

**United States Department of Labor
Employees' Compensation Appeals Board**

M.S., Appellant)

and)

DEPARTMENT OF THE NAVY, AIR)
SYSTEMS COMMAND, San Diego, CA,)
Employer)

**Docket No. 12-846
Issued: October 15, 2012**

Appearances:
Appellant, pro se
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 March 6, 2012 appellant filed a timely appeal from a January 30, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule award. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the decision.

ISSUE

The issue is whether appellant sustained more than a 22 percent impairment of the right arm or 23 percent impairment of the left arm, for which she received schedule awards.

On appeal, appellant contends that she continues to experience pain and loss of grip strength in her left hand.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. By decision and order issued January 8, 2001,² the Board affirmed OWCP's November 10, 1998 decision finding that appellant had not established more than 20 percent impairment to each upper extremity awarded on August 16, 1995 due to accepted bilateral carpal tunnel syndrome. Appellant also underwent right median nerve releases on September 29, 1994 and December 6, 1997. The facts of the case as set forth in the Board's prior decision are incorporated by reference.

In an April 3, 2009 report, Dr. Richard Greenfield, an attending Board-certified orthopedic surgeon, stated that he had treated appellant beginning in 1996. He noted her complaints of severe pain throughout both upper extremities and diagnosed bilateral wrist tendinosis, ongoing carpal tunnel syndromes and postsurgical status. On December 9, 2009 appellant presented with decreased sensation in the left hand, which Dr. Greenfield diagnosed as ulnar neuropathy.

January 13, 2010 electromyography and nerve conduction velocity studies of the left wrist and hand showed moderate left carpal tunnel syndrome, affecting the median and sensory nerves. Dr. Greenfield reviewed the studies on January 28, 2010 and recommended left median and ulnar nerve decompression. OWCP approved the procedures.

On June 1, 2010 Dr. Greenfield performed surgical decompression of the left median nerve at the carpal canal and decompression of the left ulnar nerve at Guyon's canal. He submitted progress notes through October 7, 2010 noting improving symptoms.

In a June 7, 2010 letter, OWCP advised appellant to submit an impairment rating from her attending physician using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). It advised her on February 2, 2011 that it could not develop her schedule award claim until the medical evidence showed that she had reached maximum medical improvement.

On July 13, 2011 appellant claimed an augmented schedule award. She submitted a February 10, 2011 report from Dr. Greenfield finding that she had reached maximum medical improvement as of December 9, 2010. Dr. Greenfield found full range of motion throughout both hands and wrists, normal sensation in both hands and significantly diminished grip strength on the left. He opined that, under the fifth edition of the A.M.A., *Guides*, appellant had 30 percent left arm impairment due to decreased grip strength.

On September 14, 2011 OWCP referred the medical record to an OWCP medical adviser to determine the percentage of permanent impairment according to the sixth edition of the A.M.A., *Guides*. It noted that a left ulnar nerve lesion was accepted in addition to bilateral carpal tunnel syndrome.

In an October 4, 2011 report, an OWCP medical adviser reviewed Dr. Greenfield's February 10, 2011 report. He concurred that appellant had reached maximum medical

² Docket No. 00-317 (issued January 8, 2001).

improvement. The medical adviser noted that section 15.4f of the sixth edition of the A.M.A., *Guides*, titled “Entrapment Neuropathy,” did not allow for impairment due to grip strength loss. Regarding both upper extremities, he referred to Table 15-23 of the sixth edition of the A.M.A., *Guides*³ to determine a grade modifier of 1 for Functional History (GMFH) due to mild intermittent symptoms, a grade modifier for Physical Examination (GMPE) of zero due to a lack of sensory or motor deficits and a grade modifier for Clinical Studies (GMCS) of 1 for a history of electrodiagnostic abnormalities. Adding the grade modifiers of 1, 1 and 0 to equal 2, then divided by 3, averaged .67, which rounded up to 1. The medical adviser determined a grade 1 impairment of the right hand, with a default impairment of two percent to each arm. He found an additional one percent impairment to the right arm according to page 448, entitled Multiple Simultaneous Neuropathies, as appellant had entrapment of both the median and ulnar nerves. The medical adviser found three percent impairment of the left arm.

By decision dated January 30, 2012, OWCP granted appellant an additional two percent impairment to the right arm and an additional three percent impairment to the left arm. The period of the award ran from December 9, 2010 to March 28, 2011.

LEGAL PRECEDENT

The schedule award provisions of FECA provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. It does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized 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 OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁴ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.⁵

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization’s International Classification of Functioning, Disability and Health (ICF).⁶ Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.⁷

³ Table 15-23, page 449 of the sixth edition of the A.M.A., *Guides* is entitled “Entrapment/Compression Neuropathy Impairment.”

⁴ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000). See 5 U.S.C. § 8107.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); see also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁶ A.M.A., *Guides* (6th ed., 2008), page 3, section 1.3, “The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.”

⁷ A.M.A., *Guides* (6th ed., 2008), pp. 494-531.

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome. On August 16, 1995 it granted her schedule awards for a 20 percent permanent impairment of each upper extremity. Pursuant to the first appeal, the Board affirmed OWCP's November 10, 1998 decision denying an augmented schedule award as the medical evidence did not establish a greater percentage of permanent impairment than that previously awarded.

Appellant claimed an augmented schedule award on July 13, 2011. In support of her claim, she submitted a February 10, 2011 report from Dr. Greenfield, finding normal sensation and full motion in both hands and wrists but diminished grip strength in the left hand. Dr. Greenfield assessed a 30 percent impairment of the left arm according to the fifth edition of the A.M.A., *Guides*. OWCP explained to appellant in a June 7, 2010 letter, however, that the impairment rating needed to be based on the sixth edition of the A.M.A., *Guides*. It referred the record to an OWCP medical adviser for an impairment rating.

On October 4, 2011 an OWCP medical adviser applied Table 15-23 of the sixth edition of the A.M.A., *Guides* to Dr. Greenfield's findings. He opined that, for both upper extremities, appellant had a GMFH of 1 for mild symptoms, a GMCS of 1 due a history of abnormal electrodiagnostic studies and a GMPE of 0, noting that grip strength was not considered under the sixth edition of the A.M.A., *Guides*. The medical adviser added these modifiers to equal 2, divided them by 3 to equal .67 rounded up to 1, resulting in a grade 1 impairment with a default grade of two percent. He assessed an additional one percent impairment to the left upper extremity for the ulnar nerve lesion, for a total three percent impairment of the left arm.

The Board finds that OWCP properly relied on Dr. Greenfield's clinical findings, as interpreted by the medical adviser, to find that appellant had a two percent impairment of the right upper extremity and a three percent impairment of the left upper extremity. OWCP's January 30, 2012 decision was proper under the law and facts of this case.

On appeal, appellant contended that she continues to experience pain and loss of grip strength in her left hand. However, as set forth above, she did not submit probative medical evidence supporting greater percentages of impairment than those awarded. 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 has not established that she sustained more than a 22 percent impairment of the right upper extremity and a 23 percent impairment of the left upper extremity, for which she received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 30, 2012 is affirmed.

Issued: October 15, 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
Employees' Compensation Appeals Board