United States Department of Labor
Employees' Compensation Appeals Board

L.J., Appellant	)	
and	)	**Docket No. 14-1253**
	)	**Issued: December 17, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Frazer, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 7, 2014 appellant, through counsel, filed a timely appeal from a January 29, 2014 decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule award. 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 four percent impairment of the right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

Under File No. xxxxxx889, OWCP accepted that on or before June 2, 2005 appellant, then a 56-year-old rural letter carrier, sustained right radial styloid tenosynovitis (de Quervain's tenosynovitis) and a right trigger thumb in the performance of duty. Under File No. xxxxxx789,

[1] 5 U.S.C. § 8101 *et seq.*

it accepted that she sustained de Quervain's tenosynovitis of the left wrist. OWCP doubled the claims with File No. xxxxxx789 serving as the master file.

On March 15, 2006 Dr. Raymond D. Dragann, an attending osteopath Board-certified in orthopedic surgery, performed a release of the first dorsal compartment of the trigger thumb with excision of a ganglion cyst in the tendon sheath. Appellant stopped work on the day of the surgery and remained off work through January 22, 2012. She received wage-loss compensation for total disability.

From April 24, 2006 through March 25, 2012, appellant was followed by Dr. Scott M. Fried, an attending osteopath Board-certified in orthopedic surgery, who submitted periodic reports noting continued objective signs of de Quervain's tenosynovitis and trigger fingers in the right hand. In April 24, 2006, January 30 and October 17, 2007, August 4, 2010, and March 25, 2012 reports, Dr. Fried noted appellant's history of bilateral carpal tunnel syndrome with bilateral median nerve releases performed in 1994. He opined that her bilateral carpal tunnel syndrome remained active, with objective neurologic signs of median nerve compression at the wrists.

In July 2011, OWCP obtained a second opinion from Dr. Robert Franklin Draper, Jr., a Board-certified orthopedic surgeon, who opined that appellant continued to have residuals of the accepted trigger fingers, de Quervain's tenosynovitis and carpal tunnel syndrome. Dr. Draper found appellant able to perform full-time sedentary duty. A statement of accepted facts provided for Dr. Draper's use noted that "preexisting or concurrent medical conditions include: carpal tunnel syndrome."

Appellant performed light-duty work from January 23 to March 26, 2012,[2] with intermittent absences through January 2013. She retired from the employing establishment effective January 31, 2013.

On June 4, 2013 appellant claimed a schedule award. In support of her claim, she submitted a March 7, 2013 report from Dr. Nicholas Diamond, an attending osteopath, who reviewed medical records and opined that appellant had reached maximum medical improvement. Dr. Diamond noted that appellant underwent a right median nerve release on May 27, 1994 and a left median nerve release on June 16, 1994. He related appellant's complaints of locking of the right thumb, pain and paresthesias in the right hand, difficulties with activities of daily living, and a *Quick*DASH score of 63 on the right. On examination of the right arm, Dr. Diamond found restricted motion of the wrist and hand, a sensory deficit over the median nerve, and 4/5 muscle strength. He diagnosed cumulative and repetitive trauma disorder, bilateral carpal tunnel syndrome, right de Quervain's syndrome with a cyst in the first dorsal compartment, status post right median nerve release on May 27, 1994, status post de Quervain's release with cystectomy on March 15, 2006, and status post right trigger thumb release performed on March 15, 2006. Referring to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, "A.M.A.,

[2] By decision dated April 4, 2012, OWCP found that appellant's actual earnings as a modified clerk properly represented her wage-earning capacity.

Guides"), Dr. Diamond found a Class of Diagnosis (CDX) of entrapment neuropathy of the median nerve at the wrist according to Table 15-23,[3] with a grade modifier for Functional History (GMFH) of 3 according to Table 15-7,[4] a grade modifier for Clinical Studies (GMCS) of 1, and a grade modifier for findings on Physical Examination (GMPE) of 3. Using the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), he found a net adjustment of 2, raising the default five percent rating for median nerve entrapment to six percent. Dr. Diamond found a class 1 CDX for right de Quervain's tenosynovitis, equaling one percent impairment according to Table 15-3.[5] He found a GMFH of 3, GMPE of 2, and noted that a GMCS was not applicable. Using the net adjustment formula, Dr. Diamond found a net adjustment of 3, raising the default one percent impairment to two percent. He then combined the six and three percent impairments to equal a total eight percent impairment of the right upper extremity.

