

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**V.P., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Colorado Springs, CO, Employer**

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**Docket No. 13-783  
Issued: June 20, 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  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 12, 2013 appellant filed a timely appeal from a January 29, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied additional schedule award. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 three percent impairment of the left upper extremity for which she received a schedule award.

**FACTUAL HISTORY**

On September 4, 2007 appellant, then a 56-year-old rural carrier, filed an occupational disease claim alleging that she sustained inflamed left wrist tendons and arm as a result of repetitive motion in the performance of duty. She did not stop work. OWCP accepted

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

appellant's claim for tenosynovitis of the left hand and wrist. On October 2, 2008 appellant underwent left extensor tendon transfer and left de Quervain's release. She stopped work and received disability compensation. On December 13, 2008 appellant returned to light duty for four hours per day.

OWCP accepted that on October 1, 2009 appellant sustained a recurrence of disability due to the National Reassessment Process. She was placed on the periodic rolls. On May 31, 2011 appellant was referred to vocational rehabilitation.

In a June 19, 2012 report, Dr. William V. Watson, a Board-certified orthopedic surgeon and second opinion examiner, provided an accurate history of injury and reviewed appellant's records. He noted that she underwent a left extensor tendon transfer and left de Quervain's tendinitis release. Upon examination, Dr. Watson observed normal range of motion of the thumb with the exception that she had approximately -25 degrees flexion contracture of the left thumb at the metacarpophalangeal joint and slightly diminished interphalangeal flexion. He also noted tenderness at the base of the thumb and over the previously released tendons on the radial aspect. Range of motion of the wrists further revealed some limitation of wrist extension to approximately 25 degrees, but other wrist range of motion was within normal limits. Dr. Watson opined that appellant's accepted conditions of tenosynovitis of the left hand and wrist were still active and that her current symptoms were related to her accepted injury.

On July 9, 2012 appellant filed a schedule award claim. In a May 31, 2012 impairment evaluation form, Dr. Jack L. Rook, Board-certified in physical medicine and rehabilitation, noted diagnoses of thumb extensor tendon rupture and wrist de Quervain. He submitted a *QuickDASH* score of 65 and a range of motion report. For her thumb extensor condition, Dr. Rook determined that appellant had class 1 diagnoses according to Table 15-2. He utilized grade modifiers 3 based on Functional History (GMFH), 1 based on Physical Examination (GMPE), and 3 based on Clinical Studies (GMCS). For her wrist condition, Dr. Rook determined that she had class 1 diagnosis and grade modifiers 3 based on GMFH, 1 based on GMPE and 1 based on GMCS. He concluded that appellant had four percent upper extremity impairment for her left thumb and three percent upper extremity impairment for her left wrist for a total of seven percent combined upper extremity impairment.

On January 10, 2013 OWCP referred appellant's schedule award claim to the district medical adviser. In a January 15, 2013 report, Dr. Morley Slutsky, Board-certified in occupational medicine and district medical adviser, noted her accepted condition of tenosynovitis of the left hand and wrist and reviewed her history, including the statement of accepted facts. He provided an accurate history of injury and noted that appellant underwent left extensor indicis and left de Quervain's release. Dr. Slutsky reported a date of maximum medical improvement of June 19, 2012, the date of Dr. Watson's second opinion examination and stated that he used Dr. Watson's findings for final rating calculations.

Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009) (hereinafter, A.M.A., *Guides*), Dr. Slutsky opined that appellant had one percent impairment due to left wrist tenosynovitis and two percent impairment due to left thumb extensor tendon rupture, which resulted in a total left upper extremity impairment of three percent. For her left wrist tenosynovitis, he determined that appellant had a

class 1 diagnosis according to Table 15-3.<sup>2</sup> Dr. Slutsky reported a grade modifier 1 based on functional history<sup>3</sup> because appellant did not document having to perform functional modifications in order to achieve self-care activities and a grade modifier 1 for physical examination due to tenderness over the area where the tendon resides.<sup>4</sup> He applied the net adjustment of zero and found that appellant had one percent upper extremity impairment for left wrist tenosynovitis. For her left thumb extensor, Dr. Slutsky determined that appellant had a class 1 diagnosis according to Table 15-2.<sup>5</sup> He reported a grade modifier 1 based on functional history due to her ability to perform self-care activities without modifications<sup>6</sup> and a grade modifier 1 for physical examination due to tenderness.<sup>7</sup> Dr. Slutsky applied the net adjustment formula of zero and found that appellant had six percent left digit impairment. He converted her digit impairment using Table 15-12<sup>8</sup> and determined that appellant had two percent left upper extremity impairment. Thus, Dr. Slutsky concluded that appellant had a combined total of three percent impairment for the left upper extremity.

