United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant **and** **DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Denver, CO, Employer**	)	**Docket No. 12-1498** **Issued: January 14, 2013**

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 July 2, 2012 appellant filed a timely appeal from a January 6, 2012 merit decision of the Office of Workers' Compensation Programs concerning her 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 this claim.

ISSUE

The issue is whether appellant has established greater than seven percent impairment of her right thumb, for which she received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 17, 2008 appellant, then a 61-year-old medical instrument technician, injured her right thumb when she slipped in a stairwell. OWCP accepted the claim for right hand sprain and right thumb sprain and paid appropriate benefits.

On May 5, 2010 appellant requested a schedule award. In an April 28, 2010 report, Dr. Diego Osuna, a Board-certified family practitioner, noted the history of injury and treatment. Right hand examination revealed no swelling, painful right thumb carpometacarpal (CMC) joint and normal hair pattern. Right hand was slightly colder than left with negative Finkelstein's and Phalen's test and normal coloration, but has appeared purplish in past. Tinel's at wrist and elbow were negative. Negative grind test of CMC and no ulnar collateral ligament laxity. Two-point discrimination in thumb was less than five millimeters. Range of motion distal interphalangeal (DIP) joint flexion was 60 degrees extension + 10; metacarpophalangeal (MCP) flexion 60 degrees neutral; CMC abduction 50 degrees, adduction 4 centimeters and opposition 7 centimeters. An assessment of CMC arthritis exacerbated by fall and strain of thumb and possible complex regional pain syndrome (CRPS) was provided. Dr. Osuna opined that appellant reached maximum medical improvement. Under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), he noted that appellant had 5 percent total digit impairment under Table 15-30 based on loss of range of motion and a 13 percent right upper extremity impairment based on a diagnosis of CRPS type 1.

For the CRPS diagnosis, Dr. Osuna found that, under Table 15-24, page 453, appellant had pain greater than one year disproportionate to the inciting event and temperature asymmetry, with reports of skin color changes and asymmetry, sweating and edema in the right hand and motor dysfunction including weakness. There was also displayed and observed evidence of temperature asymmetry and color changes; decreased thumb range of motion and smooth skin. Dr. Osuna advised that no other diagnosis better explained the signs and symptoms. Under Table 15-25, page 453, he assigned four total objective diagnostic criteria points of one each for cyanotic skin color; cool skin temperature cool; skin smooth and joint stiffness. Dr. Osuna also noted that an OWCP referral physician had agreed with a diagnosis of probable CPRS. He opined that the CPRS condition was ratable as it was present for a year or more, verified by more than one physician and met objective criteria. Under Table 15-7, Table 15-8 and Table 15-9 respectively, Dr. Osuna found a grade 2 modifier for functional history, a grade 1 modifier for physical examination and a grade 2 modifier for clinical studies for an average of grade modifiers of 1.6, which rounded up to 2. Under Table 15-26, he found a grade modifier average of 2 corresponded to a class 2 impairment. Dr. Osuna next found that the criteria points for CRPS corresponded to class 1, grade E, upper extremity impairment rating of 13 percent.

On January 7, 2011 an OWCP medical adviser reviewed the medical record, including Dr. Osuna's April 28, 2010 report, for impairment rating. He opined that appellant reached maximum medical improvement on April 28, 2010. Under the A.M.A., *Guides*, the medical adviser opined that appellant had seven percent right thumb digit impairment secondary to right thumb CMC joint arthritis. He stated that Dr. Osuna only documented one motion per thumb joint movement, which was not consistent with the requirements of section 15.7 and, thus, such

measurements were not valid for impairment rating purposes. The medical adviser stated that the three main criteria for rating appellant for CRPS had not been met under Table 15-13 and Table 15-24. For the objective criteria, he found the right hand skin discoloration and sensory findings met CRPS criteria. However, while appellant had reported symptoms of a temperature disparity between the two extremities, hand swelling and sudomotor/edema, there was no objective evidence between different physicians over a years' period of time documenting such symptoms. The medical adviser noted that appellant had significant right thumb CMC arthritis and that any decreased motion finding were not valid given the pathology in that area and there had been no documented objective evidence documenting decreased motion/trophic changes. He further stated that a comprehensive differential diagnostic process had not been undertaken to clearly rule out all other differential diagnoses, noting that rheumatologic conditions and other autonomic conditions could produce appellant's symptoms.

