United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 14-1674**
	)	**Issued: December 16, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, 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:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 28, 2014 appellant, through her attorney, filed a timely appeal of a May 9, 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 consider the merits of the case.

ISSUE

The issue is whether appellant has more than five percent permanent impairment of her upper extremities due to bilateral carpal tunnel syndrome.

On appeal counsel argued that there was a conflict of medical opinion evidence between appellant's attending physician and the medical adviser.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 14, 2006 appellant, then a 42-year-old distribution clerk, filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment.

On June 15, 2006 Dr. George P. Zavitsanos, a Board-certified plastic surgeon, diagnosed carpal tunnel syndrome. Dr. Manzoor Mohiuddin, a Board-certified physiatrist, examined appellant on December 6, 2002 and found carpal tunnel syndrome. He reported left hand pain from the left wrist to the left thumb and left elbow. Dr. Mohiuddin also noted that appellant had a motor vehicle accident in 2001 which resulted in right hand numbness and pain. He performed nerve conduction and electromyogram (EMG) studies which demonstrated mild-to-moderate left sensory motor carpal tunnel syndrome, mild right ulnar sensory neuropathy at the wrist and moderate right sensory motor carpal tunnel syndrome. OWCP accepted appellant's claim for bilateral carpal tunnel syndrome on July 12, 2006.

In a report dated May 2, 2006, Dr. Stephanie Sweet, a Board-certified orthopedic surgeon, reviewed appellant's electrodiagnostic testing dated April 18, 2006 and found that appellant had no left median motor conduction and that her right median motor conduction was markedly slow across the wrist. She also found an absence of bilateral median sensory conduction. Dr. Sweet reported advanced thenar atrophy on physical examination. She recommended carpal tunnel decompression. The electrodiagnostic studies demonstrated motor nerve in the left median wrist and elbow of onset 0.00 and amplification of 0.00 while in the right median wrist and elbow 10 and 1.37, respectively, for a velocity of 51.72 milliseconds over 21 centimeters.

Dr. Zavitsanos performed a left carpal tunnel release on July 14, 2006. He performed a right carpal tunnel release on September 8, 2006. In a treatment note dated October 9, 2006, Dr. Zavitsanos stated that appellant had excellent results bilaterally and experienced little pain and weakness. He released her to return to full duty on December 3, 2006.

In a report dated May 9, 2013, Dr. David Weiss, an osteopath, examined appellant for schedule award purposes. He described her employment duties and her symptoms of pain, numbness, tingling and swelling in both hands and wrists. Dr. Weiss reviewed appellant's electrodiagnostic testing. Appellant reported bilateral hand and wrist pain with stiffness as well as swelling and weakness in both hands and wrists. She stated that she had difficulty with activities of daily living such as washing and dressing in addition to brushing her teeth, applying makeup and eating. Appellant noted difficulty with grasping objects and decreased grip strength bilaterally. She reported a pain level of 8 out of 10. Dr. Weiss found that appellant's *Quick*DASH was 79 percent involving the right upper extremity and 61 percent for the left.

On physical examination Dr. Weiss found thenar atrophy bilaterally with positive Tinel's sign, positive Phalen's test as well as positive carpal compression sign and normal range of motion. He also noted that grip strength testing performed three times revealed 20 kilograms of force strength in the right hand and 18 kilograms of force strength in the left hand. Pinch key testing indicated five kilograms bilaterally. Dr. Weiss performed Semmes-Weinstein monofilament testing and found a diminished sensibility at 3.61 over the median nerve

distribution bilaterally. He found that two-point discrimination was 10 millimeters on the right and 6 millimeters on the left.

Dr. Weiss applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, sixth edition[2] to his findings and the diagnosis of entrapment neuropathy.[3] In the right wrist he found grade modifiers of test findings 4, history 3 and physical examination 2 for a total of 9 and an average of three or eight percent impairment. Dr. Weiss stated that the functional history based on appellant's *Quick*DASH score was 79 percent or grade modifier 3 and that her impairment rating remained at 8 percent.[4] In the left wrist, he found test findings 4, history 3, physical examination 2 for a total of 9, an average of three or eight percent impairment. He stated that appellant's *Quick*DASH score was 61 percent and that her impairment remained at 8 percent. Dr. Weiss stated that appellant reached maximum medical improvement on May 9, 2013.

Appellant requested a schedule award on August 21, 2013. OWCP referred the medical evidence to OWCP medical adviser on August 30, 2013 to review the application of the A.M.A., *Guides*. On September 11, 2013 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and district medical adviser reviewed Dr. Weiss' report and disagreed with his impairment rating. He reviewed the findings on physical examination noting thenar atrophy, positive Tinel's sign and Phalen's test as well as positive carpal compression. Dr. Berman noted that strength was normal and that there was decreased sensation over the median nerve in both the right and left hands. He found that appellant's test findings for the right median nerve were properly categorized at grade modifier 3, Axon loss.[5] Dr. Berman noted that grade modifier 4 indicated an "almost dead nerve" which he felt was inappropriate. He further found that for history, the appropriate category was significant intermittent symptoms, grade modifier 2 rather than constant symptoms, grade modifier 3 as found by Dr. Weiss. Dr. Berman agreed with physical findings grade modifier 2, for decreased sensation.[6] He applied the formula from the A.M.A., *Guides*, adding the three grade modifiers and reached an average of two for five percent impairment.[7] Dr. Berman also opined that the *Quick*DASH score should be grade modifier 2 rather than 3, and that the impairment remained five percent. In regard to appellant's left upper extremity, he listed that grade modifiers as test findings 3, history 2, physical examination 2 for five percent impairment of the left upper extremity as well.

