United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 13-753**
	)	**Issued: August 13, 2013**
U.S. DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE, Miami, FL, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 4, 2013 appellant, through her attorney, filed a timely appeal from a February 5, 2013 schedule award 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 established that she sustained greater than a 13 percent impairment of the right upper extremity, for which she received a schedule award.

On appeal, counsel asserts that OWCP should rely on the June 20, 2012 impairment rating provided by Dr. Martin Fritzhand, an attending Board-certified urologist, who performed a schedule award evaluation.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on October 24, 2002 appellant, then a 34-year-old senior inspector, sustained right lateral epicondylitis and a right wrist sprain/strain/tear when lifting heavy luggage into a car trunk. She was first followed bya Dr. Alejandro Badia, who submitted reports from November 13, 2002 to March 26, 2003 diagnosing right lateral epicondylitis and right wrist synovitis related to the October 24, 2001 lifting incident. Appellant's condition improved with corticosteroid injections. She had right wrist arthroscopy on May2, 2003 and returned to work. Appellant was further injured on June 9, 2003.

In a June 11, 2003 report, Dr. Jay J. Dennis, an attending Board-certified orthopedic surgeon, provided a history of the two right wrist injuries and surgeries. On examination, he found exquisite tenderness over the scapholunate joint and restricted motion. Dr. Dennis diagnosed a ligament reinjury and prescribed a splint.

Appellant was then treated by Dr. Jacqueline Redondo, an attending Board-certified hand surgeon, who performed an authorized right wrist arthroscopy with debridement on December 17, 2003 to repair an interosseousscapholunate ligament tear. She received compensation on the daily rolls from December 17, 2003 to January 5, 2004. Appellant returned to light-duty work in January 2004 with restrictions against lifting with the right arm. Dr. Redondo renewed these restrictions through March 2004.

A July 16, 2004 magnetic resonance imaging MRI) scan of the right wrist showing scapholunate and triangular fibrocartilage complex (TFCC) tears, chondromalacia, reactive edema and secondary degenerative changes at the radiolunate and radial scaphoid joint, consistent with instability. In an August 24, 2004 report, Dr. Elizabeth A. Ouellette, an attending Board-certified hand surgeon, recommended surgery to stabilize the right wrist.

OWCP obtained a second opinion from Dr. Michael A. Russin, a Board-certified orthopedic surgeon, who opined on June 21, 2005 that appellant had reached maximum medical improvement and could return to work with no restrictions. Dr. Russin opined that the scapholunate dissociation and tear of the TFCC of the right wrist had resolved without residuals, although postsurgical changes were noted on x-rays.

OWCP found a conflict of medical opinion between Dr. Redondo, for appellant and Dr. Russin, for the government. To resolve the conflict, it selected Dr. Elliott B. Weinger, a Board-certified orthopedic surgeon. In an October 6, 2005 report, Dr. Weinger reviewed the medical record and a statement of accepted facts provided for his use. He noted that, after a May 2, 2003 right wrist arthroscopy, appellant returned to work in early June 2003 then sustained a second right wrist injury on June 9, 2003, requiring a second surgery. On examination, Dr. Weinger found a 7- to 10-degree loss of maximum palmar flexion of the right wrist, excellent bilateral grip strength and intact neurovascular status. He diagnosed status post interosseous scapholunate dissociation and TFCC tear, resolved without residuals as of

August 2004. Dr. Weinger noted that there were no objective findings of continuing right lateral epicondylitis or a right wrist sprain.[2]

On September 10, 2012 appellant claimed a schedule award. In support of her claim, she submitted a June 20, 2012 impairment rating from Dr. Martin Fritzhand, a Board-certified urologist retained by appellant to provide a medical evaluation. Dr. Fritzhand reviewed medical records and stated that appellant had reached maximum medical improvement in January 2005. On examination of the right arm,he found diminished muscle strength, atrophy in the right forearm, numbness in the right wrist, palmar flexion and radial deviation diminished to 10 degrees, ulnar deviation limited to 10 degrees, crepitus in the right wrist on active and passive movement and a normal sensory examination. Dr. Fritzhand related appellant's complaints of subjective chronic right arm pain. Referring to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*(A.M.A., *Guides*), he stated that he "used TFCC tear to assess impairment." Dr. Fritzhand stated, however, that appellant's impairment could also be assessed using the stand-alone range of motion method, not combined with the diagnosis-based impairment. He found that, according to Table 15-32,[3]she had a 21 percent right upper extremity impairment due to loss of wrist flexion, 4 percent for restricted radial deviation and 4 percent for restricted ulnar deviation, totaling a 29 percent impairment of the right arm.

