United States Department of Labor
Employees' Compensation Appeals Board

H.R., Appellant	)	
and	)	**Docket No. 13-1264**
	)	**Issued: December 3, 2013**
DEPARTMENT OF VETERANS AFFAIRS, JACKSON VETERANS ADMINISTRATION MEDICAL CENTER, Jackson, MS, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 30, 2013 appellant filed a timely appeal from a November 9, 2012 decision of the Office of Workers' Compensation Programs (OWCP) that denied her claim for an additional schedule award. 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 decision.

ISSUE

The issue is whether appellant has left upper extremity impairment greater than 19 percent and right upper extremity impairment greater than 9 percent.

On appeal, appellant asserts that she was given improper notice of the appointment for an OWCP second-opinion evaluation and that the report of OWCP referral physician contained errors.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This case has previously been before the Board. In a July 12, 2012 decision, the Board found that appellant was not entitled to augmented compensation for her granddaughter. The Board further found that OWCP did not follow the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (hereinafter)[2] in developing the medical evidence before granting a schedule award on November 1, 2011.[3] The Board remanded the case to OWCP for a proper impairment analysis of her upper extremities under the A.M.A., *Guides*. On remand, OWCP was directed to combine her three files to be followed by further development of the medical record in accordance with the A.M.A., *Guides*.[4] The facts of the previous Board decision are incorporated herein by reference.

By report dated May 31, 2012, Dr. Eric E. Wegener, an attending physician, noted appellant's complaint of left ring finger trigger. Physical examination demonstrated clicking, popping, locking and crepitus over the left ring finger. Dr. Wegener recommended surgical release. On July 24, 2012 OWCP combined appellant's file numbers xxxxxx181, xxxxxx756 and xxxxxx096, with the former becoming the master file. On September 12, 2012 Dr. Wegener requested approval for hand surgery.

In August 2012, OWCP informed appellant that a second opinion would be obtained. On September 20, 2012 it informed her that an appointment was scheduled on October 4, 2012 with Dr. Byron Thomas Jeffcoat, a Board-certified orthopedic surgeon. In correspondence dated September 28, 2012, appellant noted that she would attend the scheduled examination and requested a copy of her case record and the statement of accepted facts.

In an October 4, 2012 report, Dr. Jeffcoat noted his review of the medical record, including appellant's surgical history. On physical examination, he noted full range of motion of the shoulders and full external and internal rotation of the elbows and wrists. Phalen's and Tinel's tests were negative bilaterally at the elbow and wrist. Appellant had 85 degrees of flexion at the metacarpophalangeal joints of all digits of the left and right hand and 90 degrees of flexion of the proximal interphalangeal joints of both hands. The distal interphalangeal joints were held at extension. Dr. Jeffcoat indicated that appellant had full extension of all digits in her

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

[3] On February 20, 1997 appellant, a nurse, claimed a traumatic injury to her elbows adjudicated by OWCP under file number xxxxxx181. A May 21, 2004 occupational disease claim was adjudicated under file number xxxxxx756 and accepted for right shoulder sprain/supraspinatus tear. On May 6, 2005 appellant had arthroscopic decompression of a right rotator cuff tear. On August 29, 2005 she received a schedule award for seven percent impairment of the left arm due to the accepted left lateral epicondylitis. Under file number xxxxxx096, OWCP accepted an August 2006 claim for bilateral carpal tunnel syndrome and bilateral trigger finger. Appellant returned to modified duty on December 26, 2006. In a March 14, 2007 decision, OWCP found that her actual earnings in the modified job represented her wage-earning capacity with no loss. On June 30, 2008 appellant underwent a left index finger release and returned to modified duty. On March 10, 2009 she was granted a schedule award for two percent right arm impairment due to her right shoulder condition. In a November 1, 2011 decision, OWCP noted appellant's previous schedule awards and issued awards for an additional 7 percent right arm impairment and 12 percent left arm impairment.

[4] Docket No. 12-448 (issued July 12, 2012).

hands, that wrist extension was normal bilaterally and that maximum medical improvement was reached six weeks after each surgery.

Dr. Jeffcoat advised that, in accordance with the sixth edition of the A.M.A., *Guides*, under Table 15-2, Digital Regional Grid, appellant had a Class 0 impairment due to trigger digits because she had no residual findings and, therefore, a zero impairment. With regard to appellant's right upper extremity, he noted that in 2006 electrodiagnostic testing showed mild carpal tunnel syndrome which indicated that, under Table 15-23, Entrapment/Compression Neuropathy Impairment, she had no impairment. With regard to left carpal tunnel syndrome, Dr. Jeffcoat indicated that previous electrodiagnostic testing revealed severe carpal tunnel syndrome and that, under Table 15-23, appellant had a grade 3 modifier for test results and for physical findings and a grade 2 modifier for history. He applied an appropriate rating process and concluded that she had seven percent left upper extremity impairment due to carpal tunnel syndrome.

In an October 31, 2012 report, Dr. H.P. Hogshead, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed the record.[5] He indicated that Dr. Jeffcoat found very little agreement with prior examiners and, while his report was brief, it appeared to be authentic and factual. Dr. Hogshead agreed with Dr. Jeffcoat's conclusion that appellant had no impairment of the right upper extremity and a seven percent on the left. He concluded that she had no additional upper extremity impairment.

