United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
and	)	**Docket No. 13-1399**
	)	**Issued: April 24, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Las Vegas, NV, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 28, 2013 appellant filed a timely appeal from a March 27, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 established that she sustained more than a two percent permanent impairment to the right upper extremity, for which she received a schedule award.

On appeal, appellant contends that she is entitled to more than the percentage of permanent impairment to the right upper extremity awarded on the basis that she is still having pain and discomfort. Additionally, Dr. Aubrey Swartz, a Board-certified orthopedic surgeon and OWCP referral physician, improperly applied the American Medical Association, *Guides to the*

[1] 5 U.S.C. § 8101 *et seq.*

Evaluation of Permanent Impairment (A.M.A., *Guides*) in his January 28, 2013 second opinion report.

FACTUAL HISTORY

OWCP accepted that appellant, then a 47-year-old letter carrier, sustained a right thumb trigger finger due to factors of her federal employment and a recurrence on August 30, 2011. Appellant underwent limited open carpal tunnel release and right thumb trigger release surgery performed by Dr. Andrew Bronstein, a Board-certified hand surgeon, on January 4, 2012.

On November 21, 2012 appellant filed a claim for a schedule award.

Dr. Cesar Estela, a Board-certified physiatrist, diagnosed right thumb trigger finger and possible right carpal tunnel syndrome. He administered cortisone injections and by December 20, 2004 released appellant to full duty with no restrictions.

On April 24, 2012 Dr. Foluke Adekunle, a Board-certified internist, indicated that appellant worked with repetitive movement and September 28, 2011 electromyogram and nerve conduction studies (EMG/NCS) revealed carpal tunnel syndrome and ulnar nerve lesion.

In a December 3, 2012 letter, OWCP notified appellant of the deficiencies of her schedule award claim and afforded her 30 days to submit additional evidence.

Subsequently, appellant submitted a letter dated December 6, 2012 requesting a second opinion evaluation. She indicated that Dr. Bronstein was unable to provide additional medical evidence.

OWCP referred appellant to Dr. Swartz for a second opinion examination. On January 28, 2013 Dr. Swartz conducted a physical examination and reviewed appellant's medical records and a statement of accepted facts. Upon physical examination, he found that carpometacarpal (CMC) motion in abduction of 50 degrees equaled zero percent digital impairment; adduction of five centimeter (cm) equaled four percent digital impairment; eight cm of opposition equaled zero percent digital impairment; metacarpophalangeal joint flexion of 20 degrees equaled four percent digital impairment; and interphalangeal joint impairment of 70 degrees equaled one percent digital impairment. Dr. Swartz added the percentages of impairment and arrived at a total of nine percent digital impairment. He indicated that the accepted condition was right trigger thumb and opined that appellant had a nine percent digital impairment rating under Table 15-30 -- *Thumb Range of Motion*,[2] on page 468, of the A.M.A., *Guides*. Dr. Swartz referred to Table 15-12,[3] on page 421 and noted that a nine percent digital impairment equaled four percent hand impairment, which was also equal to three percent upper extremity impairment. He concluded that appellant had a three percent upper extremity impairment and a date of maximum medical improvement of January 4, 2013.

[2] Table 15-30, page 468, of the sixth edition of the A.M.A., *Guides* is entitled *Thumb Range of Motion*.

[3] Table 15-12, pages 421-23, of the sixth edition of the A.M.A., *Guides* is entitled *Impairment Values Calculated From Digit Impairment*.

On March 17, 2013 Dr. Ellen Pichey, an OWCP medical adviser, reviewed the medical evidence of record and concurred with Dr. Swartz that appellant had reached maximum medical improvement effective January 4, 2013, one year after surgery. She, however, disagreed with Dr. Swartz' impairment rating. Dr. Pichey indicated that according to the sixth edition of the A.M.A., *Guides*, "impairment due to digital stenosing tenosynovitis (trigger finger), persistent triggering with normal motion, class 1, default position C" equaled a six percent digital impairment under Table 15-2,[4] on page 392 and equated to a two percent hand and upper extremity impairment under Table 15-12,[5] on page 421. She concluded that appellant had a two percent permanent impairment of the right upper extremity. Dr. Pichey explained that Dr. Swartz used range of motion for the method of choice for determination of the impairment rating and, although this method could be used, it was not the preferred method from the A.M.A., *Guides* for the diagnosis in this case. She found that it was "more appropriate to use the diagnosis-based impairment (DBI) tables, as [she had] done above, to arrive at the calculated impairment percentages" and indicated that according to pages 461-64 of the A.M.A., *Guides*:

> "Section 15.2, Diagnosis-Based Impairments, is the method of choice for calculating impairment. Range of Motion is used principally as a factor in the Adjustment Grid: Physical Examination, as explained in Section 15.3b. [Range of Motion] is to be used as a standalone rating … when no other diagnosis[-]based sections of this chapter are applicable for impairment rating of a condition."

By decision dated March 27, 2013, OWCP granted appellant a schedule award for two percent permanent impairment to the right upper extremity for 6.24 weeks for the period January 4 through February 16, 2013, relying on Dr. Pichey's March 17, 2013 report.

LEGAL PRECEDENT

The schedule award provisions of FECA[6] provide for compensation to employees sustaining impairment from loss or loss of use of specified members 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 sound 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. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[7] For schedule awards after

[4] Table 15-2, pages 391-94, of the sixth edition of the A.M.A., *Guides* is entitled *Digit Regional Grid: Digit Impairments*.

[5] *See supra* note 3.

[6] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[7] *See Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000). *See also* 5 U.S.C. § 8107.

