United States Department of Labor
Employees' Compensation Appeals Board

J.V., Appellant	)	
and	)	**Docket No. 14-1638**
	)	**Issued: December 1, 2014**
U.S. POSTAL SERVICE, POST OFFICE, El Paso, TX, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 21, 2014 appellant filed a timely appeal from the June 11, 2014 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 to review the merits of this case.

ISSUE

The issue is whether appellant is entitled to an additional schedule award for his right upper extremity or any schedule award for his left upper extremity.

FACTUAL HISTORY

On January 6, 2006 appellant, a 53-year-old city letter carrier, sustained a traumatic injury in the performance of duty when he lifted trays of mail. OWCP accepted his claim for sprain of the right shoulder and upper arm, unspecified site, right rotator cuff syndrome, brachial

[1] 5 U.S.C. § 8101 *et seq.*

neuritis or radiculitis, displacement of cervical intervertebral disc without myelopathy, right carpal tunnel syndrome, cellulitis of neck, and fracture of cervical vertebra without spinal cord injury.

On September 11, 2009 appellant received a schedule award for an 11 percent impairment of his right upper extremity. As there were no motor or sensory deficits in the upper extremities resulting from the accepted conditions in the cervical spine, the rating was based on loss of right shoulder motion.

In 2013, Dr. Stanley E. French, Jr., a chiropractor, offered an evaluation of permanent impairment. He determined that appellant had an impairment of the cervical spine equal to 15 percent of the whole person. Dr. Robert E. Urrea, a Board-certified orthopedic surgeon, agreed with a 15 percent whole person impairment.

Appellant filed a claim for an additional schedule award. An OWCP medical adviser observed, however, that schedule awards were not payable for impairment to the spine or the whole person. They were payable only for scheduled members of the body. "For this reason I am unable to recommend impairment for this claimant based on impairment of the spine or whole person."

OWCP referred appellant to Dr. Sofia M. Weigel, a Board-certified physiatrist, who related appellant's history and symptoms. Dr. Weigel described her findings on physical examination, including good active range of motion, and offered an evaluation of permanent impairment. There was no evidence of cervical radiculopathy and no objective sensory or motor findings. For a full-thickness rotator cuff injury, Dr. Weigel noted a default impairment value of three percent for the right upper extremity under Table 15-5, page 403 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*). She adjusted this to four percent, as clinical studies confirmed the diagnosis and the surgical report documented a complete tear.

Dr. Weigel noted that electrodiagnostic criteria were not met for a diagnosis of carpal tunnel syndrome but for the diagnosis of wrist pain post injury she noted a default impairment of one percent under Table 15-3, page 395 of the A.M.A., *Guides*. She found no adjustment for physical examination or clinical studies. Dr. Weigel concluded that appellant had a five percent total impairment of the right upper extremity. She found no impairment on the left.

The medical adviser confirmed Dr. Weigel's impairment ratings. He noted that appellant had already received a schedule award for an 11 percent impairment of his right upper extremity based on loss of shoulder motion and therefore was not entitled to an additional award based on the shoulder but because appellant had not yet received a schedule award based on his wrist, the 11 percent he previously received should be combined with the 1 percent for wrist pain, giving a total impairment of 12 percent for the right upper extremity or an additional impairment of 1 percent. As there was no evidence of motor or sensory deficit, appellant had no impairment of the left upper extremity.

In a decision dated June 11, 2014, OWCP issued an award for an additional one percent impairment of the right upper extremity. It found no impairment of the left upper extremity.

Appellant questions how Dr. French can assess a 15 percent whole person impairment and OWCP can assess a 1 percent impairment for the same injury.

LEGAL PRECEDENT

The schedule award provision of FECA[2] and the implementing regulations[3] 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.[4]

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. OWCP has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[5] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[6]

FECA does not authorize the payment of schedule awards for the permanent impairment of "the whole person."[7] Payment is authorized only for the permanent impairment of specified members, organs or functions of the body. No schedule award is payable for a member, function or organ of the body not specified in FECA or in the regulations.[8] Because neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the spine or back,[9] no claimant is entitled to such an award.[10]

Amendments to FECA modified the schedule award provisions to make clear that scheduled members were covered regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Thus, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.[11]

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[2] *Id.* at § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

[5] *Supra* note 3; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010).

[7] *Ernest P. Govednick*, 27 ECAB 77 (1975).

[8] *William Edwin Muir*, 27 ECAB 579 (1976).

[9] FECA specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

[10] *E.g., Timothy J. McGuire*, 34 ECAB 189 (1982).

[11] *Rozella L. Skinner*, 37 ECAB 398 (1986).

