

In a March 9, 2011 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective March 13, 2011 as he no longer had any residuals or disability causally related to his accepted October 6, 2010 employment injury.

On January 11, 2012 appellant filed a claim for a schedule award.

A February 16, 2011 work capacity evaluation (Form OWCP-5c) contained a partially illegible signature of a physician with the last name of Halston. It stated that appellant could return to unrestricted duty on February 17, 2011.

By letter dated January 24, 2012, OWCP advised appellant that the medical evidence of record was insufficient to establish his claim as there was no narrative report outlining his current condition or providing whether he had any permanent impairment as a result of his work-related condition. It requested that he submit a medical report based on a recent examination that included, among other things, an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Appellant was afforded 30 days to submit the requested evidence.

Also, on January 24, 2012 OWCP requested that appellant's physician determine whether appellant had reached maximum medical improvement with regard to his accepted condition and to calculate an impairment rating under the sixth edition of the A.M.A., *Guides*. No response was received.

In a July 2, 2012 decision, OWCP denied appellant's claim, finding that he had not submitted the requested medical evidence to establish his entitlement to a schedule award.

On July 9, 2012 appellant, through his attorney, requested a telephone hearing with an OWCP hearing representative.

In a January 9, 2013 medical report, Dr. Karen M. Garvey, an attending Board-certified internist, listed a history of the October 6, 2010 employment injury and appellant's medical, social and occupational background. She reviewed his medical records and noted his left wrist symptoms. On physical examination of the left wrist, Dr. Garvey reported essentially normal findings with the exception of a palpable click at the area of the base of the distal wrist proximal to the ulnar styloid process and decreased range of motion. She diagnosed a left wrist sprain. Dr. Garvey advised that appellant reached maximum medical improvement on February 1, 2011 when he was returned to unrestricted work duty. Utilizing the sixth edition of the A.M.A., *Guides*, she determined that he had 12 percent impairment of the left upper extremity causally related to his accepted October 6, 2010 employment injury.

In a January 18, 2013 decision, an OWCP hearing representative set aside the July 2, 2012 decision and remanded the case to OWCP for further medical development based on Dr. Garvey's January 9, 2013 report.

On remand, an OWCP medical adviser reviewed appellant's medical record. In a January 24, 2014 report, he stated that there were no objective findings to support residuals of the accepted left wrist sprain condition. The medical adviser related that the accepted wrist condition was self-limiting and would resolve within weeks unless there was more serious

underlying pathology. He stated that Dr. Garvey's observation of clicking and stiffness of the wrist and assertion that this was somehow related to the original injury and accepted condition was medically improbable given that they were not present two weeks after the sprain (close to when the sprain would have been resolved). Therefore, the medical adviser concluded that appellant had no residuals from the original wrist injury and no impairment to the left wrist impairment. He stated that he had very limited medical notes in this case and that the date of maximum medical improvement would be the date when active medical treatment stopped, but additional information would have to be obtained by the Department of Labor.

On January 31, 2013 OWCP determined that there was a conflict in the medical opinion evidence between Dr. Garvey and its medical adviser regarding the extent of appellant's permanent impairment. On the same date, it referred appellant, together with the case record and a statement of facts, to Dr. Joseph M. De Michele, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a February 15, 2013 report, Dr. De Michele reviewed a history of the October 6, 2010 employment injury and appellant's medical record. He noted his complaint of stiffness-achiness and a click in his left wrist. On physical examination of the left wrist and upper extremity, Dr. De Michele found no soft tissue swelling, tenderness, edema, color-temperature changes or other vasomotor-psuedomotor signs. Comparable measurement at different levels revealed no evidence of muscle atrophies. The neurovascular status was intact and specific tests were essentially within normal limits. The left wrist had full range of motions without restrictions, 60 degrees each of palmar flexion and dorsiflexion, 20 degrees of radial deviation, 30 degrees of ulnar deviation and full pronosupination. No pain-guarding-spasm elicited against resistance. Provocative testings for carpal instability and "ECU-ECR-FCU-ECU" tendinitis tests were all negative. No cystic lesion or other abnormalities were identified. A neurological evaluation revealed no evidence of trophic-sensory-motor, reflex deficits, abnormal click or any other abnormalities. Mild terminal stiffness was noted in the right shoulder and left ankle from unrelated injuries.

