United States Department of Labor
Employees' Compensation Appeals Board

R.S., Appellant	)	
and	)	**Docket No. 12-1628**
	)	**Issued: May 7, 2013**
DEPARTMENT OF THE NAVY, NAVAL AVIATION DEPOT, Cherry Point, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 25, 2012 appellant filed a timely appeal from the July 12, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which found an additional impairment. 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 27 percent impairment of his left upper extremity or more than a 15 percent impairment of his right upper extremity, for which he received schedule awards.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

In a prior appeal,[2] the Board found that medical evidence establishing a three percent impairment of the left arm and a nine percent impairment of the right arm, both due to loss of motion, such that appellant was not entitled to an additional award. The facts of this case, as set forth in the Board's prior decision, are hereby incorporated by reference.[3]

On April 4, 2012 appellant claimed an additional schedule award. He submitted a February 15, 2012 report by Dr. Lawrence Morales, his attending orthopedic surgeon, who diagnosed bilateral carpal tunnel syndrome and bilateral ulnar compression neuropathy. Applying the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009), Dr. Morales found a 17 percent impairment of the left upper extremity and an 18 percent impairment on the right due to loss of hand, wrist and elbow motion.

Test findings showed conduction delays. The history was one of constant symptoms. Physical findings showed decreased sensation bilaterally. Appellant's *Quick*DASH score was in the severe range. Dr. Morales determined that appellant had a three percent bilateral impairment due to carpal tunnel syndrome and a three percent bilateral impairment due to ulnar compression neuropathy.

An OWCP medical adviser reviewed Dr. Morales' evaluation and noted that OWCP did not accept ulnar compression neuropathy. He added that because range of motion was a stand-alone evaluation method, appellant could not receive a rating for both carpal tunnel syndrome and loss of range of motion, but as the range of motion method yielded a higher impairment rating, the medical adviser found it appropriate. He concurred with Dr. Morales' finding that appellant had a 17 percent impairment of the left upper extremity and an 18 percent impairment of the right due to loss of hand and wrist motion.

On July 12, 2012 OWCP issued a schedule award for an additional 3 percent impairment of the right upper extremity (18 percent total).

On appeal, appellant presents arguments about an overpayment decision that is not the subject of this appeal. The Board addressed the overpayment issue on December 18, 2012 in an appeal docketed as No. 12-1030.[4]

[2] Docket No. 12-1923 (issued April 20, 2011).

[3] In 1998 appellant, a 40-year-old sandblaster, filed an occupational disease claim alleging that his carpal tunnel syndrome was a result of hand-cleaning, stripping or blasting small aircraft components, which made his hands numb. OWCP accepted his claim for bilateral carpal tunnel syndrome and approved surgical releases. On June 22, 2010 an OWCP hearing representative found that appellant properly received compensation for a 27 percent impairment of his left upper extremity and a 15 percent impairment of his right. The hearing representative determined that OWCP erroneously paid appellant for an additional 15 percent bilaterally, for totals of 42 and 30 percent respectively.

[4] Docket No. 12-1030 (issued December 18, 2012).

LEGAL PRECEDENT

The schedule award provision of FECA[5] and the implementing 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.[7]

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 regulations as the appropriate standard for evaluating schedule losses.[8] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[9]

ANALYSIS

OWCP determined that appellant previously received compensation for a 27 percent impairment of his left upper extremity and a 15 percent impairment of his right upper extremity. The issue on this appeal, therefore, is whether the February 15, 2012 impairment evaluation by Dr. Morales, the attending orthopedic surgeon, establishes that appellant has greater impairment.

OWCP issued an additional 3 percent award for the right upper extremity because Dr. Morales found an 18 percent impairment due to loss of motion. The A.M.A., *Guides*, however, does not authorize range of motion as a stand-alone method for evaluating impairment due to carpal tunnel syndrome.

The A.M.A., *Guides* permits range of motion as a stand-alone alternative for most diagnosis-based impairments of the upper extremity.[10] The diagnosis-based impairment method of the sixth edition is given preference, however, with range of motion used principally as a alternative in rating impairment.[11] Impairment due to carpal tunnel syndrome is specifically determined by Chapter 15.4f.[12] This chapter explains that the method used to calculate impairment in entrapment neuropathies deviates slightly from the diagnosis-based method

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

[8] *Supra* note 6; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[10] A.M.A., *Guides* 390 (6th ed. 2009) (*see* Table 15-2 through Table 15-5).

[11] *Id*. at 461.

[12] *Id*. at 432.

because the diagnosis is already established; therefore, only the grade modifiers for test findings, history, physical findings and functional scale need to be determined.[13]

To rate the impairment for focal nerve compromise, one must use Table 15-23, page 449. Dr. Morales noted that test findings showed conduction delays (grade modifier 1). The history was one of constant symptoms (grade modifier 3). Physical findings showed decreased sensation bilaterally (grade modifier 2). The average of these modifiers is two. Table 15-23 shows that the default impairment value for a grade 2 carpal tunnel syndrome is five percent. Dr. Morales noted that appellant's *Quick*Dash score was in the severe range (grade 3), which is one grade higher than the average. This increases the default value by one, for a final upper extremity impairment of six percent bilaterally.

This is lower than the impairment ratings for which appellant previously received compensation. For this reason, the Board finds that appellant is not entitled to an increased schedule award for either upper extremity.

CONCLUSION

The Board finds that appellant is not entitled to an increased award. The current medical evidence shows that he has a 6 percent bilateral upper extremity impairment due to carpal tunnel syndrome, which is less than the 27 percent he received for his left upper extremity and the 15 percent he received for his right upper extremity.

[13] *See id*. at 433.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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