United States Department of Labor
Employees' Compensation Appeals Board

R.E., Appellant **and** **U.S. POSTAL SERVICE, TRANSPORTATION DEPARTMENT, San Francisco, CA, Employer**	))))))))	**Docket No. 13-397** **Issued: August 12, 2013**

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 December 10, 2012 appellant filed a timely appeal of a July 25, 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 this case.

ISSUE

The issue is whether appellant has greater than 24 percent right upper extremity permanent impairment and 24 percent left upper extremity permanent impairment, for which he received schedule awards.

FACTUAL HISTORY

On October 11, 2005 appellant, then a 57-year-old truck driver, filed an occupational disease claim alleging that on September 28, 2004 he first became aware of his bilateral carpal

[1] 5 U.S.C. § 8101 *et seq.*

tunnel syndrome. However, it was not until September 25, 2005 that he realized the condition was caused by his employment. OWCP accepted the claim for bilateral carpal tunnel syndrome and right hand trigger finger. It authorized right carpal tunnel release, which was performed on January 25, 2006, left carpal tunnel release, which was performed on October 26, 2010 and left median nerve and neurolysis decompression surgery, which was performed on November 8, 2010.[2]

On August 30, 2007 appellant filed a claim for a schedule award.

By decision dated March 12, 2008, OWCP granted appellant a schedule award for 24 percent impairment of the right upper extremity and 24 percent impairment of the left upper extremity. The period of the award was from December 27, 2007 to November 9, 2010.

On March 11, 2012 appellant filed a claim for an increased schedule award.

In an April 2, 2012 report, Dr. Walter A. Semkiw, appellant's treating physician Board-certified in occupational medicine, indicated that he could not comment on appellant's impairment as his office used the fifth edition of the A.M.A, *Guides* and not the sixth. However, he provided his January 7, 2001 report and physical findings from appellant's most recent visit. The date of maximum medical improvement was determined to be January 7, 2011. A physical examination revealed full right wrist extension with pain noted on the dorsal right hand along the middle finger extensor tendon, left hand paresthesias, bilateral forearm pain and right hand pain, numbness and tingling in digits one to three.

On May 10, 2012 OWCP referred appellant for a second opinion evaluation with Dr. Aubrey Swartz, a Board-certified orthopedic surgeon, for an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a June 25, 2012 report, Dr. Swartz detailed appellant's medical history and reported findings of the physical examination that he performed on that date. On examination appellant had a positive Tinel's sign in both elbows, a positive Durkan test in the right wrist and hand, tenderness over the A1 flexor pulley of the right hand, markedly restricted motion in both thumbs at the carpometacarpal joint and intact bilateral upper extremity sensation. Dr. Swartz determined that appellant was status post carpal tunnel surgical release for the right and left hands, and status postoperative release for the right and left middle fingers. He referred to Table 15-23[3] for entrapment/compression neuropathy impairment and noted that test findings were not available which would correlate to a grade modifier of zero. Regarding a functional history adjustment at Table 15-7 page 406, Dr. Swartz noted that appellant had significant intermittent symptoms, which would rate a grade modifier of two. He noted that the physical examination, at Table 15-8, page 408, revealed significant bilateral decreased grip strength and element of residual weakness corresponded to a grade modifier of three. The total of the modifiers was 5, which he then averaged and arrived at a grade modifier of 1.75 or 2. Dr. Swartz explained that

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[2] Appellant retired from the employing establishment in 2009.

[3] A.M.A., *Guide*s 449.

appellant's *Quick*Dash score was 40, which was equivalent to a grade modifier of one. As the *Quick*Dash score is one grade lower than the grade assigned, Dr. Swartz explained that this would qualify appellant for the lower value which was an impairment rating of four percent.

With respect to appellant's right trigger finger, Dr. Swartz used Table 15-31, page 470 to find 19 percent digital impairment for 70 percent metacarpophalangeal (MP) flexion, 6 percent digital impairment for 90 percent proximal interphalangeal (PIP) flexion and 25 percent digital impairment for 20 percent distal interphalangeal (DIP) motion, which resulted in a total 42 percent right digital impairment. Using Table 15-12, page 422, Dr. Swartz found 43 percent digital impairment resulted in 9 percent hand impairment and 8 percent right upper extremity impairment. Next, Dr. Swartz used Table 15-31, page 470 to determine the impairment for appellant's left trigger finger based on 6 percent digital impairment for 80 percent MP flexion, a 6 percent digital impairment for 90 percent PIP flexion and 25 percent digital impairment for a 20 percent DIP motion, which resulted in a total 34 percent digital impairment.

