United States Department of Labor
Employees' Compensation Appeals Board

F.H., Appellant	)	
and	)	**Docket No. 13-866**
	)	**Issued: August 2, 2013**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Omaha, NE, Employer	)	

Appearances:
John J. Higgins, Esq., for the appellant
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 28, 2013 appellant, through his attorney, filed a timely appeal from an October 18, 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 more than a 39 percent permanent impairment of the left upper extremity and a 36 percent permanent impairment of the right upper extremity.

FACTUAL HISTORY

On April 22, 2003 appellant, then a 52-year-old mail handler, filed an occupational disease claim alleging that he sustained nerve damage of the right elbow causally related to

[1] 5 U.S.C. § 8101 *et seq.*

factors of his federal employment. OWCP accepted his claim for bilateral tardy ulnar nerve palsy under the current file number.

OWCP previously accepted appellant's February 17, 1999 occupational disease claim for herniated cervical discs at C4-5 and C5-6 and a consequential injury of cervical disc disease at C6-7 and C7-T11 under master file number xxxxxx138. It granted him a schedule award for a seven percent permanent right upper extremity impairment as a result of cervical radiculopathy.

OWCP further accepted appellant's June 4, 2001 occupational disease claim for bilateral carpal tunnel syndrome under file number xxxxxx991. He underwent bilateral carpal tunnel releases in May 2001. By decision dated January 29, 2004, OWCP granted appellant a schedule award for a 39 percent permanent impairment of the left upper extremity and a 29 percent permanent impairment of the right upper extremity, for a combined 68 percent upper extremity impairment due to bilateral carpal tunnel syndrome.

On February 8, 2008 appellant requested an increased schedule award. By letter dated February 21, 2008, OWCP requested that he submit an impairment evaluation from his attending physician in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*).

By letter dated November 17, 2011, OWCP referred appellant to Dr. James Warmbrod, a Board-certified orthopedic surgeon, for an impairment evaluation. In a report dated December 8, 2011, Dr. Warmbrod diagnosed herniated cervical discs, bilateral carpal tunnel syndrome and bilateral tardy ulnar nerve palsy. He reviewed diagnostic studies showing mild carpal tunnel syndrome in 2001 and mild-to-moderate elbow mononeuropathy. On physical examination Dr. Warmbrod measured good range of motion of the elbows, wrists and hands with atrophy of the "inner ossei and the thenar musculature of the left hand" and finger weakness in abduction on the left side. Applying the sixth edition of the A.M.A., *Guides*, he found a 10 percent whole person impairment due to cervical disc disease using Chapter 17, applicable to rating impairments of the spine and pelvis. For the right upper extremity, Dr. Warmbrod applied Table 15-23 on page 449 relevant to rating an impairment due to entrapment neuropathy. After applying grade modifiers, he found that appellant had a two percent right upper extremity impairment due to carpal tunnel syndrome. For the left upper extremity, Dr. Warmbrod used Table 15-23 to rate carpal tunnel and cubital tunnel syndrome. He determined that, after applying grade modifiers, appellant had a three percent impairment due to left carpal tunnel syndrome and a three percent impairment due to left cubital tunnel syndrome, which he found yielded a nine percent left upper extremity impairment.

In a supplemental report dated December 22, 2011, Dr. Warmbrod advised that appellant had "no impairment, based on radicular symptoms and signs of his upper or lower extremities." He acknowledged that OWCP provided a schedule award for impairments originating in the spine only if it caused an impairment of an extremity and related that "this means that [appellant] has no additional impairment, other than what I gave him for his carpal tunnel or cubital tunnel syndromes."

On January 31, 2012 an OWCP medical adviser noted that Dr. Warmbrod found no evidence of any cervical radiculopathy and thus appellant had no more than the previously awarded seven percent right upper extremity impairment for radiculopathy issued under file

number xxxxxx138. The medical adviser further found that he had a two percent right upper extremity impairment and a nine percent left upper extremity impairment due to entrapment neuropathy, which was less than that previously awarded for carpal tunnel syndrome under file number xxxxxx991.

By decision dated February 14, 2012, OWCP denied appellant's claim for an increased schedule award. It found that he had no more than the previously awarded 36 percent impairment of the right upper extremity and 39 percent impairment of the left upper extremity.