In a November 10, 2012 supplemental report, Dr. Fritzhand explained that the range of motion rating method was appropriate for either a TFCC tear or a right wrist sprain. He opined that appellant's right wrist pathologies had worsened since Dr. Weinger's October 6, 2005 report, which was "the usual course of events and would certainly explain changes in her physical examination over a seven[-]year period … resulting in markedly diminished range of motion."

On December 19, 2012 OWCP obtained a second opinion from Dr. Melvyn D. Drucker, a Board-certified orthopedic surgeon,who reviewed the medical record and statement of accepted facts provided for his use and noted findings on December 18, 2012 examination. Dr. Drucker noted discomfort with palpation of the dorsal and palmar aspects of the right wrist, a positive supination test, some clicking in the dorsum of the wrist with extreme flexion, 50 degrees dorsiflexion and palmar flexion, 70 degrees supination, 90 degrees pronation and 10 degrees radial and ulnar deviation. He found no atrophy in the right arm, an intact neurovascular examination, pain with hyperextension of the right[4] elbow over the lateral epicondyle and a positive wrist extension test. Dr. Drucker opined that appellant reached maximum medical

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[2]Appellant sought treatment for a cervical sprain after a June 1, 2009 fall at work and underwent left ankle arthroscopy with open lateral ligament reconstruction on December 18, 2009. There is no claim for injuries sustained in a June 1, 2009 fall before the Board on the present appeal.

[3] Table 15-32, page 473 of the sixth edition of the A.M.A., *Guides* is entitled "Wrist Range of Motion."

[4] On its face, Dr. Drucker's report mentions pain with hyperextension of the left elbow. However, in the following sentence, he noted comparative findings for the left elbow, indicating that he meant to refer to the right elbow regarding pain with hyperextension.

improvement as of December 12, 2005 when she returned to full duty. Referring to Table15-4[5] of the sixth edition of the A.M.A., *Guides*,[6]he found a class 1 diagnosis-based impairment (CDX) of the right elbow, with a grade modifier for Functional History (GMFH) of 2, grade modifier for Physical Examination (GMPE) of 1 and a grade modifier for Clinical Studies (GMCS) of 1. Applying the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), the default grade of C was raised to D, equaling a two percent impairment of the right upper extremity. Referring generally to Table 15-32 and Table 15-33,[7]he found an additional 13 percent impairment due to restricted wrist motion. Dr. Drucker combined the impairments to equal a total 15 percent impairment of the right upper extremity.

On January 25, 2013 an OWCP medical adviser reviewed Dr. Drucker's report and found a 13 percent impairment of the right upper extremity, 12 percent for the wrist and 1 percent for the elbow. He found that, according to Table 15-32, dorsiflexion limited to 50 degrees equaled a 3 percent impairment, palmar flexion limited to 50 degrees equaled a 3 percent impairment, radial deviation limited to 10 degrees equaled a 2 percent impairment and ulnar deviation limited to 10 degrees equaled a 4 percent impairment, for a total 12 percent right upper extremity impairment. According to Table 15-33, supination limited to 70 degrees equaled a one percent impairment. The medical adviser combined the impairments to total 13 percent.

By decision dated February 5, 2013, OWCP awarded appellant a schedule award for a 13 percent impairment of the right upper extremity, based on the medical adviser's review of Dr. Drucker's December 19, 2012 report. The period of the award ran from December 12, 2005 to September 21, 2006.

LEGAL PRECEDENT

The schedule award provisions of FECA[8] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, 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 mater 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

[5] Table 15-3, page 395 of the sixth edition of the A.M.A., *Guides* is entitled "Wrist Regional Grid: Upper Extremity Impairments."