Based on the history and findings and review of the medical record, Dr. De Michele opined that appellant suffered a contusion or sprain of the ulnar side of his left wrist on October 6, 2010 for which he received adequate and reasonable treatment. Appellant reached maximum medical improvement in February 2011 when he was released to unrestricted full duties. Dr. De Michele related that some functional overlay and inhibition was noted during the objective testing, but objective findings were negative on the indirect evaluation. He advised that appellant's present objective findings failed to reveal any evidence of permanent functional impairment or sequelae and none were expected as a result of the October 6, 2010 injury. Dr. De Michele stated that the conclusion and opinion of Dr. Garvey were not corroborated by the normal objective findings. In an accompanying OWCP-5c form dated February 15, 2013, he stated that appellant could resume unrestricted full duties.

In a March 22, 2013 decision, OWCP denied appellant's schedule award claim. The weight of the medical evidence was accorded to Dr. De Michele's opinion.

By letter dated March 26, 2013, appellant, through his attorney, requested a telephone hearing before an OWCP hearing representative.

In a September 23, 2013 decision, an OWCP hearing representative affirmed the March 22, 2013 decision. The weight of the medical evidence was accorded to Dr. De Michele's opinion.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing federal regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁴ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵ Effective May 1, 2009, FECA adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁶

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁷ The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination.⁸ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁹

² *Id.* at § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Ausbon N. Johnson*, 50 ECAB 304 (1999).

⁵ *See supra* note 3; *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

⁷ 5 U.S.C. § 8123(a).

⁸ 20 C.F.R. § 10.321.

⁹ *L.S.*, Docket No. 12-139 (issued June 6, 2012); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

ANALYSIS

The Board finds that appellant did not sustain a ratable employment-related impairment, thereby entitling him to a schedule award.

OWCP accepted that appellant sustained a left wrist sprain as a result of his employment duties as a letter carrier. Appellant claimed a schedule award due to his accepted condition.

OWCP determined that there was a conflict in medical opinion between Dr. Garvey, an attending physician who opined that appellant had 12 percent impairment of the left wrist and OWCP's medical adviser who found that he had no impairment of the left wrist. To resolve the conflict, OWCP referred appellant to Dr. De Michele for an impartial medical examination. Dr. De Michele determined in a February 15, 2013 report that appellant did not have a ratable impairment of his left wrist as a result of his accepted condition. In a decision dated September 23, 2013, an OWCP hearing representative affirmed the March 22, 2013 denial of appellant's schedule award claim. The Board finds that the medical evidence failed to establish any permanent impairment of his left wrist as a result of his accepted injury.

The Board finds that OWCP properly relied on the February 15, 2013 report from Dr. De Michele, who properly reviewed the medical record and found no permanent functional impairment as a result of the accepted October 6, 2010 employment injury. Dr. De Michele provided normal findings on physical examination of the left wrist. He found no soft tissue swelling, tenderness, edema, color-temperature changes or other vasomotor-psuedomotor signs and no evidence of muscle atrophies. Dr. De Michele found that the neurovascular status was intact and specific tests were essentially within normal limits. He reported full range of motion without restrictions in the left wrist, which included 60 degrees each of palmar flexion and dorsiflexion, 20 degrees of radial deviation, 30 degrees of ulnar deviation and full pronosupination. Dr. De Michele related that a neurological evaluation revealed no evidence of trophic-sensory-motor or reflex deficits, abnormal clicks or any other abnormalities. He noted some functional overlay and inhibition during the objective testing, but stated that the objective findings were negative on the indirect evaluation. Dr. De Michele reviewed Dr. Garvey's January 9, 2013 report and found that her conclusion and opinion were not corroborated by the objective findings. He determined that appellant had reached maximum medical improvement in February 2011 when he was released to unrestricted full duties. Dr. De Michele concluded that appellant could resume unrestricted full duties.

As Dr. De Michele was selected as the impartial medical specialist to resolve the conflict regarding the extent and degree of impairment, if any, of appellant's employment-related injury and his report was sufficiently well rationalized and based upon a proper factual background, his report constitutes the special weight of the medical evidence.¹⁰ The Board finds, therefore, that Dr. De Michele's report constituted the special weight of medical opinion and supports OWCP's determination denying appellant a schedule award for the left upper extremity impairment.

¹⁰ See cases cited, *supra* note 9.

Appellant may request a 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 sustain a ratable impairment entitling him to a schedule award.

ORDER

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

Issued: August 20, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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