ANALYSIS

Although Dr. French, the chiropractor, found that appellant had an impairment of the cervical spine equal to 15 percent of the whole person, and although Dr. Urrea, the orthopedic surgeon, agreed with a 15 percent whole person impairment, FECA does not allow schedule awards for impairment of the cervical spine or impairment of the whole person. OWCP therefore properly referred appellant to Dr. Weigel, a physiatrist, for a second opinion.

Diagnosis-based impairment is the primary method of evaluation for the upper extremities. The first step is to choose the diagnosis that is most applicable for the region being assessed, for example, the shoulder, elbow or wrist. Selection of the optimal diagnosis requires judgment and experience. If more than one diagnosis can be used, the highest causally related impairment rating should be used. This will generally be the more specific diagnosis. Typically, one diagnosis will adequately characterize the impairment and its impact on activities of daily living.[12]

Specific criteria for that diagnosis determine which class is appropriate: no objective problem, mild problem, moderate problem, severe problem, very severe problem approaching total function loss. The A.M.A., *Guides* assigns a default impairment rating for each diagnosis by class, which may be slightly adjusted using such grade modifiers or nonkey factors as functional history, physical examination and clinical studies.[13]

OWCP did not accept that appellant had injured his left upper extremity directly. It accepted displacement of a cervical intervertebral disc without myelopathy, cellulitis of the neck, and fracture of a cervical vertebra with spinal cord injury, but Dr. Weigel found no evidence of cervical radiculopathy and no objective sensory or motor findings. Accordingly, there was no impairment of the left upper extremity stemming from the accepted cervical conditions.

As for the right upper extremity, Dr. Weigel selected the diagnosis of full-thickness rotator cuff injury as the most appropriate diagnosis for the shoulder region. Table 15-5, page 403 of the A.M.A., *Guides* shows a default upper extremity impairment value of three percent for this diagnosis. As clinical studies or the surgical report confirmed a full-thickness tear, Dr. Weigel adjusted the default impairment value slightly higher to reflect the moderate problem shown by clinical studies.[14] Appellant's functional history and physical examination findings showed only a mild problem not warranting further adjustment. Thus, he had a four percent impairment of his right upper extremity due to the accepted rotator cuff syndrome.

As for the wrist region, Dr. Weigel found that electrodiagnostic tests did not meet the specified criteria for the definition of carpal tunnel syndrome for impairment rating purposes. Impairment values for entrapment or compression neuropathies such as carpal tunnel syndrome are found in Table 15-23, page 449 of the A.M.A., *Guides*; however, electrodiagnostic testing

[12] A.M.A., *Guides* 387, 389 (6th ed. 2009).

[13] *Id*. at 497.

[14] *Id*. at Table 15-9, 410.

must meet specified minimum standards to confirm the presence of carpal tunnel syndrome for impairment rating purposes.[15] Studies that do not meet the specified criteria are considered normal studies, and the individual is either given no impairment rating or is rated, as applicable, under the tables for diagnosis-based impairment.[16]

Dr. Weigel therefore turned to the diagnosis-based estimates in Table 15-5, page 395. This table, the Wrist Regional Grid, assigns a default upper extremity impairment value of one percent for wrist pain after acute injury or surgery. This is the highest impairment rating one may receive for such a condition.

The four percent impairment for rotator cuff syndrome and the one percent impairment for wrist pain after injury or surgery combine to give appellant a total right upper extremity impairment rating of five percent. This is less than the 11 percent award he received in 2009 and therefore does not demonstrate that he is entitled to a schedule award for additional or increased impairment of his right upper extremity.

The medical adviser did not evaluate appellant's impairment as it currently stands. Instead, he combined the one percent current impairment for wrist pain after injury or surgery with the impairment evaluated in 2009 to determine any increase in impairment. To be accurate, appellant's current right upper extremity impairment consists of a four percent impairment due to rotator cuff syndrome and a one percent impairment due to wrist pain after injury or surgery or a total impairment of five percent. This is what the medical adviser should have compared to the impairment found in 2009.

The Board will modify OWCP's June 11, 2014 decision to find that appellant is not entitled to an additional schedule award for his right upper extremity. 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 is not entitled to an additional schedule award for his right upper extremity or any schedule award for his left upper extremity.

[15] *Id*. at 487 (Appendix 15-B: Electrodiagnostic Evaluation of Entrapment Syndromes).

[16] *Supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2014 decision of the Office of Workers' Compensation Programs is modified to find no entitlement to an additional schedule award for the right upper extremity and is affirmed as modified.

Issued: December 1, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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