[6] Table 15-4, page 398 of the sixth edition of the A.M.A., *Guides* is entitled "Elbow Regional Grid: Upper Extremity Impairments."

[7] Table 15-33, page 474 of the A.M.A., *Guides* is entitled "Elbow/Forearm Range of Motion."

[8]5 U.S.C. § 8107.

has concurred in such adoption.[9] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.[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, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, (GMPE) and GMCS.[12] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

ANALYSIS

Appellant claimed a schedule award for right lateral epicondylitis and a right wrist sprain/strain tear initially sustained on October 24, 2002 with a reinjury on June 9, 2003. In support of her claim, she submitted a June 20, 2012 impairment rating by Dr. Fritzhand, a Board-certified urologist,who opined that appellant reached maximum medical improvement in January 2005. Referring generally to Table 15-32 of the A.M.A., *Guides*,[13] Dr. Fritzhand found that she had a 21 percent right upper extremity impairment due to loss of wrist flexion, 4 percent for restricted radial deviation and 4 percent for restricted ulnar deviation, totaling a 29 percent impairment of the right arm. He affirmed this rating in a November 10, 2012 supplemental report. However, Dr. Fritzhand did not correlate the specific degree ranges of wrist motion to the percentage ranges provided in Table 15-32.

OWCP obtained a second opinion from Dr. Drucker, a Board-certified orthopedic surgeon, who submitted a December 19, 2012 report based on a review of the complete medical record and a statement of accepted facts. Dr. Drucker found a two percent impairment of the right upper extremity according to Table 15-4 due to a class 1 diagnosis-based impairment of the right elbow due to accepted lateral epicondylitis. He noted a GMFH of 2, GMPE of 1 and GMCS of 1. Using the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), Dr. Drucker raised the default CDX grade 1 of C to D, equaling a two percent impairment of the right upper extremity. He then referred to Table 15-32 and Table 15-33 to find an additional 13 percent impairment due to restricted right wrist motion. Dr. Drucker combined the impairments to equal a total 15 percent impairment of the right arm.

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[9] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[10] 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).

[11] 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."

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

[13] Table 15-32, page 473 of the sixth edition of the A.M.A., *Guides* is entitled "Wrist Range of Motion."

An OWCP medical adviser reviewed Dr. Drucker's report on January 25, 2013 and made minor adjustments to the percentages of impairment for restricted motion. The medical adviser noted that,according to Table 15-32, 50 degrees of wrist dorsiflexion equaled a 3 percent impairment, 50 degrees palmar flexion equaled a 3 percent impairment, 10 degrees radial deviation equaled a 2 percent impairment and 10 degrees ulnar deviation equaled a 4 percent impairment, for a total 12 percent impairment of the right arm. The medical adviser applied an additional one percent impairment for supination limited to 70 degrees according to Table 15-33. He combined the 12 and 1 percent impairments to equal a 13 percent impairment of the right arm.

The Board finds that Dr. Drucker's impairment rating of appellant's right upper extremity, as reviewed by the medical adviser, is entitled to the weight of the medical evidence, as it was based on the medical record and statement of accepted facts.[14] He also properly applied the appropriate tables of the A.M.A., *Guides* to detailed clinical findings. Dr. Fritzhand did not apply specific tables of the A.M.A., *Guides* to each range of wrist motion. Therefore, OWCP's February 5, 2013 decision finding that appellant had not established that she sustained more than a 13 percent impairment of the right upper extremity was proper under the facts and circumstances of this case.

On appeal, counsel requests that OWCP rely on the June 20, 2012 impairment rating of Dr. Fritzhand. As stated above, Dr. Fritzhand did not fully correlate his findings to the A.M.A., *Guides*. Dr. Drucker's report, as reviewed by the medical adviser, correctly applied specific portions of the A.M.A., *Guides* to the clinical findings.

Appellant may request a schedule award or increased schedule award regarding the right upper extremity, 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 13 percent impairment of the right upper extremity, for which she received a schedule award.

[14] *Deborah L. Beatty*, 54 ECAB 340 (2003).

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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