United States Department of Labor
Employees' Compensation Appeals Board

K.S., Appellant	)	
and	)	**Docket No. 12-879**
	)	**Issued: October 2, 2012**
DEPARTMENT OF HOMELAND SECURITY, Renton, WA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 13, 2012 appellant filed a timely appeal from a February 27, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.

ISSUE

The issue is whether appellant has more than 10 percent permanent impairment of the right upper extremity for which he received a schedule award.

FACTUAL HISTORY

On September 1, 2009 appellant, then a 33-year-old federal air marshal, filed a Form CA-1, notice of traumatic injury, alleging that on the same date while participating in field office training he twisted his right wrist. OWCP accepted appellant's claim for right wrist ligament

[1] 5 U.S.C. §§ 8101-8193.

tears, closed fracture of the navicular bone of the right wrist, mononeuritis of the right arm and expanded his claim to include right phantom limb. It authorized right wrist surgery performed on September 15, 2010. Appellant returned to work on October 11, 2010.

Appellant was initially treated by Dr. Allen Geltzer, a family practitioner, on September 9, 2009, for a right hand injury which occurred in March 2009 while hitting a punching bag at work. Dr. Geltzer diagnosed myalgia. An x-ray of the right wrist dated September 9, 2009 revealed no acute fracture or malalignment. Appellant was treated by Dr. Mathew J. Robon, a Board-certified orthopedist, on November 4 and 6, 2009, for a right wrist injury which occurred in February and September 2009 when he hit an object awkwardly during training exercises. Dr. Robon diagnosed dynamic scapholunate ligament (SL) instability and probable SL tear. On November 5, 2009 he underwent a magnetic resonance imaging (MRI) scan arthrogram of the right wrist which revealed "tears of the scapholunate and lunate triquetral ligaments and of the membranous portion of the disc, mild degenerative joint disease primarily in the radial aspect of the wrist and mostly involving the trapezoid and abnormal pisiform angulation with widening of the distal portion of the triquetral pisiform joint which indicated laxity or tear of the pisiform ligaments." A December 3, 2009 x-ray of the right wrist revealed no bone, joint or soft tissue abnormality. An August 16, 2010 bilateral wrist x-ray revealed no fractures, dislocations and normal carpal alignment.

Appellant came under the treatment of Dr. Douglas P. Hanel, a Board-certified orthopedist, who on September 15, 2010 performed an excision of right posterior and anterior interosseous nerve neurectomy and diagnosed right wrist pain secondary to right wrist anterior and posterior interosseous nerve neuroma. In a report dated October 11, 2010, Dr. Hanel noted that appellant was one month postsurgery and his incision was well healed, he had full range of motion above the wrist and all five digits of the hand, sensation was intact with two-point discrimination in all fingertips. In a report dated June 20, 2011, he provided an impairment rating under the fifth edition of the A.M.A., *Guides*.[2] Dr. Hanel advised that, in accordance with the fifth edition of the A.M.A., *Guides*, appellant had 10 percent impairment of the right upper extremity. He noted that appellant was at maximum medical improvement.

On August 16, 2011 appellant filed a claim for a schedule award.

In a letter dated August 23, 2011, OWCP requested that appellant submit a rating of permanent impairment pursuant to the sixth edition of the A.M.A., *Guides*[3] which OWCP began using effective May 1, 2009.

In an October 11, 2011 report, an OWCP medical adviser reviewed Dr. Hanel's report and requested that Dr. Hanel submit an addendum report using the sixth edition of the A.M.A., *Guides*.[4] On October 18, 2011 OWCP again requested a revised impairment rating in accordance with the sixth edition of the A.M.A., *Guides*. No response was received.

[2] A.M.A., *Guides* (5th ed. 2001).

[3] A.M.A., *Guides* (6th ed. 2009).

