

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

C.P., Appellant)	
)	
and)	Docket No. 13-1293
)	Issued: November 20, 2013
U.S. POSTAL SERVICE, POST OFFICE,)	
Charlotte, NC, Employer)	
)	

<i>Appearances:</i> Alan J. Shapiro, Esq., for the appellant Office of Solicitor, for the Director	<i>Case Submitted on the Record</i>
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DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 7, 2013 appellant, through her attorney, filed a timely appeal of a March 28, 2013 Office of Workers' Compensation Programs' (OWCP) merit decision denying her request for a schedule award. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish permanent impairment as a result of her accepted condition of bilateral carpal tunnel syndrome, thereby entitling her to a schedule award.

On appeal counsel argued that OWCP's hearing representative unfairly weighed the evidence rather than remanding the case for further development.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on appeal. The relevant facts are set forth below.

On May 19, 1999 appellant, then a 42-year-old distribution clerk, filed a traumatic injury claim alleging that she injured her right hand and arm casing mail on April 29, 1999. OWCP accepted her claim for carpal tunnel syndrome of the right wrist on September 22, 1999. Appellant returned to light-duty work. She filed a recurrence of disability claim on May 25, 2000. Appellant underwent surgery for right carpal tunnel release on June 21, 2000. OWCP authorized left carpal tunnel release on September 21, 2000. Appellant underwent left carpal tunnel release on November 10, 2000. OWCP accepted bilateral carpal tunnel syndrome and bilateral synovitis of the wrists with bilateral carpal tunnel release. Appellant underwent a nerve conduction velocity study on April 11, 2002 which was normal.

OWCP referred appellant for an impartial medical examination with Dr. Robert Elkins, a Board-certified orthopedic surgeon, due to a conflict of medical opinion evidence regarding appellant's continuing employment-related condition and her ability to work on December 15, 2009. In a report dated January 20, 2010, Dr. Elkins noted appellant's history of injury and reviewed the statement of accepted facts. He also considered her medical records noting that her nerve conduction velocity testing in 2002 was normal. Dr. Elkins performed a physical examination finding tenderness in the lateral forearm and wrist, but a negative Tinel's sign. He opined that appellant's tenderness was nonphysiologic in nature as there was no real tenderness in her neck, shoulder, scapula, arm, forearm or trigger points. Dr. Elkins also determined that her complaints of dullness in the right arm were nonphysiologic. He found that appellant's motor strength was invalid. Dr. Elkins opined that her bilateral carpal tunnel syndrome had resolved and diagnosed moderate symptom magnification and pain accentuation. He stated that appellant could return to her date-of-injury position with no restrictions. Dr. Elkins completed a work capacity evaluation on January 20, 2010 and again opined that the work-related condition of carpal tunnel syndrome had resolved and that she could return to work with no restrictions.

By decision dated August 20, 2010, OWCP terminated appellant's medical and compensation benefits effective August 29, 2010. It found that the medical evidence submitted by appellant did not contain reasoning or objective findings in support of the conclusions. Appellant appealed this decision to the Board. In the March 8, 2012 decision and order,² the Board found that the weight of the medical evidence as represented by Dr. Elkins' well-reasoned report established that appellant's disability and medical residuals as a result of her accepted bilateral carpal tunnel syndrome had resolved. The facts and circumstances of the case as set forth in the Board's prior decision are adopted herein by reference.

On July 12, 2012 appellant filed a claim for compensation requesting a schedule award. OWCP requested medical opinion evidence in support of appellant's claim by letter dated July 25, 2012.

² Docket No. 11-884 (issued March 8, 2012).

By decision dated September 18, 2012, OWCP denied appellant's claim for a schedule award on the grounds that she had not submitted the necessary medical evidence of impairment to scheduled member. Counsel requested a telephone hearing before an OWCP hearing representative on September 24, 2012. He appeared at the oral hearing on January 10, 2013 and requested 30 days to submit additional medical evidence.