In a May 23, 2013 memorandum, OWCP requested that an OWCP medical adviser indicate if the accepted conditions of trigger finger and radial styloid tenosynovitis of the right hand resulted in permanent impairment of the right upper extremity. In a June 12, 2013 report, an OWCP medical adviser reviewed the medical record and agreed with Dr. Diamond that appellant had reached maximum medical improvement as of March 7, 2013. However, the medical adviser opined that carpal tunnel syndrome should not be included in calculating the impairment rating as OWCP had not accepted the condition as work related. The medical adviser agreed with Dr. Diamond's calculation of two percent impairment of the right arm due to de Quervain's tenosynovitis. He also noted that appellant had additional impairment due to the right trigger thumb, which Dr. Diamond omitted from his report. The medical adviser found that, according to Table 15-2,[6] appellant had a class 1 impairment of the right thumb, equaling six percent impairment, converted to two percent impairment of the right upper extremity. He combined the two percent impairment for de Quervain's tenosynovitis with the two percent impairment for trigger thumb to equal a total four percent impairment of the right arm.

By decision dated July 17, 2013, OWCP granted appellant a schedule award for four percent impairment of the right arm. In a July 22, 2013 letter, counsel requested a hearing, held November 15, 2013. At the hearing, he asserted that OWCP had accepted bilateral carpal tunnel syndrome in 1994. Counsel contended that regardless of this acceptance, OWCP was required to include carpal tunnel syndrome in the impairment rating because it was a preexisting condition affecting the same member of the body.

By decision dated January 29, 2014, an OWCP hearing representative denied modification on the grounds that the arguments at hearing did not demonstrate that the July 17, 2013 schedule award determination should be modified. The hearing representative found that

[3] A.M.A., *Guides* 449, Table 15-23, of the sixth edition is entitled "Entrapment/Compression Neuropathy Impairment."

[4] *Id*. at 406, Table 15-7, of the sixth edition is entitled "Functional History Adjustment: Upper Extremities."

[5] *Id*. at 396, Table 15-3, of the sixth edition is entitled "Wrist Regional Grid: Digit Impairments."

[6] *Id*. at 391, Table 15-2, of the sixth edition is entitled "Digit Regional Grid: Digit Impairments."

the medical adviser properly excluded carpal tunnel syndrome from the impairment rating as it was not an accepted condition.

LEGAL PRECEDENT

The schedule award provisions of FECA[7] 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 mater 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.[8] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.[9]

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).[10] Under the sixth edition, the evaluator identifies the impairment class of diagnosis condition, which is then adjusted by grade modifiers based on functional history, physical examination and clinical studies.[11] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX). The A.M.A., *Guides* divides the upper extremity into regions for rating purposes. The hand is one of the designated regions.[12]

The A.M.A., *Guides* provide a specific rating process for entrapment neuropathies such as carpal tunnel.[13] This rating process requires that the diagnosis of a focal neuropathy syndrome be documented by sensory or motor nerve conduction studies or electromyogram. The A.M.A., *Guides* do not allow additional impairment values for decreased grip strength, loss of motion or pain.[14] Table 15-23 provides a compilation of the grade modifiers for test findings, history and physical findings which are averaged and rounded to the nearest whole number. This table also

[7] 5 U.S.C. § 8107.

[8] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

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

[10] A.M.A., *Guides* (6th ed. 2008), page 3, Section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

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

[12] *Id*. at Figure 15-1, "Upper Extremity Regions."

[13] *Id*. at 432-50.