On March 7, 2012 appellant requested an oral hearing before an OWCP hearing representative. In a statement dated May 31, 2012, his attorney argued that Dr. Warmbrod's opinion was insufficient as he did not obtain independent diagnostic studies. Counsel further asserted that appellant had cervical radiculopathy. He discussed medical reports from 2003 which he noted found a 58 percent impairment.

On August 14, 2012 appellant's attorney requested a review of the written record in lieu of an oral hearing. By decision dated October 18, 2012, an OWCP hearing representative affirmed the February 14, 2012 decision. She found that there was no evidence showing that appellant had more than a combined 75 percent impairment of both upper extremities.

On appeal appellant's attorney argues that the medical evidence is sufficient to show that he is entitled to additional compensation.

LEGAL PRECEDENT

The schedule award provision of FECA,[2] and its implementing federal regulations,[3] 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.[4] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[5]

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).[6] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Id.* at § 10.404(a).

[5] 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).

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

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 zero to four) are described for the categories of test findings, history and physical findings. The grade modifiers are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value.

ANALYSIS

OWCP accepted that appellant sustained herniated discs at C4-5 and C5-6 under file number xxxxxx138, bilateral carpal tunnel syndrome under file number xxxxxx991 and bilateral tardy ulnar nerve palsy under file number xxxxxx115. It paid him schedule awards for a 7 percent permanent impairment of the right upper extremity due to cervical radiculopathy and a 29 percent permanent impairment of the right upper extremity and a 39 percent permanent impairment of the left upper extremity due to carpal tunnel syndrome.

On February 8, 2008 appellant requested an increased schedule award. OWCP referred him to Dr. Warmbrod for a second opinion examination. In his December 8, 2011 report, he reviewed the diagnosed conditions of herniated cervical discs, bilateral carpal tunnel syndrome and bilateral tardy ulnar nerve palsy. Dr. Warmbrod found that appellant had a 10 percent whole person impairment due to cervical disc disease. FECA, however, specifically excludes the back as an organ and, therefore, the back does not come under the provisions for payment of a schedule award.[8] A schedule award is payable for a permanent impairment of the extremities that is due to a work-related back condition.[9] In a supplemental report dated December 22, 2011, Dr. Warmbrod advised that appellant had no impairment resulting from radiculopathy of the extremities. Consequently, he has not shown that he has a ratable impairment due to cervical radiculopathy.

Dr. Warmbrod evaluated appellant's bilateral carpal tunnel syndrome in accordance with Table 15-23. After applying grade modifiers, he found a two percent right upper extremity impairment and a three percent left upper extremity impairment due to carpal tunnel syndrome. Dr. Warmbrod further found that appellant had a three percent impairment due to left cubital tunnel syndrome. An OWCP medical adviser reviewed Dr. Warmbrod's opinion and concluded that appellant was not entitled to an additional schedule award. The Board notes that the maximum upper extremity impairment rating allowed for entrapment neuropathies under Table 15-23 is nine percent.[10] Consequently, even if appellant received the maximum rating under Table 15-23 he would have only a 9 percent right upper extremity impairment due to carpal tunnel syndrome and a 14 percent left upper extremity impairment due to carpal and cubital tunnel syndrome.[11] As this amount is far less than the amount appellant previously

[7] *Id.* at 449, Table 15-23.

[8] *Francesco C. Veneziani*, 48 ECAB 572 (1997).

[9] *Denise D. Cason*, 48 ECAB 530 (1997).

[10] A.M.A., *Guides* 449, Table 15-23.

[11] The A.M.A., *Guides* provides that for multiple entrapments such as both carpal and cubital tunnel syndromes, the nerve qualifying for the larger impairment is given the full impairment and the other nerve is given a 50 percent rating. *See* A.M.A., *Guides* 448.

received from OWCP for his upper extremity impairments, the Board finds that OWCP properly denied his claim for an increased schedule award. There is no evidence showing that he has more than a 39 percent permanent impairment of the left upper extremity and a 36 percent permanent impairment of the right upper extremity.

On appeal appellant's attorney argues that the evidence establishes that he is entitled to a greater impairment rating. Where a claimant has previously received a schedule award and subsequently claims an additional schedule award due to a worsening of his or her condition, the claimant bears the burden of proof to establish a greater impairment causally related to the employment injury.[12] Appellant has not submitted sufficiently rationalized evidence showing entitlement to an increased schedule award.

CONCLUSION

The Board finds that appellant has no more than a 39 percent permanent impairment of the left upper extremity and a 36 percent permanent impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 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

[12] *Edward W. Spohr*, 54 ECAB 806 (2003).