On January 25, 2013 Dr. William C. Daniels, a Board-certified orthopedic surgeon, noted appellant's report of symptoms of numbness, tingling and weakness in both upper extremities. He stated that appellant underwent electrodiagnostic testing on October 19, 2011 which revealed bilateral carpal tunnel syndrome. Dr. Daniels opined that appellant reached maximum medical improvement on October 19, 2011. He found that sensation was grossly intact to light touch and pinprick with slight diminished pinprick on the thumb and index finger right greater than left. Dr. Daniels stated that Tinel's sign was slightly positive on the right only and that appellant's left forearm measured 27.5 centimeters while her right measured 27 centimeters. He determined that there was significant weakness on manual muscle testing to all muscles in the upper extremities and that found grip strength of zero pounds bilaterally repeated three times. Dr. Daniels diagnosed bilateral carpal tunnel syndrome.

Dr. Daniels applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ Table 15-23 entrapment/compression neuropathy.⁴ He found that appellant's test findings were grade modifier 1, that her history was of mild persistent symptoms also grade modifier 1 and that functional scale was grade modifier 1. Dr. Daniels stated that appellant's physical findings were grade modifier 2. Applying the A.M.A., *Guides* formula, he determined that grade modifier 1 was the final rating category. Dr. Daniels stated, "The default value in the [grade modifier 1] column is two percent. Using the functional scale, again determined by the patient's history and the various questionnaires, moderate category is utilized resulting in a shift to the right, resulting in three percent [upper extremity impairment] on the right. Using the 50 percent value of the left results in 1.5. Therefore the final [upper extremity impairment] for the bilateral carpal tunnel, allowed conditions is 5 percent, by rounding the 1.5 up to 2 percent."

By decision dated March 28, 2013, the hearing representative found that Dr. Elkins' report established that appellant's disability and medical residuals due to her accepted carpal tunnel syndrome had resolved. He concluded that appellant had not, therefore, met her burden of proof to establish that she sustained permanent impairment to a listed scheduled member due to her accepted work injury. The hearing representative affirmed OWCP's September 18, 2012 decision.

³ 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

⁴ A.M.A., *Guides* 449, Table 15-23.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing regulations⁶ set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the discretion of OWCP. 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁷

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.⁸ In Table 15-23, grade modifier 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.⁹

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome due to her April 29, 1999 employment injury. On August 20, 2010 it terminated her medical and compensation benefits effective August 29, 2010 finding that she had no disability or medical residuals due to her accepted condition. The Board affirmed this decision.

Appellant requested a schedule award on July 12, 2012. She failed to submit any medical evidence comporting with the sixth edition of the A.M.A., *Guides* and OWCP denied her claim on September 18, 2012. Appellant requested an oral hearing. Following the oral hearing on January 10, 2013, she submitted a medical report from Dr. Daniels dated January 25, 2013 utilizing the A.M.A., *Guides* and concluding that appellant had three percent impairment of her right upper extremity and two percent impairment of her left upper extremity.

OWCP's hearing representative denied appellant's claim for a schedule award on the grounds that she had no residuals of her accepted condition in accordance with Dr. Elkins'

⁵ 5 U.S.C. §§ 8101-8193, 8107.

⁶ 20 C.F.R. § 10.404.

⁷ For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁸ A.M.A., *Guides* 449, Table 15-23.

⁹ A survey completed by a given claimant, known by the name *QuickDASH*, may be used to determine the function scale score. A.M.A., *Guides* 448-49.

impartial medical examination. The issue, however, is not whether appellant required further medical treatment for her bilateral carpal tunnel syndrome, the issue decided by Dr. Elkins, but whether she is entitled to a schedule award for a permanent impairment. A claimant may have an employment-related condition that results in permanent impairment under the A.M.A., *Guides*, without any disability for work or the need for continued medical treatment.¹⁰

On remand, OWCP should review the medical evidence and determine whether appellant has established a permanent impairment in accordance with the appropriate provisions of the A.M.A., *Guides*. The case will be remanded to OWCP for further development and the proper adjudication of the issue of the extent of the bilateral upper extremity impairment to be followed by a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2013 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: November 20, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹⁰ See *B.K.*, 59 ECAB 228 (2007); *D.L.*, Docket No. 11-1971 (issued August 21, 2012).