On January 29, 2013 OWCP granted a schedule award for three percent impairment of the left upper extremity impairment based on Dr. Slutsky's report. The award ran for a period June 19 to August 23, 2012 for 7.32 weeks.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>9</sup> and its implementing regulations<sup>10</sup> 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. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. For consistent results and to ensure equal justice, the Board has authorized 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 OWCP as the appropriate standard for evaluating schedule losses.<sup>11</sup>

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<sup>2</sup> A.M.A., *Guides* 395-97.

<sup>3</sup> *Id.* at 406.

<sup>4</sup> *Id.* at 408.

<sup>5</sup> *Id.* at 391-94.

<sup>6</sup> *Id.* at 406.

<sup>7</sup> *Id.* at 408.

<sup>8</sup> *Id.* at 421.

<sup>9</sup> 5 U.S.C. § 8107.

<sup>10</sup> 20 C.F.R. § 10.404.

<sup>11</sup> *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.<sup>12</sup>

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.<sup>13</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>14</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*.<sup>15</sup>

### ANALYSIS

Appellant's claim was accepted for tenosynovitis of the left hand and wrist. On July 9, 2012 she filed a claim for a schedule award. The Board finds that medical evidence of record establishes no more than three percent impairment for appellant's left upper extremity.

In support of her claim, appellant submitted a May 31, 2012 impairment evaluation form from Dr. Rook, who found that appellant had seven percent impairment for the left upper extremity. He utilized Table 15-2 to determine that appellant had four percent upper extremity impairment for left thumb condition and three percent upper extremity impairment for her left wrist condition for a total of seven percent impairment of the left upper extremity. The Board notes that Dr. Rook provided a conclusion regarding impairment, but he did not provide any explanation for how he reached his conclusion. Dr. Rook did not provide any findings on examination or medical rationale for how he determined appellant's diagnosis-based impairment or grade modifiers. He merely circled numbers on an impairment evaluation form. The Board also notes that Dr. Rook also did not indicate which edition of the A.M.A., *Guides* he used for his impairment calculations. A medical opinion is of limited probative value if it contains a conclusion unsupported by medical rationale.<sup>16</sup> Accordingly, the Board finds that Dr. Rook's impairment rating is of diminished probative value.

In a January 15, 2013 medical adviser report, Dr. Slutsky determined that appellant had three percent impairment for the left upper extremity. He explained that the sixth edition of the A.M.A., *Guides* utilized a diagnosis-based impairment method and that range of motion impairment was only used as a physical adjustment factor or if no other approach is available. Utilizing Table 15-3 and Table 15-2, Dr. Slutsky determined that appellant had one percent

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<sup>12</sup> Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

<sup>13</sup> A.M.A., *Guides* 383-419.

<sup>14</sup> *Id.* at 411.

<sup>15</sup> *Tommy R. Martin*, 56 ECAB 273 (2005).

<sup>16</sup> *T.M.*, Docket No. 08-975 (February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

impairment for left wrist tenosynovitis and two percent impairment for left thumb condition for a total of three percent impairment for the upper extremity.

The Board finds that the medical adviser properly applied the sixth edition of the A.M.A., *Guides* to rate impairment to appellant's left wrist condition. Dr. Slutsky reviewed the medical evidence and determined that appellant had no more than three percent impairment for the left upper extremity under the sixth edition of the A.M.A., *Guides*. His rating is in accordance with the protocols pertaining to upper extremity impairment determinations and represents the weight of medical opinion. Appellant did not submit other medical evidence, which conformed to the A.M.A., *Guides*, that establishes that he is entitled to greater impairment than that which was granted by OWCP.

On appeal, counsel contends that the schedule award did not include all of the disability, pain, weakness, scars, and thumb impairment and noted that Dr. Rook provided a greater impairment rating. As previously noted, however, Dr. Rook did not provide any explanation for his impairment rating, and thus, his report is of limited probative value.

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 did not meet her burden of proof to establish that she has more than a three percent impairment of her left upper extremity for which she received a schedule award.<sup>17</sup>

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<sup>17</sup> The Board notes that appellant submitted additional evidence following the January 29, 2013 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 29, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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