[4] *Id.*

Appellant submitted an October 28, 2011 report from Dr. Alfred I. Blue, a Board-certified orthopedist, who noted appellant's symptoms of a right wrist that pops and clicks with pain and weakness. Dr. Blue noted that appellant had problems with activities of daily living including dressing but could dress without assistance. Appellant had tenderness and pain of the wrist, decreased grip strength and an inability to lift minimal objects. Dr. Blue noted that the x-rays revealed a widening between the scapholunate joint and the pressure trigger. He noted a scar across the dorsal aspect of the right wrist, tenderness over the scapholunate, no swelling was noted and extension was 66 degrees of the right wrist and 82 degrees of the left wrist, flexion was 75 degrees on the right and 82 degrees on the left, ulnar deviation was 40 degrees on the right and 48 degrees on the left and radial deviation was 16 degrees on the right and 35 degrees on the left. Dr. Blue noted objective findings of a scar and decreased strength, no atrophy and no sensory changes. He diagnosed scapholunate tear by MRI scan arthrogram with resultant local neurectomy of the wrist. Dr. Blue noted that appellant had reached maximum medical improvement with 10 percent impairment of the right upper extremity under the sixth edition of the A.M.A., *Guides*. He evaluated appellant's wrist condition under Table 15-3 (Wrist Regional Grid) on pages 395-97. Dr. Blue found that appellant met the criteria for wrist sprain and history of dislocation including carpal instability, under class 1, since he had residual functional loss with normal motion. He noted the default grade was C for eight percent impairment of the upper extremity. Under functional history adjustment for the upper extremities, Dr. Blue found a grade modifier 2 under Table 15-7, page 406, which constituted a moderate problem, as he was able to perform activities of daily living independently with some element of discomfort. Under physical examination adjustment for the upper extremities, he found that appellant had a grade modifier 1 under Table 15-8, page 408 as mild considering motion loss and variable weakness. For clinical studies adjustment, Dr. Blue found appellant had a grade modifier 2 under Table 15-9, page 410, as the clinical studies identified mild degenerative joint disease of the wrist joint, the ligament noted on the MRI scan arthrogram. He applied the net adjustment formula on page 411. Dr. Blue found that (grade modifier for functional history -- class of diagnoses) + (grade modifier for physical examination -- class of diagnosis) + (grade modifier for clinical studies -- class of diagnosis) equaled (2-1) + (1-1) + (2-1) which equaled a net modifier of +2. Applying this net adjustment of +2, to the default value (grade C impairment of eight percent) resulted in a grade E or 10 percent impairment of the right upper extremity.

In a December 20, 2011 report, an OWCP medical adviser reviewed Dr. Blue's report and agreed with his conclusion that appellant had 10 percent impairment of the right upper extremity.

In a decision dated February 27, 2012, OWCP granted appellant a schedule award for 10 percent impairment of the right upper extremity. The period of the award was from October 28, 2011 to June 2, 2012.

LEGAL PRECEDENT

The schedule award provision of FECA[5] and its implementing regulations[6] 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.[7]

For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[8] For decisions issued beginning May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.[9] It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.[10]

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).[11] Under the sixth edition of the A.M.A., *Guides*, for upper extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[12] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[13]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*.[14]

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[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *See id*.; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[8] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[9] A.M.A., *Guides* (6th ed. 2009).

[10] *Tammy L. Meehan*, 53 ECAB 229 (2001).

[11] A.M.A., *Guides*, *supra* note 1 at 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[12] *Id.* at 385-419.

[13] *Id.* at 411.

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

ANALYSIS

OWCP accepted that appellant sustained right wrist ligament tears, closed fracture of the navicular bone of the right wrist, mononeuritis of the right upper limb and right phantom limb. On August 16, 2011 appellant filed a claim for a schedule award.

Appellant initially submitted a June 20, 2011 report from Dr. Hanel finding 10 percent right arm impairment under the fifth edition of the A.M.A., *Guides*. Thereafter, appellant submitted an October 28, 2011 report from Dr. Blue who found that appellant had 10 percent impairment of the right arm using the sixth edition of the A.M.A., *Guides*. Under Table 15-3, page 395, Dr. Blue identified the impairment class of the diagnosed condition (CDX) as wrist sprain and history of dislocation including carpal instability. OWCP's medical adviser reviewed Dr. Blue's report and concurred in his findings.

An OWCP medical adviser reviewed Dr. Blue's analysis under the sixth edition of the A.M.A., *Guides* and agreed with the 10 percent impairment of the right arm. Under Table 15-3, Dr. Blue identified the impairment class for the diagnosed condition (CDX) as wrist sprain/strain and history of dislocation including carpal instability and assigned a class 1 rating with residual functional loss with normal motion. He noted the default grade was eight percent impairment of the arm. The medical adviser agreed with Dr. Blue that under Table 15-7 and section 15.3 a grade modifier 2 for GMFH was appropriate based on moderate ongoing symptoms with the ability to perform self-care activities independently. Under Table 15-8, page 408, Dr. Blue found a grade modifier of 1 for GMPE as he noted loss of motion and variable weakness. Under Table 15-9, page 410-11, he found grade modifier 2 for GMCS as the diagnostic study showed mild degenerative joint disease. Utilizing the net adjustment formula, Dr. Blue found that there was a +2 net adjustment. Thus, the medical adviser confirmed that appellant had properly concluded a grade E or 10 percent upper extremity impairment.

The Board finds that the medical evidence establishes that appellant has 10 percent impairment of the right upper extremity. The record does not contain any probative medical evidence to establish greater impairment under the sixth edition of the A.M.A., *Guides.*

On appeal, appellant argues that he sustained a greater impairment than that determined by OWCP. He asserts that Dr. Blue's detailed description of his restriction of motion, decreased strength and scarring with widening between the scapholunate joint indicated that this injury had had a profound impact on his life. The Board notes that OWCP factored these issues into the rating in accordance with the A.M.A., *Guides.* Dr. Blue determined that appellant sustained a 10 percent impairment of the right upper extremity due to his work injury. The medical adviser concurred in this finding. As noted above, the record does not contain any probative medical evidence to establish greater impairment under the sixth edition of the A.M.A., *Guides.*

CONCLUSION

The Board finds that appellant has no more than 10 percent permanent impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 2, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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