

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

M.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Suitland, MD, Employer**

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**Docket No. 12-1360
Issued: September 17, 2012**

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 11, 2012 appellant filed a timely appeal from a January 6, 2012 decision of the Office of Workers' Compensation Programs (OWCP) that denied her claim for 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 over the merits of the decision.

ISSUE

The issue is whether appellant met her burden of proof to establish that she has more than 20 percent impairment of the right arm for which she received schedule awards.

On appeal, appellant requests that the Board assess her pay rate.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This case has previously been before the Board.² In a decision dated April 20, 1998, the Board set aside a September 11, 1995 OWCP decision with respect to appellant's pay rate for compensation purposes.³ By decision dated May 6, 1998, the Board determined that an OWCP decision regarding an overpayment in compensation was not in posture for decision until the issue of her pay rate issue had been resolved.⁴ In a February 20, 2001 decision, the Board found that OWCP properly determined that appellant's pay rate for compensation purposes was the pay rate of the date of injury, March 20, 1985. The Board further found that she was not entitled to waiver of an overpayment in the amount of \$1,206.22 and that OWCP properly denied her request for merit review.⁵ On July 31, 2001 the Board denied appellant's request for reconsideration. By decision dated June 18, 2003, the Board found that she did not have more than a 20 percent permanent impairment of her right upper extremity.⁶ In a May 15, 2006 decision, the Board found that OWCP properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) and properly computed appellant's retroactive compensation.⁷ By decision dated December 2, 2010, the Board found that OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128 on the grounds that it was untimely filed and failed to demonstrate clear evidence of error and affirmed a May 7, 2009 OWCP decision.⁸ In a second December 2, 2010 decision, the Board found that OWCP properly reduced appellant's compensation under section 8113(b) of FECA for failing, without good cause, to cooperate with vocational rehabilitation and affirmed a January 14, 2010

² Appellant was employed as a distribution clerk. She sustained a right shoulder injury on March 20, 1985 while throwing mail and the claim was accepted for right shoulder strain, right shoulder chronic tendinitis, right shoulder/acromioclavicular arthrosis, right shoulder arthritis, right shoulder traumatic arthropathy and right upper extremity mononeuritis. Appellant had shoulder surgery in December 1985 and worked intermittently until May 15, 1989. She has not worked since. On August 8, 1992 OWCP accepted that appellant sustained employment-related right carpal tunnel syndrome and she had a right carpal tunnel release on September 25, 2001.

³ Docket No. 96-460 (issued April 20, 1998).

⁴ Docket No. 97-776 (issued May 6, 1998).

⁵ Docket No. 99-2221 (issued February 20, 2001).

⁶ Docket No. 02-2350 (issued June 18, 2003). On September 28, 1988 appellant was granted a schedule award for a 10 percent impairment of the right upper extremity due to her shoulder condition. On May 14, 1996 she was granted a schedule award for an additional 10 percent, for carpal tunnel syndrome, for a total right upper extremity impairment of 20 percent.

⁷ Docket No. 05-832 (issued May 15, 2006). The decision on Docket No. 05-832 had initially been issued on January 6, 2006. The Director filed a petition for reconsideration, which was granted by order dated May 15, 2006 and the decision on Docket No. 05-832 was reissued that day. In the interim, OWCP issued a March 3, 2006 decision in response to the Board's January 6, 2006 decision. Appellant filed an application for review with the Board of the March 3, 2006 decision. In an order dated April 27, 2007, Docket No. 06-971, the Board dismissed the appeal. The Board noted that OWCP and the Board may not have concurrent jurisdiction over the same case and found that, as the Director had filed a petition for reconsideration of the January 6, 2006 Board decision, the Board retained jurisdiction over the matter until after it issued the May 15, 2006 decision.

⁸ Docket No. 10-419 (issued December 2, 2010).

OWCP decision.⁹ The facts of the previous Board decisions are incorporated herein by reference.

On October 21, 2010 appellant filed a schedule award claim. By letter dated March 1, 2011, OWCP informed her of the medical evidence needed to support her claim for a schedule award. Appellant was requested to submit an impairment evaluation in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).¹⁰

In a May 24, 2011 report, Dr. Ricardo O. Pyfrom, an attending Board-certified orthopedic surgeon, advised that appellant was being treated for bilateral carpal tunnel syndrome, rheumatoid arthritis, de Quervain's tenosynovitis and cervical radiculopathy that affected the upper extremities. He provided physical examination findings and advised that in accordance with the sixth edition of the A.M.A., *Guides*, under Table 15-3, Wrist Regional Grid, for the diagnosis of right de Quervain's tenosynovitis, appellant had a class 1 impairment. Dr. Pyfrom found functional history and physical examination modifiers 2, no modifier for clinical studies and a *QuickDash* score of 55, for a grade D, which yielded an upper extremity impairment due to her wrist condition of two percent. He rated appellant under Table 15-23, Entrapment/Compression Neuropathy Impairment and found that, based on right median nerve entrapment, she had a test findings modifier 2 and history and physical examination modifiers 3, for an average of 2.67, with a *QuickDash* score of 55, which yielded an upper extremity impairment of six percent. Dr. Pyfrom totaled the impairment ratings, finding a right arm impairment of eight percent.¹¹