By decision dated October 11, 2013, OWCP granted appellant schedule awards for five percent impairment of each of her upper extremities.

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[2] A.M.A., *Guides*, 6th ed. (2009). 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition of the A.M.A., *Guides*. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

[3] A.M.A., *Guides* 449, Table 15-23.

[4] *Id.* at 406, Table 15-7.

[5] *Id.* at 487, Appendix 15-B.

[6] *Id.* at 449, Table 15-23.

[7] *Id.* at 448.

Counsel requested an oral hearing before an OWCP hearing representative on October 18, 2013. He appeared and argued that there was a conflict of medical opinion regarding the extent of appellant's permanent impairment for schedule award purposes. In a decision dated May 9, 2014, the hearing representative found that Dr. Berman's report was entitled to the weight of the medical evidence.

LEGAL PRECEDENT

The schedule award provision of FECA[8] and its implementing regulations[9] set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss or loss of use, of scheduled members or functions 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 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[10]

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[11] In Table 15-23, grade modifiers levels (ranging from 0 to 4) are described for the categories test findings, history, and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down by one percent based on functional scale, an assessment of impact on daily living activities.[12] The maximum impairment rating for carpal tunnel syndrome is nine.[13]

ANALYSIS

OWCP accepted that appellant developed bilateral carpal tunnel syndrome due to her employment duties and that she underwent bilateral carpal tunnel releases to address these conditions. Following her surgeries and her return to full duty in 2006, appellant filed a claim for a schedule award on August 21, 2013 and submitted a report from Dr. Weiss.

In regard to appellant's right wrist, Dr. Weiss found grade modifier 4 for test findings which correlates to an almost dead nerve, grade modifier 3 for history due to constant symptoms and grade modifier 2 for physical examination due to decreased sensation. In accordance with

[8] 5 U.S.C. §§ 8101-8193, 8107.

[9] 20 C.F.R. § 10.404.

[10] *See supra* note 2.

[11] A.M.A., *Guides* 449, Table 15-23.

[12] A survey completed by a given claimant, known by the name *Quick*DASH, may be used to determine the function scale score. A.M.A., *Guides* 448-49.

[13] *Id.* at 449, Table 15-23.

the A.M.A., *Guides*, he totaled these grade modifiers to reach nine then divided by three to reach an average of three or eight percent impairment.[14] Dr. Weiss stated that the functional history based on appellant's *Quick*DASH score was 79 percent or 3[15] and that her impairment rating remained at 8 percent as the value for the functional scale score was equal to the grade assigned for the condition.[16]

In the left wrist, he found test findings grade modifier 4, history grade modifier 3, physical examination grade modifier 2 for a total of 9, an average of three or eight percent impairment. Dr. Weiss stated that appellant's *Quick*DASH score was 61 percent was also grade modifier 3 and that her impairment remained at 8 percent. He stated that appellant reached maximum medical improvement on May 9, 2013.

On September 11, 2013 Dr. Berman, the district medical adviser, reviewed Dr. Weiss' report and disagreed with his impairment rating. He found that the test findings for the right median nerve were grade modifier 3, Axon loss.[17] Dr. Berman noted that grade modifier 4 indicated an "almost dead nerve." He further found that for history, the appropriate category was significant intermittent symptoms, grade modifier 2 rather than constant symptoms as found by Dr. Weiss. Dr. Berman agreed that physical findings were grade modifier 2, for decreased sensation.[18] He applied the formula for carpal tunnel syndrome under the A.M.A., *Guides* and reached an average of two for five percent impairment.[19] Dr. Berman also opined that the *Quick*DASH score should be grade modifier 2 rather than 3, and that the impairment remained five percent. In regard to appellant's left upper extremity, he listed that grade modifiers as test findings 3, history 2, physical examination 2 for five percent impairment of the left upper extremity as well.

The Board finds that this case is not in posture for a decision. Dr. Weiss provided findings on physical examination and upon review of the medical records. He reached grade modifiers for test findings of an almost dead median nerve, and for history grade modifier 3 for constant symptoms. Dr. Berman reduced each of these grade modifiers finding Axon loss and intermittent symptoms, respectively. However, neither physician provided the specific basis utilized for determining the appropriate grade modifier. There is no discussion of the findings on electrodiagnostic testing performed by Dr. Sweet and of application of Appendix 15-B: Electrodiagnostic Evaluation of Entrapment Syndromes.[20] The Board is unable to determine the appropriate selection for grade modifier for test results based on these reports. It is also unclear how the physicians reached the history grade modifier. Neither Dr. Weiss nor Dr. Berman provided the medical reasoning for picking the selected grade modifier.

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[14] *Id.*

[15] *Id.* at 406, Table 15-7.

[16] *Id.* at 449.

[17] *Id.* at 487, Appendix 15-B.

[18] *Id.* at 449, Table 15-23.

[19] *Id.* at 448.

[20] *Id.* at 487.

Proceedings before OWCP are not adversarial in nature and OWCP is not a disinterested arbiter; in a case where OWCP "proceeds to develop the evidence and to procure medical evidence, it must do so in a fair and impartial manner."[21] On remand, OWCP should refer appellant and the appropriate test results to a second opinion physician for a detailed and well-reasoned report in accordance with the A.M.A., *Guides* addressing each of grade modifiers and providing the reasoning behind the selections considering the appropriate provisions of the A.M.A., *Guides*. After this and such other development of the medical evidence as it deems necessary, OWCP should issue a *de novo* decision regarding appellant's permanent impairment for schedule award purposes.

CONCLUSION

The Board finds this case not in posture for decision due to deficiencies in the medical evidence requiring additional development by OWCP.

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2014 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: December 16, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[21] *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).