On November 7, 2012 OWCP authorized additional hand surgery.

By decision dated November 9, 2012, OWCP noted that appellant had previously received upper extremity schedule awards totaling 9 percent on the right side and 19 percent on the left. It found that she was not entitled to an additional schedule award.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing federal regulations,[6] 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.[7] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[8]

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

[5] *Supra* note 3.

[6] 20 C.F.R. § 10.404.

[7] *Id*. at § 10.404(a).

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

and Health (ICF).[9] 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).[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[11]

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[12] 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.[13]

OWCP's 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.[14]

ANALYSIS

The Board finds that appellant has no greater than 9 percent impairment of her arm right or 19 percent of the left arm, for which she has received schedule awards. The accepted conditions are left lateral epicondylitis, right shoulder sprain/supraspinatus tear, bilateral carpal tunnel syndrome and bilateral trigger finger.

The Board notes that neither Dr. Wegener nor Dr. Jeffcoat found that appellant had impairment due to a shoulder or elbow condition. Both physicians agreed that, in accordance with Table 15-23, Entrapment/Compression Neuropathy Impairment,[15] she had a seven percent impairment of the left upper extremity due to carpal tunnel syndrome. There is, therefore, no contemporaneous medical evidence of record to support that appellant had any additional upper extremity impairment due to a shoulder or elbow condition in 2012 or greater than a seven percent left upper extremity impairment due to carpal tunnel syndrome.

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[9] A.M.A., *Guides*, *supra* note 2 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

[10] *Id*. at 385-419.

[11] *Id*. at 411.

[12] *Id*. at 449.

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

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

[15] A.M.A., *Guides*, *supra* note 2 at 449.

Regarding the accepted right carpal tunnel syndrome, Dr. Wegener advised that appellant had five percent impairment. He indicated that she had modifiers 2 for test findings and history and 1/2 for physical examination. Dr. Wegener, however, did not explain why he chose these modifiers. His finding regarding right carpal tunnel syndrome is, therefore, of diminished probative value. Dr. Jeffcoat found that appellant had no impairment, noting that presurgery testing indicated only mild carpal tunnel syndrome and she reported that she was doing well. Dr. Hogshead, the medical adviser, agreed with Dr. Jeffcoat's conclusion. The record supports that appellant had no additional impairment due to right carpal tunnel syndrome.

Regarding the impairments for the accepted bilateral trigger fingers, Dr. Wegener selected range of motion measurements. The A.M.A., *Guides* provides that, under specific circumstances, range of motion may be selected as an alternative approach in rating upper extremity impairment and cautions that an impairment rating that is calculated using range of motion stands alone and may not be combined with a diagnosis-based impairment.[16] However, section 15.7a indicates that range of motion should be measured after a warm up, that the maximum range of motion should be measured at least three times and that the maximum measurement is used to determine range of motion measurement.[17] There is no indication that the digital range of motion measurements for each joint reported by Dr. Wegener followed the procedure outlined in the A.M.A., *Guides*. As such, his opinion is of reduced probative value. Dr. Jeffcoat advised that appellant had no digital impairment, finding full digital range of motion on physical examination. He concluded that, under Table 15-2, Digital Regional Grid, appellant had a Class 0 impairment.

Appellant was previously granted additional awards for 7 percent right upper extremity impairment and an additional 12 percent impairment on the left. These awards were based on impairments related to diagnoses of bilateral carpal tunnel syndrome and trigger fingers and were in addition to the August 29, 2005 schedule award for a seven percent impairment of the left arm due to lateral epicondylitis and a schedule award for a two percent impairment on March 10, 2009 due to her accepted right shoulder condition. Benefits payable under section 8107(c) of FECA shall be reduced by the period of compensation paid under the schedule for an earlier injury if compensation in both cases is for impairment of the same member or function or different parts of the same member or function and that latter impairment in whole or in part would duplicate compensation payable for the preexisting impairment.[18]

There is no additional evidence in conformance with the sixth edition of the A.M.A., *Guides*, that supports that appellant has upper extremity impairments greater than 19 percent on the left side or 9 percent on the right. As to the reported left ring finger trigger diagnosed by Dr. Wegener and for which additional surgery was authorized, this evidence reflects that this

[16] *Id*. at 390.

[17] *Id*. at 464.

[18] 20 C.F.R. § 10.404(c)(1-2) (2011).

finger had not reached maximum medical improvement. It is well established that a schedule award cannot be paid until a claimant has reached maximum medical improvement.[19]

As to appellant's argument on appeal that she was provided insufficient notice for the second-opinion evaluation, the record indicates that in August 2012 OWCP informed her that an examination would be scheduled. OWCP informed her on September 20, 2012 that an examination had been scheduled on October 4, 2012 with Dr. Jeffcoat. In correspondence dated September 28, 2012, appellant informed OWCP that she would attend the scheduled appointment and requested copies of her case record, the statement of accepted facts and questions provided Dr. Jeffcoat. Given this and her appearance at the scheduled examination, the record does not reflect that improper notice was given for the evaluation.

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 no greater than 19 percent impairment of the left upper extremity and no greater than 9 percent impairment on the right.

[19] *D.S.*, Docket No. 08-885 (issued March 17, 2009).

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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