United States Department of Labor
Employees' Compensation Appeals Board

C.J., Appellant	)	
and	)	**Docket No. 13-806**
	)	**Issued: August 28, 2013**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, U.S. PRISON ATLANTA, Atlanta, GA, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 21, 2013 appellant filed a timely appeal from a November 28, 2012 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 the schedule award.

ISSUE

The issue is whether appellant met her burden of proof to establish more than a three percent impairment of the right arm, for which she previously received a schedule award.

On appeal, appellant asserts that the opinion of her physician establishes that she has 10 percent impairment.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On June 29, 2010 appellant, then a 42-year-old time and leave clerk, filed an occupational disease claim, alleging that her job duties of computer entry, filing and maintaining documents, caused pain that radiated from her right hand up to her elbow. She submitted medical evidence, including an October 16, 2009 electrodiagnostic study of the upper extremities that was interpreted as demonstrating no evidence of carpal tunnel syndrome.

OWCP denied the claim. By decision dated February 3, 2011, it vacated the two prior decisions and accepted that appellant sustained employment-related right lateral epicondylitis. A March 8, 2011 electrodiagnostic study demonstrated mild right median neuropathy at the wrist compatible with mild right carpal tunnel syndrome. On June 1, 2011 OWCP accepted right carpal tunnel syndrome as employment related. On June 29, 2011 Dr. Clark H. Glass, a Board-certified orthopedic surgeon, performed right carpal tunnel release. Appellant returned to a modified position on July 25, 2011. A November 14, 2011 electrodiagnostic study demonstrated mild improvement of right median conduction values with no evidence of significant entrapment or compression and no evidence of a more proximal lesion, flexopathy or cervical radiculopathy.

On August 21, 2012 appellant filed a schedule award claim.In an August 6, 2012 report, Dr. Glass noted that she had tenderness over the lateral epicondyle of the right elbow. He indicated thatappellant had good range of motion of the right wrist but mild swelling and mild pain at the extremes of motion and a positive Tinel's sign over the median nerve with slight decreased sensation in the median nerve distribution. Dr. Glass diagnosed carpal tunnel syndrome, lateral epicondylitis and wrist pain. He concluded that appellant had reached maximum medical improvement and estimated her permanent impairment at 10 percent of the right upper extremity.

In an October 30, 2012 report, Dr. Glass advised that he last examined appellant on August 6, 2012 when he found her at maximum medical improvement. Hefurther stated that under Table 15-1 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[2]she had a class 1 impairment of 10 percent.

On November 13, 2012 Dr. G.M. Pujadas, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed the record including Dr. Glass'October 30, 2012 report. He noted that appellant had a right carpal tunnel release on June 29, 2011 with a confirmatory preoperative electrodiagnostic study. Dr. Pujadas indicated that Dr. Glass' report was not in accordance with the A.M.A., *Guides* and found that maximum medical improvement was reached on August 6, 2012. He advised that under Table 15-23 of the sixth edition,appellant had a Functional History (GMFH) grade modifier one for, noting that no disabilities of the arm, shoulder and hand score was available, a Physical Examination (GMPE) grade modifier two and a Clinical Studies (GMCS) grade modifier one,for an overall grade of one, which yielded a maximum upper extremity impairment of three percent.

[2] A.M.A.,*Guides* (6th ed. 2008).

By decision dated November 28, 2012, appellant was granted a schedule award for a three percent impairment of the right arm, for a total of 9.36 weeks, to run from August 6 to October 10, 2012.

LEGAL PRECEDENT

The schedule award provision of FECA[3] and its implementing federal regulations[4] 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 adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[5] For decisions after May 1, 2009, the sixth edition of the A.M.A., *Guides*will be used.[6]

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[7] In Table 15-23, grade modifier 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.[8]

Section 15.2 of the A.M.A., *Guides* provides that in most cases only one diagnosis in each limb involved will be appropriate.[9] The A.M.A., *Guides* state, "If a patient has two significant diagnoses, for instance, rotator cuff tear and biceps tendinitis, the examiner should use the diagnosis with the highest causally related impairment rating for the impairment calculation." Section 15.3f of the A.M.A., *Guides* further provides:

> "If there are multiple diagnoses within a specific region, then the most impairing diagnosis is rated because it is probable this will incorporate the functional losses of the less impairing diagnoses. In rare cases, the examiner may combine multiple impairments within a single region if the most impairing diagnosis does not adequately reflect the losses."[10]

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[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Id.* at § 10.404(a).

[6] FECA Bulletin No. 09-03 (issued March 15, 2009).

[7] *Supra*note 2 at 449.

[8] *Id*. at 448-50.

[9] *Id*. at 387.

[10] *Id*. at 419; *see M.P.*, Docket No. 10-1918 (issued May 16, 2011).

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[11]

ANALYSIS

The Board finds that appellant has not established that she has more than a three percent impairment of the right upper extremity. Appellant's accepted conditions are right carpal tunnel syndrome and right lateral epicondylitis. On November 28, 2012 she was granted a schedule award for a three percent impairment of the right arm.

In an August 6, 2012 report, Dr. Glass, an attending orthopedic surgeon, merely estimated appellant's right upper extremity impairment at 10 percent. In an October 30, 2012 report, he advised that, under Table 15-1 of the A.M.A., *Guides*, she had 10 percent right upper extremity impairment. Dr. Glass provided no further explanation.

Section 15.1 of the sixth edition of the A.M.A, *Guides* explains that the first step in calculating impairment is to define a diagnosis.[12] A chart on page 389 of the A.M.A, *Guides*, shows the steps to be followed in determining an impairment rating.[13] As noted above, section 15.2 of the A.M.A., *Guides* provides that in most cases only one diagnosis in each limb involved will be appropriate[14] and that impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 and accompanying relevant text.[15] Dr. Glass did not indicate which of appellant's diagnoses was the most impairing and did not follow the procedures outlined in the A.M.A, *Guides*. His opinion is thus of diminished probative value.

OWCP's medical adviser, Dr. Pujadas, provided a November 13, 2012 report in which he noted his review of the medical evidence including Dr. Glass' October 30, 2012 report, which he properly noted was not in accordance with the A.M.A., *Guides*. He then found that maximum medical improvement was reached on August 6, 2012 and advised that under Table 15-23, appellant had a functional history grade modifier of one for, a physical examination modifier of two and a clinical studies modifier of one. As noted in the explanatory text found on page 448 of the A.M.A., *Guides*, these values are to be totaled and averaged, which in this case, for a total of four, the average is 1.33 which, as the A.M.A., *Guides* indicates, yields an overall grade of

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

[12] *Supra* note 2 at 385.

[13] *Id.* at 389.

[14] *Supra* note 9.

[15] *Supra* note 7.

one.[16] As correctly determined by Dr. Pujadas, the maximum rating for a grade 1 impairment under Table 15-23 is three percent.[17]

The medical evidence of record thus supports that appellant has three percent right arm impairment due to right carpal tunnel syndrome. There is no medical evidence in accordance with the A.M.A, *Guides* to support that she was entitled to an additional award.

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 a three percent impairment of the right arm.

ORDER

IT IS HEREBY ORDERED THAT the November 28, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 28, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

[16] *Id.* at 448.

[17] *Supra* note 7.