

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

C.W., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Albany, NY, Employer

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**Docket No. 13-1501
Issued: November 15, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 11, 2013 appellant filed a timely appeal from the May 23, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding 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 over the merits of this case.

On appeal, appellant did not contest the percentage of impairment of the schedule award, but argued that the date of commencement of the schedule award should have been October 12, 2012 rather than February 19, 2013.

¹ 5 U.S.C. §§ 8101-8193.

ISSUE

The issue is whether OWCP properly determined the date of the maximum medical improvement for commencement of appellant's schedule award.

FACTUAL HISTORY

On May 22, 2009 OWCP accepted that appellant, then 50-year-old distribution window clerk, sustained bilateral carpal tunnel syndrome due to the repetitive duties of her job.

On August 24, 2009 appellant underwent right carpal tunnel release surgery and on October 14, 2009 she underwent left carpal tunnel release surgery. Both procedures were authorized by OWCP.

On February 16, 2011 appellant filed a claim for a schedule award. She did not submit any impairment rating evaluation report with her claim.

By letter dated February 23, 2012, OWCP asked appellant to provide an impairment rating evaluation which applied the standards of the sixth edition of American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). It received a medical report dated February 16, 2011 from Dr. Carl L. Krasniak, an attending Board-certified plastic surgeon, who stated that appellant had "a nonscheduled loss of use of 10 percent of each hand with permanence" but did not explain the rating standards he applied.²

On October 12, 2012 an OWCP claims examiner advised appellant by telephone that the impairment rating she submitted was insufficient. She informed appellant that she needed to submit a written request if she wished to be sent for a second opinion examination regarding her claimed impairment. In an October 12, 2012 letter received on October 18, 2012, appellant advised OWCP that she was unable to find a physician who could provide an impairment rating evaluation under the relevant standards.

On February 1, 2013 OWCP referred appellant to Dr. Charles E. Jordan, a Board-certified orthopedic surgeon, for an examination and impairment rating evaluation under the sixth edition of the A.M.A., *Guides*.

In a February 19, 2013 report, Dr. Jordan described appellant's medical history and detailed the findings of the impairment examination he conducted that date. On examination, appellant's hands revealed well-healed carpal tunnel incisions with no local redness, swelling or tenderness. She had negative Tinel's and Phalen's signs in both hands but there was perhaps a very slight thenar atrophy in the right hand compared to the left. Dr. Jordan stated that appellant had a full range of motion in all joints in her hands and that sensation seemed to be intact. He described the standards of Table 15-23 on page 449 of the sixth edition of the A.M.A., *Guides*. Under this table, Dr. Jordan calculated grade modifier values for history, physical findings and

² Appellant also submitted an impairment rating worksheet that was signed by a physician's assistant.

functional scale. He concluded that appellant had “a one percent schedule loss of both upper extremities” according to the sixth edition of the A.M.A., *Guides*.³

In a May 8, 2013 supplemental report, Dr. Jordan clarified that he had found that appellant had a one percent permanent impairment of her right arm and a one percent permanent impairment of her left arm.

In a March 22, 2013 report with a May 20, 2013 annotation, Dr. Henry J. Magliato, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, agreed with Dr. Jordan’s rating of one percent permanent impairment to appellant’s right and left arms. He advised that she reached maximum medical improvement on February 19, 2013, the date of Dr. Jordan’s impairment rating evaluation.

In a May 23, 2013 decision, OWCP granted appellant schedule awards for a one percent permanent impairment of her right arm and a one percent permanent impairment of her left arm. The date of maximum medical improvement was listed as February 19, 2013. The awards ran from February 19 to April 3, 2003 based on the February 19, 2013 impairment rating evaluation of Dr. Jordan as confirmed by Dr. Magliato.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing regulations⁵ 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 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.⁶ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁷

The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury.⁸ Maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.⁹ The determination of the date of maximum

³ Dr. Jordan indicated that appellant’s condition was stable and that the date of maximum medical improvement “was obtained roughly one year from the time of her date of surgery.”

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *Id.*

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁸ *Adela Hernandez-Piris*, 35 ECAB 839 (1984).