Next, Dr. Swartz used the conversion tables and found seven percent right hand impairment and six percent left upper extremity impairment using Table 15-12, page 421. Lastly, Dr. Swartz found the total impairment for appellant's right and left upper extremity to be 12 percent right upper extremity impairment (combining 8 percent with 4 percent) and 10 percent left upper extremity impairment (combining 6 percent with 4 percent).

On July 19, 2012 OWCP's medical adviser, reviewed and concurred with Dr. Swartz's June 25, 2012 report and impairment determination. She concluded the date of maximum medical improvement to be June 25, 2012, the date of Dr. Swartz's report.

OWCP's medical adviser opined that appellant was not entitled to an additional schedule award as the evidence established 10 percent left upper extremity impairment and 12 percent right upper extremity impairment.

By decision dated July 25, 2012, OWCP denied appellant's request for an additional schedule award.

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

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

appropriate standard for evaluating schedule losses.[6] Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.[7]

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).[8] The sixth edition requires identifying 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).[9] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[10]

ANALYSIS

Appellant received a schedule award on March 12, 2004 for impairment of 24 percent of the right upper extremity and 24 percent of the left upper extremity. He seeks an increased schedule award. It is appellant's burden of proof to establish increased impairment as determined under the sixth edition of the A.M.A., *Guides*.

The Board finds that appellant did not submit sufficient medical evidence to show that he has more than a 24 percent right upper extremity permanent impairment and 24 percent left upper extremity permanent impairment, for which he received a schedule award.

Both Dr. Swartz and the medical adviser agreed as to the extent of appellant's impairment. They found that Table 15-23 (Entrapment/Compression Neuropathy Impairment)[11] was appropriate to rate appellant's bilateral carpal tunnel syndrome. Dr. Swartz and the medical adviser identified a grade modifier of zero for test findings.[12] For functional history, appellant had significant intermittent symptoms, which would rate a grade modifier of two. For physical findings, Dr. Swartz found a grade modifier of three examination of significant bilateral decreased grip strength and element of residual weakness. The Board notes that, when grade modifier values were added, they properly resulted in a total of five. Dividing this value of five by the three modifier categories provided an average of 1.75 which was rounded to 2 which properly represented a default impairment rating of five percent.[13] In determining whether to

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[6] *Id.*

[7] Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[8] A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): *A Contemporary Model of Disablement*.

[9] A.M.A., *Guides* 494-531.

[10] *Id*. at 521.

[11] *See id.* at 449, Table 15-23.

[12] *Id.*

[13] *See id*. at 448-49.

modify the default value of five percent, both Dr. Swartz and the medical adviser considered appellant's *Quick*Dash score of 40 which lowered appellant's impairment to four percent for both upper extremities. Next, Dr. Swartz and the medical adviser properly concluded that appellant had an eight percent upper extremity impairment for loss of range of motion in his right middle finger and a six percent left upper extremity impairment for left middle finger loss of range of motion.[14] Using the Combined Values Chart,[15] both physicians determined that appellant had 12 percent right upper extremity impairment and 10 percent left upper extremity impairment.

The Board finds that OWCP's medical adviser and second opinion physician properly applied the A.M.A., *Guides* to rate impairment to appellant's right and left upper extremities. They reviewed the medical evidence and determined that appellant had 12 percent right upper extremity impairment and 10 percent left upper extremity impairment under the sixth edition of the A.M.A., *Guides*. There is no other medical evidence in conformance with the sixth edition of the A.M.A., *Guides* that supports any greater impairment.

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 more than 24 percent right upper extremity permanent impairment and 24 percent left upper extremity permanent impairment, for which he had already received schedule awards.

[14] *See id.* at 421-22, Table 15-12.

[15] *Id.* at 604.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 25, 2012 is affirmed.

Issued: August 12, 2013
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