United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 12-752**
	)	**Issued: October 2, 2012**
U.S. POSTAL SERVICE, POST OFFICE, North Metro, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 21, 2012 appellant, through her attorney, filed a timely appeal from a January 17, 2012 Office of Workers' Compensation Programs' (OWCP) schedule award decision. 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 her burden of proof to establish that she sustained more than 12 percent permanent impairment of her left arm, for which she received a schedule award.

FACTUAL HISTORY

On May 21, 2008 appellant, then a 50-year-old postal clerk, felt a sharp sensation from her left hand, wrist and shoulder while in the performance of duty. She stopped work on May 22, 2008 and returned on May 27, 2008. OWCP accepted appellant's claim for a thoracic

[1] 5 U.S.C. § 8101 *et seq.*

back sprain, a left wrist sprain and left shoulder impingement syndrome. Appellant received compensation benefits.

On February 1, 2011 appellant requested a schedule award. By letter dated February 11, 2011, OWCP informed her of the evidence needed to support her claim and requested that she submit such evidence within 30 days.

In a report dated February 24, 2011, Dr. Maurice Jove, a Board-certified orthopedic surgeon, indicated that he had already given appellant a disability rating and opined that maximum medical improvement had been reached.

By decision dated June 20, 2011, OWCP denied appellant's claim for a schedule award. It found that the evidence did not demonstrate a permanent impairment.

On June 30, 2011 appellant's representative requested a telephonic hearing, which was held on October 6, 2011. In a letter dated November 3, 2011, appellant's representative requested that the file remain open for an additional 30 days. By decision dated December 14, 2011, an OWCP hearing representative affirmed the June 20, 2011 decision.

On December 22, 2011 appellant's representative requested reconsideration and submitted new medical evidence. In a November 17, 2011 report, Dr. Martin Fritzhand, a Board-certified urologist, noted appellant's history of injury and treatment and utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (A.M.A., *Guides*) (6th ed. 2009). He examined appellant and determined that for range of motion of the shoulder she had: forward flexion and abduction of the left shoulder diminished to 90 degrees; extension diminished to 20 degrees; adduction diminished to 40 degrees; external rotation of the left shoulder diminished to 60 degrees and internal rotation diminished to 20 degrees. Dr. Fritzhand's findings for range of motion of the left wrist were essentially normal, other than radial deviation diminished to zero degrees. He opined that appellant reached maximum medical improvement by January 2010. Dr. Fritzhand explained that he utilized Table 15-5 shoulder sprain/strain to assess impairment.[2] He explained that if motion loss was present the impairment could be assessed using section 15-7, Range of Motion Impairment. Dr. Fritzhand noted that "range of motion impairment stands alone and is not combined with diagnosis impairment."[3] He utilized the *Quick*DASH and determined that appellant had a score of 84. Dr. Fritzhand referred to Table 15-34.[4] He determined that appellant had arm impairment due to flexion loss of three percent, extension loss of two percent, abduction loss of three percent and loss of internal rotation of four percent. Dr. Fritzhand opined that appellant sustained a permanent impairment to the left upper extremity of 12 percent. Regarding the wrist, he referred to Table 15-3 wrist sprain/strain to assess the left wrist impairment and explained that if motion loss was present this impairment was to be assessed using section 15-7, Range of Motion Impairment. Dr. Fritzhand reiterated that range of motion impairments stood alone and were not combined. He utilized Table 15-32 and determined that appellant had an impairment of four percent secondary to poor

[2] A.M.A., *Guides* 404.

[3] *Id.* at 407.

[4] *Id.* at 475.

radial deviation.[5] Dr. Fritzhand used the Combined Values Chart and opined that appellant sustained a permanent impairment to the left arm of 16 percent.