[14] *Id.* at 433.

provides the range of impairment values as well as the function scale modifier which determines the impairment value within the impairment scale.[15]

It is well established that in determining entitlement to a schedule award, preexisting impairment to the scheduled member is to be included.[16] There is no basis for including subsequently acquired conditions. OWCP procedures provide: "Impairment ratings for schedule awards include those conditions accepted by OWCP as job related and any preexisting permanent impairment of the same member or function."[17]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*.[18] In some instances, an OWCP medical adviser's opinion can constitute the weight of the medical evidence. This occurs in schedule award cases where an opinion on the percentage of permanent impairment and a description of physical findings is on file from an examining physician, but the percentage estimate by this physician is not based on the A.M.A., *Guides*. In this instance, a detailed opinion by OWCP's medical adviser which gives a percentage based on reported findings and the A.M.A., *Guides* may constitute the weight of the medical evidence.[19]

ANALYSIS

The issue on appeal concerns whether appellant established that a July 17, 2013 schedule award for four percent impairment of the right upper extremity should be modified. Counsel requested a hearing, held November 15, 2013, at which he contended that OWCP should have included carpal tunnel syndrome in the schedule award calculation as it had been accepted by OWCP and because it was a preexisting condition affecting the same region of the body. OWCP then issued a January 29, 2014 decision affirming the prior schedule award. The Board finds, however, that as the July 17, 2013 schedule award was in error, the case is not in posture for a decision.

OWCP accepted that appellant sustained de Quervain's disease and trigger thumb and fourth finger of the right hand. In medical reports dated from April 24, 2006 to March 25, 2012, Dr. Fried, an attending osteopathic physician Board-certified in orthopedic surgery, noted that appellant sustained bilateral carpal tunnel in 1994 with bilateral median nerve releases. OWCP

[15] *Id*.

[16] *R.G.*, Docket No. 13-220 (issued May 9, 2013); *Peter C. Belkind*, 56 ECAB 580 (2005); *Raymond E. Gwynn*, 35 ECAB 247 (1983).

[17] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.806.5(d) (February 2013).

[18] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims* Chapter 2.808.6(f) (February 2013); *see also L.R.*, Docket No. 14-674 (issued August 13, 2014); *D.H.*, Docket No. 12-1857 (issued February 26, 2013).

[19] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.7(h) (April 1993).

also noted preexisting carpal tunnel syndrome in its June 28, 2011 statement of accepted facts. Appellant claimed a schedule award on June 4, 2013.

On July 17, 2013 OWCP granted appellant a schedule award for four percent impairment of the right arm due to locking of the right thumb and tenosynovitis, based on an OWCP medical adviser's review of an impairment rating by Dr. Diamond, an attending osteopathic physician. It excluded preexisting right carpal tunnel syndrome from consideration in calculating the schedule award, finding that it had not been accepted as work related.

It is well established that, in determining entitlement to a schedule award, preexisting impairment to the scheduled member is to be included.[20] The medical record establishes that appellant had carpal tunnel syndrome with right median nerve release in 1994, prior to the development of right de Quervain's tenosynovitis and trigger thumb as of June 2, 2005.

As OWCP improperly excluded preexisting carpal tunnel syndrome from consideration in determining the appropriate percentage of permanent impairment, the case must be remanded for additional development. Following this and all other necessary development, OWCP will issue an appropriate merit decision in the case.

On appeal, counsel argues that OWCP should have included preexisting carpal tunnel syndrome with right median nerve release, accepted under File No. xxxxxx065, in calculating the schedule award for a right trigger finger and right radial styloid tenosynovitis under the present claim. The Board has accepted this point. Counsel also cites as authority the Board's holding in *Raymond E. Gwynn*,[21] and OWCP procedures. Alternatively, counsel contends that there is a conflict of medical opinion between Dr. Diamond, an attending osteopathic physician, and an OWCP medical adviser, regarding the appropriate percentage of permanent impairment.

Because the case must be remanded for additional development, it is premature to address counsel's argument regarding a conflict of medical opinion between Dr. Diamond and the medical adviser.

CONCLUSION

The Board finds that the case is not in posture for a decision. The case will be remanded to OWCP for additional development regarding the appropriate percentage of right upper extremity impairment.

[20] *Michael C. Milner*, 53 ECAB 446, 450 (2002).

[21] *Supra* note 16.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 29, 2014 is set aside, and the case remanded for additional development consistent with this decision.

Issued: December 17, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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