Under Table 15-2, page 392, the medical adviser found that the most impairing diagnosis was right thumb arthritis (post-traumatic degenerative joint disease) which had diagnosis class 1 with default grade C which equaled six percent digit impairment. Under Table 15-7, page 406, he found grade modifier for functional history not applicable as OWCP's second opinion examiner had performed the most comprehensive symptom assessment and had indicated that there may be some dramatization of symptoms and symptom magnification.[2] Under Table 15-8, page 408, the medical adviser found grade modifier of 2 for physical examination given moderate palpatory findings consistent with significant degenerative joint disease. Under Table 15-9, page 410, he found grade modifier for clinical studies not applicable as the diagnostic tests were used to place appellant's thumb into the correct diagnosis and diagnosis class. Under the net adjustment formula, the medical adviser found grade modifier physical examination (2) minus diagnostic class (1) equaled 1, which moved the grade one step to the right of default grade C for a final grade of D or seven percent right thumb impairment under Table 15-2. He noted that seven percent right thumb impairment converted to three percent upper extremity impairment.

By decision dated January 6, 2012, OWCP granted appellant a schedule award for seven percent impairment of the right thumb digit. The award represented 5.25 weeks of compensation and covered the period April 28 to June 3, 2010.

OWCP subsequently accepted right metacarpophalangeal sprain and right localized unspecified osteoarthritis.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing 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

[2] In a February 24, 2010 report, Dr. Hendrick Arnold, a Board-certified orthopedic surgeon to whom OWCP referred appellant, regarding the extent of her work-related condition, opined that, while appellant's accepted condition remained symptomatic, she exaggerated and dramatized her symptoms.

[3] 20 C.F.R. § 10.404.

specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates 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 the implementing regulations as the appropriate standard for evaluating schedule losses.[4] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.[5]

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).[6] Under the sixth edition of the A.M.A., *Guides,* 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).[7] The net adjustment formula is GMFH - CDX + GMPE - CDX + GMCS - CDX.[8]

ANALYSIS

OWCP accepted appellant's claim for right hand sprain and right thumb sprain and she claimed a schedule award.

In an April 28, 2010 report, Dr. Osuna provided physical examination findings and opined that appellant was at maximum medical improvement. Under the sixth edition of the A.M.A., *Guides*, he opined that she had 5 percent digit impairment based on range of motion findings and 13 percent digit impairment based on a diagnosis of CRPS type 1. Based on Dr. Osuna's physical examination, an OWCP medical adviser utilized the sixth edition of the A.M.A., *Guides* to rate a seven percent impairment to appellant's right thumb.

The A.M.A., *Guides* explains that diagnosis-based impairment is the method of choice for calculating impairment, while range of motion is used principally as an adjustment factor. When other grids refer the evaluator to the range of motion section or when no other diagnosis-based system is applicable, range of motion impairment serves as a stand-alone rating, one that cannot be combined with a diagnosis-based estimate.[9] Under the range of motion method, Dr. Osuna found five percent digit impairment while the medical adviser found no ratable impairment. The medical adviser noted and the Board agrees that Dr. Osuna did not document valid range of motion measurements as required by section 15.7. This section requires the rating

---

[4] *See id.; Jacqueline S. Harris*, 54 ECAB 139 (2002).

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

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

[7] A.M.A., *Guides* 385-419.

[8] *Id*. at 411.

[9] *Id*. at 461.

physician to perform three measurements per joint motion, that the measurements be averaged and that each of the three measurements be within 10 degrees of the calculated average. The measurements for the affected extremity must also be compared with that of the opposite extremity to determine the percentage of relative deficit of the affected extremity.[10] Dr. Osuna did not document performing valid range of motion measurements as required by section 15.7, thus his range of motion calculation is not valid for impairment rating purposes.