On January 6, 2012 an OWCP medical adviser reviewed the history of injury and treatment and utilized the A.M.A., *Guides*. He explained that appellant had a chronic neck sprain with pain radiating to the left shoulder and arm with marked motion deficit in the left shoulder. The medical adviser noted that range of motion was a standalone measurement. He found that appellant had 12 percent permanent impairment of the left arm. The medical adviser attached a worksheet which referred to Table 15-34.[6] Forward flexion of 90 degrees warranted three percent impairment, backward elevation of 30 degrees warranted two percent impairment, abduction of 90 degrees warranted three percent impairment and internal rotation of 20 degrees warranted four percent impairment. Adduction of 40 degrees and external rotation of 60 degrees yielded no ratable impairment. The medical adviser added the values and determined that appellant reached maximum medical improvement on November 17, 2011 with 12 percent permanent impairment of the left arm.

By decision dated January 17, 2012, OWCP granted appellant a schedule award for a 12 percent permanent impairment of the left arm. Appellant was entitled to 37.44 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of FECA,[7] and its implementing federal regulations,[8] 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.[9] For decisions issued after May 1, 2009, the sixth edition will be used.[10]

In addressing upper extremity impairments, the sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers

[5] *Id.* at 473.

[6] *Id.* at 475.

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

[9] *Id*. at § 10.404(a).

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

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]

With respect to the shoulder, reference is first made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. A class of diagnosis may be determined from the Shoulder Regional Grid (including identification of a default grade value).[13] Table 15-5 also provides that, if motion loss is present for a claimant who has undergone rotator cuff repair surgery, impairment may alternatively be assessed using section 15.7 (range of motion impairment). Such a range of motion impairment stands alone and is not combined with diagnosis impairment.[14] Impairment ratings for limited shoulder motion are derived from Table 15-34 on page 475.[15] Under Table 15-35 on page 477, a grade modifier value is assigned to the impairment ratings calculated from Table 15-35. Table 15-36 on page 477 provides standards for adjusting the grade modifier value based on a claimant's functional history.[16]

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 OWCP's medical adviser providing rationale for the percentage of impairment specified.[17]

ANALYSIS

Appellant's claim was accepted for thoracic back sprain, region, left wrist sprain and left shoulder impingement syndrome. She received a schedule award for 12 percent permanent impairment of her left arm. The award was based on the November 17, 2011 report of Dr. Fritzhand, a Board-certified urologist, and the January 6, 2012 report of the medical adviser.

Regarding appellant's left shoulder, both Dr. Fritzhand and the medical adviser were in agreement and found that appellant had 12 percent right arm impairment under the standards of the sixth edition of the A.M.A., *Guides*. The Board finds that they properly applied the A.M.A., *Guides* to reach the rating of impairment for the left shoulder. Per Table 15-34 on page 475, left shoulder flexion of 90 degrees resulted in three percent upper extremity impairment and extension of 20 degrees resulted in two percent impairment. Left shoulder abduction of 90 degrees gave three percent and adduction of 40 degrees yielded zero percent impairment.

[11] A.M.A., *Guides* 494-531; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

[12] *Id.* at 521.

[13] *See* A.M.A., *Guides* 401-11 (6th ed. 2009).

[14] *Id.* at 402-05, 475-78.

[15] *Id*. at 475, Table 15-34.

[16] *Id*. at 477, Tables 15-35 and 15-36.

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

Internal rotation of 30 degrees yielded four percent and external rotation of 60 degrees resulted in zero percent impairment.

However, the Board finds that the case is not in posture with regard to whether appellant should receive a schedule award for her accepted wrist sprain. Dr. Fritzhand provided appellant with an impairment rating four percent secondary to poor radial deviation.[18] The medical adviser did not address impairment in the wrist region. It is well established that proceedings under FECA are not adversarial in nature and, while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[19] Accordingly, once OWCP undertakes development of the medical evidence, it has the responsibility to do so in a proper manner.[20] The Board will remand the case for further development of the medical evidence and a reasoned opinion regarding whether appellant has a permanent impairment attributable to her left wrist. Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that with regard to the left shoulder appellant has not met her burden of proof to establish that she has greater than the 12 percent impairment of the left upper extremity. However, the case is not in posture with regard to the left wrist.

[18] A.M.A., *Guides* 473.

[19] *Richard E. Simpson*, 55 ECAB 490 (2004).

[20] *Melvin James*, 55 ECAB 406 (2004).

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2012 Office of Workers' Compensation Programs' decision is affirmed, in part and remanded, in part.

Issued: October 2, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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