United States Department of Labor
Employees' Compensation Appeals Board

K.P., Appellant	)	
and	)	**Docket No. 12-655**
	)	**Issued: January 10, 2013**
U.S. POSTAL SERVICE, WEST GRAND CARRIER ANNEX, Oakland, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On January 23, 2012 appellant timely appealed the July 25, 2011 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 the schedule award claim.[2]

ISSUE

The issue is whether appellant has greater than five percent impairment of both the left and right upper extremities.

[1] 5 U.S.C. §§ 8101-8193.

[2] The current record includes evidence received after OWCP issued its July 25, 2011 final decision. The Board is precluded from considering this newly submitted evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

Appellant, a 57-year-old letter carrier, has an accepted claim for bilateral carpal tunnel syndrome (CTS) and left elbow sprain which arose on or about May 15, 2006. OWCP approved bilateral carpal tunnel releases performed on October 19, 2007 (left side) and February 15, 2008 (right side).

Before her CTS-related surgeries, appellant's treating physician, Dr. Sachin Kapoor, who is Board-certified in internal medicine as well as Board-certified in occupational and environmental medicine, had declared her permanent and stationary as of May 15, 2007. At the time, appellant reportedly was not interested in carpal tunnel release surgery. Dr. Kapoor diagnosed bilateral carpal tunnel syndrome and chronic cervical strain. He attributed both diagnoses to appellant's federal employment; however, OWCP has not accepted a cervical condition under the current claim. Applying the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), Dr. Kapoor found no upper extremity impairment due to residuals of CTS.[3]

In an August 8, 2008 addendum, Dr. Kapoor noted that, since he last declared appellant permanent and stationery in May 2007, she had undergone bilateral carpal tunnel releases and subsequently developed bilateral thumb pain and stenosing tenosynovitis. He diagnosed bilateral CTS, bilateral stenosing tenosynovitis (trigger thumb) and chronic cervical strain. Dr. Kapoor attributed all three conditions to appellant's customary duties as a letter carrier. He explained that the etiology of stenosing tenosynovitis was not clearly understood; however, it had been associated with CTS and occupations that require repetitive gripping and frequent use of the hands. As to permanent impairment, Dr. Kapoor noted that he had already addressed the extent of any impairment due to bilateral CTS and chronic cervical strain in his May 15, 2007 report. With respect to the more recent diagnosis of bilateral trigger thumb, Dr. Kapoor indicated that there was no ratable impairment under A.M.A., *Guides* (5th ed. 2001). He explained that appellant had full range of motion of the thumbs. Dr. Kapoor also indicated that grip and pinch strength were not considered for rating purposes because on testing appellant's weakness was accompanied by pain.[4]

On December 18, 2008 appellant filed a claim (Form CA-7) for a schedule award.

On August 10, 2009 OWCP contacted Dr. Kapoor and requested that he submit an impairment rating in accordance with the recently adopted sixth edition of the A.M.A., *Guides* (2008).

[3] He referenced section 16.5(d), Entrapment/Compression Neuropathy, A.M.A., *Guides* 491, 495 (5th ed. 2001). Dr. Kapoor also found no impairment associated with appellant's chronic cervical strain.

[4] *See* section 16.8a, A.M.A., *Guides* 508 (5th ed. 2001) (decreased strength *cannot* be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts (*e.g.*, thumb amputation) that prevent effective application of maximal force in the region being evaluated).

OWCP subsequently received Dr. Kapoor's follow-up treatment notes dated August 31 and September 28, 2009 and April 7, 2010, but it did not receive a specific impairment rating under the latest edition of the A.M.A., *Guides* (6th ed. 2008) as requested.

In May 2010, OWCP forwarded the case record to the district medical adviser (DMA) and asked if she would provide an impairment rating under the A.M.A., *Guides* (6th ed. 2008) based on Dr. Kapoor's previous ratings.

In a report dated June 27, 2010, Dr. Ellen L. Pichey, the DMA, found five percent impairment of each upper extremity pursuant to Table 15-23, Entrapment/Compression Neuropathy Impairment, A.M.A., *Guides* 449 (6th ed. 2008).[5] She indicated that appellant reached maximum medical improvement (MMI) on August 18, 2008.[6]

Dr. Kapoor continued to submit his latest follow-up treatment records, but he did not provide an impairment rating under the A.M.A., *Guides* (6th ed. 2008).

On December 23, 2010 OWCP granted a schedule award for five percent impairment of the left and right upper extremities. The award covered a period of 31.2 weeks from August 18, 2008 to March 24, 2009. OWCP explained that the decision was based on the DMA's June 27, 2010 impairment rating and Dr. Kapoor's August 8, 2008 permanent and stationary report.

By decision dated July 25, 2011, the Branch of Hearings & Review affirmed OWCP's December 23, 2010 schedule award.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[7] FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[8] Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).[9]

[5] Dr. Pichey is Board-certified in both family medicine and occupational medicine.

[6] The date of MMI was based on Dr. Kapoor's August 8, 2008 examination which the DMA incorrectly identified as "August 18, 2008."

[7] For a total or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

[8] 20 C.F.R. § 10.404.

[9] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

ANALYSIS

Appellant's treating physician did not provide a specific impairment rating under the A.M.A., *Guides* (6th ed. 2008), but, the DMA relied on Dr. Kapoor's August 8, 2008 examination findings in determining the extent of appellant's bilateral upper extremity impairment. Pursuant to Table 15-23, A.M.A., *Guides* 449 (6th ed. 2008), the DMA found five percent impairment for each upper extremity impairment. She explained that, based on grade modifiers for test findings (1), history (3) and physical findings (3), appellant had an average of 2.33.[10] The 2.33 figure is rounded down to a grade 2 modifier which corresponds to a default upper extremity impairment of five percent.[11] The DMA also factored in appellant's functional scale grade modifier (2) which she characterized as moderate. Because the functional scale grade modifier (2) was equal to the grade modifier assigned for the condition (2), no further adjustment was required. Accordingly, the DMA properly found that appellant had five percent impairment of each upper extremity.

The Board finds that the DMA's June 27, 2010 impairment rating conforms to the A.M.A., *Guides* (6th ed. 2008), and thus, represents the weight of the medical evidence regarding the extent of appellant's bilateral upper extremity impairment. While appellant takes issue with OWCP's December 23, 2010 award, her own physician, Dr. Kapoor, has not submitted an impairment rating under the A.M.A., *Guides* (6th ed. 2008) that might otherwise demonstrate entitlement to a greater award. Accordingly, the evidence of record does not establish that appellant has bilateral upper extremity impairment greater than what OWCP has already awarded.

CONCLUSION

Appellant has not established that she has greater than five percent impairment of the left and right upper extremities.[12]

[10] 1 + 3 + 3 = 7 ÷ 3 = 2.33.

[11] Under Table 15-23, A.M.A., *Guides* 449 (6th ed. 2008), a grade modifier 2 condition has an upper extremity impairment range of four to six percent, with five percent representing the middle or "default" impairment rating.

[12] 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.

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 10, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board