Dr. Osuna opined that appellant had 13 percent arm impairment based on CRPS. The medical adviser disagreed on the basis there was no objective findings to qualify for an impairment rating for a CRPS diagnosis. Table 15-24 page 453 outlines the diagnostic criteria for CRPS. The employee must have: (1) continuing pain which is disproportionate to any inciting event; (2) must report at least one symptom in three of the four categories: sensory, vasomotor, sudomotor/edema, motor/trophic; (3) must display at least one sign at the time of evaluation in two or motor of the following categories of sensory, vasomotor, sudomotor/edema, motor/tropic; and (4) there is no other diagnosis that better explains the signs and symptoms. A sign is counted only if it is observed and documented at the time of the impairment evaluation. To be a ratable diagnosis, page 452 further requires the diagnosis be present for at least one year, verified by more than one physician and a comprehensive differential diagnostic process has clearly ruled out all other differential diagnoses. While the medical adviser agreed that appellant had symptoms of right hand skin discoloration and sensory findings, he found her symptoms of a temperature disparity between the two extremities, sudomotor/edema and motor/trophic changes failed to meet the diagnostic criteria as they were not documented between different physicians over a years' period of time. He noted that appellant had significant right thumb CMC arthritis and that any decreased motion finding were not valid given the pathology in that area. Moreover, the medical adviser found that the last requirement that there was no other diagnosis that better explained the signs and symptoms was not met. He noted that a comprehensive differential diagnostic process had not been undertaken to clearly rule out all other diagnoses and stated that appellant's symptoms could be produced by rheumatologic conditions as well as other autonomic conditions. As appellant failed to meet the necessary diagnostic criteria for CRPS under Table 15-23, it is not a ratable diagnosis for impairment purposes.

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides,* his or her opinion is of diminished probative value in establishing the degree of permanent impairment and OWCP may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings of the attending physician.[11] The medical adviser opined that appellant's right thumb CMC arthritis (post-traumatic degenerative joint disease) resulted in seven percent impairment to appellant's right thumb and three percent arm impairment. Under Table 15-2, page 392, he found that post-traumatic degenerative joint disease was class 1 with default grade C equaled six percent digit impairment. Under Table 15-7, page 406, the medical adviser found a grade modifier for functional history was not applicable as there was evidence of record of dramatization of symptoms and symptom magnification. Under Table 15-8, page 408, he found a grade modifier of 2 for physical examination given moderate palpatory findings consistent with significant degenerative joint disease. Under

[10] *Id.* at 461-64.

[11] A.M.A., *Guides* 521. *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

Table 15-9, page 410, the medical adviser found a grade modifier for clinical studies not applicable as the diagnostic tests were used to place appellant's thumb into the correct diagnosis and diagnosis class. Under the net adjustment formula, he found a grade modifier physical examination (2) minus diagnostic class (1) equaled 1, which moved the grade one step to the right of default grade C for a final grade of D or seven percent right thumb impairment under Table 15-2 which equated to three percent arm impairment under Table 15-12 at page 421.

The Board finds that the medical adviser properly applied the sixth edition of the A.M.A., *Guides* to the clinical findings of Dr. Osuna, to rate impairment due to appellant's accepted right hand and thumb sprain. The weight of the medical evidence rests with his opinion and establishes the extent of permanent impairment in this case. Although the medical adviser provided a rating for appellant's thumb, he indicated that the impairment extended to the arm by also converting this rating to a rating of appellant's arm. OWCP issued the schedule award based on appellant's thumb impairment. The Board has held that, where the residuals of an injury to a member of the body specified in the schedule extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, of a hand into the arm or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member.[12] Consequently, the schedule award for impairment is modified to reflect that impairment should be for three percent of the arm instead of seven percent of the thumb.[13]

On appeal appellant disagreed with the January 6, 2012 schedule award, noting that she continues to live with pain and symptoms from her injury and that she refused injections and invasive thumb surgery because of her medications and stent placement. However, she has not identified any other medical evidence demonstrating impairment in excess of the seven percent right thumb impairment or three percent arm impairment. As explained, Dr. Osuna's opinion is insufficient to support greater impairment under the A.M.A., *Guides*.

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 not established that she has more than three percent impairment of the right arm.

---

[12] *George A. Boyd*, 56 ECAB 707 (2005).

[13] This results in appellant receiving additional compensation. Under 5 U.S.C. § 8107(c), impairment for 100 percent impairment of an arm yields entitlement to 312 weeks of compensation while 100 percent impairment of the thumb yields 75 weeks of compensation. Seven percent impairment of the thumb results in 5.25 weeks of compensation (7 percent times 75) which is what OWCP has paid appellant. However, three percent of 312 weeks of compensation results in 9.36 weeks of compensation (3 percent times 312). This produces a difference of 4.11 weeks of compensation (9.36 minus 5.25). Upon return of the case record, OWCP shall issue appellant a payment for the additional 4.11 weeks of compensation.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 6, 2012 is affirmed as modified.

Issued: January 14, 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