May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.[8]

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).[9] Under the sixth edition, 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).[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[11]

ANALYSIS

OWCP accepted that appellant sustained a right thumb trigger finger due to factors of her federal employment and a recurrence on August 30, 2011. Appellant underwent right thumb trigger release surgery on January 4, 2012. In a March 27, 2013 award of compensation, OWCP granted her a schedule award for two percent permanent impairment to the right upper extremity. It is appellant's burden to submit sufficient evidence to establish the extent of permanent impairment.[12]

OWCP properly referred appellant to Dr. Swartz for a second opinion examination. On January 28, 2013 Dr. Swartz found that CMC motion in abduction of 50 degrees equaled zero percent digital impairment; adduction of five cm equaled four percent digital impairment; eight cm of opposition equaled zero percent digital impairment; MP joint flexion of 20 degrees equaled four percent digital impairment; and IP joint impairment of 70 degrees equaled one percent digital impairment. He added the percentages of impairment and arrived at a total of nine percent digital impairment. Dr. Swartz indicated that the accepted condition was right trigger thumb and opined that appellant had a nine percent digital impairment rating under Table 15-30 -- *Thumb Range of Motion*,[13] on page 468, of the A.M.A., *Guides*. He referred to Table 15-12,[14] on page 421, and noted that a nine percent digital impairment equaled four percent hand impairment, which was also equal to three percent upper extremity impairment. Dr. Swartz

[8] *See D.T.*, Docket No. 12-503 (issued August 21, 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[9] A.M.A., *Guides* (6th ed., 2009), p.3, section 1.3, *International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.*

[10] *Id.* at 494-531.

[11] *See R.V.*, Docket No. 10-1827 (issued April 1, 2011).

[12] *See Annette M. Dent*, 44 ECAB 403 (1993).

[13] *See supra* note 2.

[14] *See supra* note 3.

concluded that appellant had a three percent upper extremity impairment and a date of maximum medical improvement of January 4, 2013.

Regarding appellant's impairment for the accepted right thumb trigger finger, Dr. Swartz selected range of motion measurements. The A.M.A., *Guides* provides that, under specific circumstances, range of motion may be selected as an alternative approach in rating upper extremity impairment and cautions that an impairment rating that is calculated using range of motion stands alone and may not be combined with a DBI.[15] However, section 15.7a indicates that range of motion should be measured after a warm up, that the maximum range of motion should be measured at least three times and that the maximum measurement is used to determine range of motion measurement.[16] There is no indication that the digital range of motion measurements for each joint reported by Dr. Swartz followed the procedure outlined in the A.M.A., *Guides*.[17] As such, his opinion is of reduced probative value.[18]

The Board finds that Dr. Pichey, an OWCP medical adviser, reviewed Dr. Swartz' clinical findings and properly concluded that appellant had a two percent permanent impairment of the right upper extremity. In her March 17, 2013 report, Dr. Pichey indicated that impairment due to digital stenosing tenosynovitis (trigger finger) and persistent triggering with normal motion was a class 1 and default grade C equaled a six percent digital impairment under Table 15-2,[19] and equated to a two percent hand and upper extremity impairment under Table 15-12[20] of the sixth edition of the A.M.A., *Guides*. She concluded that appellant had a two percent permanent impairment of the right upper extremity. Dr. Pichey indicated how she arrived at her conclusion by listing specific tables and pages in the A.M.A., *Guides*. She properly interpreted Table 15-12 to find that appellant qualified for two percent permanent impairment of her right upper extremity.

OWCP may rely on the opinion of Dr. Pichey to apply the A.M.A., *Guides* to the physical examination findings.[21] The Board finds that Dr. Pichey in this case properly applied the standards of the A.M.A., *Guides* using the DBI tables. Dr. Pichey's opinion is the weight of medical evidence and supports that appellant does not have a greater right upper extremity impairment than the two percent previously awarded.

---

[15] Section 15.3b, page 407, of the sixth edition of the A.M.A., *Guides* is entitled *Adjustment Grid: Physical Examination*. Section 15.3b of the A.M.A., *Guides* indicates that range of motion may be used to determine an impairment rating "only when specified by the regional grid, or in the rare case when DBIs are not applicable…. If it is clear to the evaluator that a restricted range of motion has an organic basis, [three] measurements should be obtained and the greatest range measured should be used for the determination of impairment. *Id.*

[16] A.M.A., *Guides* 464 (6th ed. 2009).

[17] *See supra* note 15.

[18] *See H.R.*, Docket No. 13-1264 (issued December 3, 2013).

[19] *See supra* note 4.

[20] *See supra* note 3.

[21] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.810.8(j) (September 2010).

The reports from Drs. Estela and Adekunle do not provide an impairment rating. Thus, these reports are of diminished probative value regarding appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.[22]

There is no probative medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant has more than a two percent permanent impairment to the right upper extremity. Accordingly, appellant has not established that she is entitled to a schedule award greater than that previously awarded.[23]

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 sustained more than a two percent permanent impairment to the right upper extremity, for which she received a schedule award.

[22] *See Richard A. Neidert*, 57 ECAB 474 (2006) (an attending physician's report is of little probative value where the A.M.A., *Guides* are not properly followed).

[23] FECA provides for reduction of compensation for subsequent injury to the same body member. It provides that schedule award compensation is reduced by the compensation paid for an earlier injury where the compensation in both cases are for impairment of the same member or function and where it is determined that the compensation for the later disability in whole or part would duplicate the compensation payable for the preexisting disability. 5 U.S.C. § 8108; 20 C.F.R. § 10.404(c).

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 24, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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