⁹ *Id.*

medical improvement is factual in nature and depends primarily on the medical evidence.¹⁰ The date of maximum medical improvement is usually considered to be the date of the evaluation accepted as definitive by OWCP.¹¹ The Board has also noted a reluctance to find a date of maximum medical improvement which is retroactive to the award, as retroactive awards often result in payment of less compensation benefits. The Board, therefore, requires persuasive proof of maximum medical improvement if OWCP selects a retroactive date.¹²

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome due to the repetitive duties of her job. In a May 23, 2013 decision, it granted her schedule awards for a one percent permanent impairment of her right and left arms. The date of maximum medical improvement was listed as February 19, 2013 and the schedule award began running on that date. The award was based on the February 19, 2013 impairment rating evaluation of Dr. Jordan, a Board-certified orthopedic surgeon serving as an OWCP referral physician, as confirmed by Dr. Magliato, a Board-certified orthopedic surgeon, serving as an OWCP medical adviser.

On appeal, appellant did not contest the percentage of impairment of the schedule award. She argued that the date of commencement of the schedule award should have been October 12, 2012, the date that an OWCP claims examiner advised her by telephone that she would be sent to an OWCP referral physician.

The Board finds that OWCP properly determined that the date of maximum medical improvement was February 19, 2013. Therefore, appellant's schedule award properly began to run on that date.¹³

Maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further. This date, which is determined through evaluation of the medical evidence, is usually considered to be the date of the evaluation accepted as definitive by OWCP.¹⁴ February 19, 2013 is the date that Dr. Jordan conducted a comprehensive evaluation of appellant's upper extremity condition and explained how he determined that she had a one percent permanent impairment of her right arm and a one percent permanent impairment of her left arm under the sixth edition of the A.M.A., *Guides*. Appellant argued that the date of maximum medical improvement should be October 12, 2012, the date that an OWCP claims examiner advised her by telephone that she would be sent to an OWCP referral physician. There is no medical evidence which supports this assertion and the record does not

¹⁰ *J.B.*, Docket No. 11-1469 (issued February 14, 2012); *Franklin L. Armfield*, 28 ECAB 445 (1977).

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.a (January 2010); see *Richard Larry Enders*, 48 ECAB 184 (1996) (the date of maximum medical improvement was the date of the audiologic examination used as the basis of the schedule award).

¹² *C.S.*, Docket No. 12-1574 (issued April 12, 2013); *P.C.*, 58 ECAB 539 (2007); *James E. Earle*, 51 ECAB 567 (2000).

¹³ See *supra* note 8.

¹⁴ See *supra* notes 9 through 11.

otherwise contain a medical report establishing that appellant's carpal tunnel condition had stabilized prior to Dr. Jordan's February 19, 2013 impairment rating evaluation. The Board has noted a reluctance to find a date of maximum medical improvement which is retroactive to the award and the record does not contain the persuasive proof required for finding such a retroactive date.¹⁵ In a February 19, 2013 report, Dr. Jordan indicated that appellant's upper extremity condition was stable at the time of the February 19, 2013 examination.¹⁶ Moreover, the determination of February 19, 2013 as the date of maximum medical improvement is supported by the opinion of Dr. Magliato, OWCP's medical adviser.

For these reasons, OWCP properly determined that appellant's date of maximum medical improvement was February 19, 2013 and it was proper for her schedule award to begin running on that date.

CONCLUSION

The Board finds that OWCP properly determined the date of maximum medical improvement and the date of commencement of appellant's schedule award.

¹⁵ See *supra* note 12.

¹⁶ In his February 19, 2013 report, Dr. Jordan also stated that the date of maximum medical improvement "was obtained roughly one year from the time of her date of surgery." However, he did not provide any indication that appellant's upper extremity condition was stable at that time or identify medical evidence which would support such a conclusion. The Board notes that appellant's carpal tunnel releases occurred in August and October 2009 and the record contains no medical evidence from the last 11 months of 2010, *i.e.*, the period about one year after these surgeries.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2013
Washington, DC

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

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

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