant's compression neuropathy of the ulnar nerve at each elbow was "poorly responsive" and stated:

> "I think here just as in the carpal tunnel syndrome [appellant] has a [grade modifier 2] and I would rate his upper extremity as five [percent] for each upper extremity based on ulnar neuritis with persistent neuropathy. This would give a total of 10 percent disability of each upper extremity based upon carpal tunnel and ulnar neuropathy for a total of 20 percent for combined value of upper

[2] In early 2005, OWCP accepted appellant's claim for the consequential injury of temporary aggravation of emotional depressive disorder.

[3] The referral was recommended by an OWCP medical adviser who noted that the diagnosis of complex regional pain syndrome, provided by an attending physician, was not supported by the medical evidence of record.

> extremities. The A.M.A., *Guides* for combining 10 and 10 percent would be 19 percent, according to the Combined Values Chart appendix on page 604. Therefore, I believe that [appellant] would have 19 percent partial permanent disability to the upper extremities meaning to the body as a whole…."

On November 19, 2011 Dr. James W. Dyer, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, provided a description of appellant's medical history and detailed the findings of Dr. Galyon's November 9, 2011 report. He stated that, based on Table 15-23 on page 449 of the sixth edition of the A.M.A., *Guides,* appellant fell under grade modifier 2 for the median and ulnar nerves in both arms, which meant that he had a default value of five percent for each median nerve and the ulnar nerve in both arms. Dr. Dyer noted that no *Quick*DASH scores were provided so the impairment for the median and ulnar nerves in each arm did not move from the default value. He noted that, with more than one entrapment, the first entrapment (median nerve) was rated at 5 percent impairment and this value was combined with 50 percent of the rating of the second entrapment (ulnar nerve). Therefore, the impairment for each arm equaled 5.0 percent plus 2.5 percent for a total, after rounding up, of 8.0 percent for each arm.

In a January 4, 2012 letter, Dr. Galyon stated that he reviewed the report of Dr. Dyer and noted that he was willing to accept an eight percent impairment of each arm as the final impairment rating.

In a February 8, 2012 award of compensation, OWCP granted appellant a schedule award for an eight percent permanent impairment of his right arm and an eight percent permanent impairment of his left arm. The award ran for 49.92 weeks from January 15 to December 29, 2012.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[6] The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.[7]

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[8] In

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999).

[6] *Id*.

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

[8] *See* A.M.A., *Guides* 449, Table 15-23.

Table 15-23, grade modifier 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.[9]

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome, bilateral ulnar nerve lesions, brachial neuritis/radiculitis, right shoulder strain and contusions of his right shoulder and elbow. In a February 8, 2012 award of compensation, it granted him a schedule award for an eight percent permanent impairment of his right arm and an eight percent permanent impairment of his left arm. OWCP based its award on an impairment rating of Dr. Dyer, a Board-certified orthopedic surgeon, who served as an OWCP medical adviser. In calculating his impairment rating, Dr. Dyer evaluated the medical findings of record, including the November 9, 2011 findings of Dr. Galyon, a Board-certified orthopedic surgeon who served as an OWCP referral physician.

In his November 18, 2011 report, Dr. Dyer discussed his review of the medical records and provided an opinion that appellant had eight percent impairment in each arm under the standards of the sixth edition of the A.M.A., *Guides*.[10] He properly applied these standards to reach his conclusion about appellant's permanent arm impairment.

Dr. Dyer properly made reference to Table 15-23 (Entrapment/Compression Neuropathy Impairment) on page 449 of the sixth edition of the A.M.A., *Guides*.[11] He found that appellant fell under grade modifier 2 for the median and ulnar nerves in both arms, which meant that he had a default value of five percent for each the median nerve and the ulnar nerve in both arms.[12] Dr. Dyer correctly pointed out that, with more than one entrapment, the first entrapment (median nerve) is rated at 5 percent impairment and this value is combined with 50 percent of the rating of the second entrapment (ulnar nerve).[13] Dr. Dyer's report was reviewed by Dr. Galyon, the second opinion physician, who agreed to Dr. Dyer's findings of eight percent for both right and left extremities. Therefore, the impairment for each arm equaled 5.0 percent plus 2.5 percent for a total, after rounding up, of 8.0 percent for each arm. The Board notes that there is no medical

[9] A survey completed by a given claimant, known by the name *Quick*DASH, may be used to determine the Function Scale score. *Id.* at 448-49.

[10] OWCP's decision regarding impairment was not issued until after May 1, 2009 and therefore evaluation of appellant's impairment under the sixth edition of the A.M.A., *Guides* was appropriate. *See supra* note 7.

[11] A.M.A., *Guides* 449, Table 15-23 (6th ed. 2009).

[12] Dr. Dyer noted that no *Quick*DASH scores were provided by Dr. Galyon, although Dr. Galyon did indicate that appellant had a Functional Scale that fell in the mild range. Both Dr. Dyer and Dr. Galyon concluded that appellant's Function Scale for the median and ulnar nerves in each arm did not warrant movement from the default value in each arm. *See id.*

[13] *See* A.M.A., *Guides* 448. Dr. Galyon failed to apply this aspect of rating multiple nerve entrapments under Table 15-23 and therefore he improperly arrived at a higher impairment rating (10 percent) for each arm.

evidence of record showing that appellant has more than an eight percent permanent impairment of each arm, for which he already received schedule award compensation.[14]

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than an eight percent permanent impairment of his right arm and an eight percent permanent impairment of his left arm, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[14] The diagnosis of complex regional pain syndrome was provided by an attending physician, but there is no probative medical evidence of record indicating that this condition should be included in an impairment rating of appellant's arms.