On July 23, 2011 Dr. Lawrence A. Manning, an OWCP medical adviser, reviewed the statement of accepted facts and medical record, including Dr. Pyfrom's impairment evaluation. He agreed with Dr. Pyfrom's finding that appellant had a 6 percent right upper extremity impairment due to carpal tunnel syndrome and noted that she previously received a schedule award for a 10 percent right upper extremity impairment due to carpal tunnel syndrome. The medical adviser disagreed with Dr. Pyfrom's two percent impairment rating for de Quervain's tenosynovitis, noting that this was not an accepted condition. He found that it would be more appropriate to use the default rating of one percent. Dr. Manning noted that appellant would be entitled to a 10 percent rating for distal clavicle resection and noted that she had previously received a schedule award for a 10 percent right shoulder impairment, for schedule awards totaling 20. He concluded that she was entitled to a combined right upper extremity impairment of 15 percent, which was less than the 20 percent previously awarded.

⁹ Docket No. 10-1526 (issued December 2, 2010). On February 10, 2012 the Board dismissed appellant's petition for reconsideration on Docket Nos. 10-419 and 10-1526 on the grounds that the petition was untimely filed.

¹⁰ A.M.A., *Guides* (6th ed. 2008).

¹¹ Appellant also submitted reports from Dr. Yevgeniy Sheyn, a Board-certified rheumatologist, Dr. Uchenna R. Nwaneri, a Board-certified orthopedic surgeon, and additional reports from Dr. Pyfrom that did not include an impairment rating.

By decision dated August 1, 2011, OWCP denied appellant's claim for an additional schedule award on the grounds that the medical evidence did not establish right arm impairment greater than the 20 percent previously granted.

On September 7, 2011 appellant requested reconsideration and submitted treatment notes from Dr. Pyfrom dated September 12 to November 3, 2011 when he advised that she needed a carpal tunnel release on the right. On December 2, 2011 Dr. Pyfrom performed a right carpal tunnel release for recurrent carpal tunnel syndrome with severe level of compromise of median nerve function with thenar atrophy and de Quervain's tenosynovitis involving the right wrist.

In a merit decision dated January 6, 2012, OWCP denied modification of the August 1, 2011 decision.

LEGAL PRECEDENT

The schedule award provision of FECA¹² and its implementing federal regulations,¹³ 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.¹⁴ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.¹⁵ For decisions issued after May 1, 2009, the sixth edition is to be used.¹⁶

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).¹⁷ Under the sixth edition, 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).¹⁸ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁹

¹² 5 U.S.C. § 8107.

¹³ 20 C.F.R. § 10.404.

¹⁴ *Id.* at § 10.404(a).

¹⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

¹⁶ FECA Bulletin No. 09-03 (issued March 15, 2009).

¹⁷ A.M.A., *Guides*, *supra* note 10 at 3, section 1.3, "The [ICF], Disability and Health: A Contemporary Model of Disablement."

¹⁸ *Id.* at 385-419.

¹⁹ *Id.* at 411.

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.²⁰ 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.²¹

ANALYSIS

The Board finds that appellant has not established that she is entitled to a schedule award for the right upper extremity greater than the 20 percent previously awarded. Appellant was granted schedule awards on September 28, 1988 and May 14, 1996, each for a 10 impairment of the right upper extremity, for a total right upper extremity impairment of 20 percent. By decision dated June 18, 2003, the Board found that she did not have right arm impairment greater than 20 percent, for which she had received schedule awards.²²

Dr. Pyfrom, an attending orthopedic surgeon, provided a May 24, 2011 report. He advised that, in accordance with the sixth edition of the A.M.A., *Guides*, appellant had a six percent impairment due to right carpal tunnel syndrome and a two percent impairment due to de Quervain's tenosynovitis, for a total right arm impairment of eight percent. Dr. Manning, an OWCP medical adviser reviewed the record, including Dr. Pyfrom's report. He noted that appellant had previously received schedule awards for 20 percent impairment. The medical adviser agreed that she had 6 percent impairment for carpal tunnel syndrome and would be entitled to a 1 percent impairment for de Quervain's tenosynovitis and that she had 10 percent impairment for her right shoulder condition, for a combined right upper extremity impairment of 15 percent.

The most favorable impairment analysis, that of Dr. Manning, the medical adviser, found that appellant had 15 percent right arm impairment. This is not greater than the 20 percent impairment previously awarded. There is no medical evidence in conformance with the A.M.A., *Guides* showing a greater impairment.

As to appellant's request on appeal that the Board review her pay rate. The last merit decision on the issue of her pay rate was a May 15, 2006 decision, in which the Board found that OWCP properly computed her retroactive compensation.²³ In a February 20, 2001 decision, the Board found that OWCP properly determined appellant's pay rate for compensation purposes.²⁴

²⁰ *Id.* at 449.

²¹ *Id.* at 448-50.

²² Docket No. 02-2350, *supra* note 6.

²³ Docket No. 05-832, *supra* note 7.

²⁴ Docket No. 99-2221, *supra* note 5.

The Board's jurisdiction is limited to reviewing final decisions of OWCP.²⁵ OWCP has not issued a decision regarding appellant's pay rate since the May 15, 2006 Board decision.

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 entitlement to a right upper extremity schedule award greater than the 20 percent previously awarded.

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

²⁵ 20 C.F.R. § 501.2(c) (2009); *J.B.*, Docket No. 09-2191 (issued May 14, 2010).