

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

C.H., Appellant )

and )

DEPARTMENT OF THE ARMY, TRAINING & )  
DOCTRINE COMMAND, Fort Sill, OK, )  
Employer )

---

**Docket No. 13-1826  
Issued: January 9, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 1, 2013 appellant filed a timely appeal from the merit decision of May 20, 2013 and the nonmerit decision of June 20, 2013 of the Office of Workers' Compensation Programs' (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has more than a 10 percent impairment of her right upper extremity, for which she received a schedule award; and (2) whether OWCP properly refused to reopen her case for reconsideration under 5 U.S.C. § 8128(a).

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 10, 2010 appellant, then a 60-year-old human resources assistant, injured her right thumb, right hand and left thumb and left hand when she tripped and fell while ascending a flight of stairs. She filed a claim for benefits, which OWCP accepted for bilateral osteoarthritis of the forearms; bilateral traumatic arthropathy of the hands; bilateral enthesopathy of the wrist and carpus; bilateral tenosynovitis of the hand and wrist; left thumb contusion and a left radial nerve injury.

On November 5, 2010 appellant underwent a trapezium resection arthroplasty to ameliorate osteoarthritis of the carpometacarpal (CMC) joint in the right wrist and de Quervain's syndrome of the right wrist. The procedure was performed by Dr. Mehdi N. Adham, a Board-certified hand surgeon.

In a Form CA-7 dated January 25, 2012, appellant requested a schedule award based on a partial loss of use of her right arm.

In a report dated March 6, 2012, Dr. Adham stated that appellant had a five percent permanent impairment based on pinch testing, JAMAR testing and post right carpometacarpal joint surgery for osteoarthritis under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*).

In a report dated January 22, 2013, OWCP's medical adviser stated that Dr. Adham's impairment rating and report was not in conformance with the protocols of the A.M.A., *Guides* or sufficient by which to rate impairment under the A.M.A., *Guides*. He recommended that appellant be referred to an appropriate medical specialist to evaluate impairment of the right arm.

In order to determine the degree of appellant's right upper extremity impairment, OWCP referred her to Dr. Sofia M. Weigel, Board-certified in physical medicine and rehabilitation. In a March 15, 2013 report, Dr. Weigel found that appellant had a 10 percent impairment based on the November 5, 2010 CMC arthroplasty. Relying on Table 15-2 at page 394 of the A.M.A., *Guides*, Wrist Regional Grid,<sup>2</sup> the Table utilized to rate upper extremity digital impairments, she stated that appellant's right thumb CMC arthroplasty yielded a class 3 impairment, with a default value of 30 percent. Dr. Weigel applied the net adjustment formula at pages 406, 410 and 411 of the A.M.A., *Guides*,<sup>3</sup> finding that appellant had a grade modifier of 3 for functional history (GMFH) under Table 15-7, based on a *QuickDASH* score of 77 for pain/symptoms with less than normal activity; a grade modifier of 2 for physical examination (GMPE) for pain in the hand/thumb; and a grade modifier of 3 for clinical studies (GMCS) based on the findings of osteoarthritis of the CMC joint in the right wrist. She subtracted the grade modifier of 3 from the above categories for a total net adjusted grade of one, which resulted in a change from a grade C

---

<sup>2</sup> A.M.A., *Guides* 394.

<sup>3</sup> *Id.* at 406, 410-11.

to grade B impairment or 28 percent impairment of the digit. This represented 10 percent impairment of the right upper extremity at Table 15-12, page 421 of the A.M.A., *Guides*.<sup>4</sup>

In an April 18, 2013 report, OWCP's medical adviser agreed with Dr. Weigel's 10 percent right upper extremity impairment rating based on right thumb CMC arthroplasty, pursuant to Table 15-2 of the A.M.A., *Guides*.

By decision dated May 20, 2013, OWCP granted appellant a schedule award for a 10 percent permanent impairment of the right upper extremity. It ran from March 6 to October 10, 2012, for a total of 31.2 weeks of compensation.

On May 29, 2013 appellant requested reconsideration. She did not submit any additional medical evidence with her request.

By decision dated June 20, 2013, OWCP denied appellant's application for review. It found that she did not raise any substantive legal questions or include new and relevant evidence sufficient to require OWCP to review its prior decision.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of FECA<sup>5</sup> and its implementing regulations<sup>6</sup> 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. However, FECA does not specify the manner in which the percentage of loss shall be determined. 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>7</sup> The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.<sup>8</sup>

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).<sup>9</sup> Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by

---

<sup>4</sup> *Id.* at 421.

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>7</sup> *Id.*

<sup>8</sup> *Veronica Williams*, 56 ECAB 367, 370 (2005).

<sup>9</sup> A.M.A., *Guides*, *supra* note 3 at 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

grade modifiers based on GMFH, GMPE and GMCS.<sup>10</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>11</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.<sup>12</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted numerous conditions stemming from the February 10, 2010 employment injury, including osteoarthritis of the right thumb/right wrist. Appellant sought a schedule award for the right upper extremity based on impairment from osteoarthritis of the right thumb and right wrist. OWCP's medical adviser found that the March 6, 2012 report from Dr. Adham, appellant's treating physician, who performed the November 5, 2010 right thumb CMC arthroplasty, did not provide a sufficient basis for an impairment rating. He referred appellant to Dr. Weigel, who rated a 10 percent right upper extremity impairment based on the CMC arthroplasty under the sixth edition of the A.M.A., *Guides* in her March 15, 2013 report.

The section of the A.M.A., *Guides* which rates diagnosis-based impairments for the upper extremities is located at Chapter 15, which states at page 387, Section 15.2 that impairments are defined by class and grade. This section states:

“The impairment class is determined first, by using the corresponding diagnosis-based regional grid. The grade is then determined using the adjustment grids provided in Section 15.3.

“Once the impairment class has been determined, based on the diagnosis, the grade is initially assigned the default value, ‘C.’ The final impairment grade, within the class, is calculated using the grade modifiers, or nonkey factors, as described in Section 15.3. Grade modifiers include functional history, physical examination, and clinical studies. The grade modifiers are used on the Net Adjustment Formula described in Section at 15.3d to calculate a net adjustment. The final impairment grade is determined by adjusting the grade up or down the default value C. by the calculated net adjustment.” The lowest possible grade is A, and adjustments less than minus 2 from the default value C will automatically be considered A; the highest possible grade is E, and adjustments greater than plus 2 will automatically be considered E.

---

<sup>10</sup> *Id.* at 385-419

<sup>11</sup> *Id.* at 411.

<sup>12</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

“The regional grid is used for 2 purposes: (1) to determine the most appropriate class for a specific regional diagnosis and (2) to determine the final impairment after appropriate adjustments are made using the grade modifiers.”<sup>13</sup>

Using the formula above and the net adjustment formula outlined at pages 406 to 411 of the A.M.A., *Guides*, Dr. Weigel found that appellant’s diagnosis of CMC right thumb resection arthroplasty was a class 3 impairment for functional history at Table 15-2, a class C, 30 percent impairment. She then applied the net adjustment formula at pages 406, 410 and 411 of the A.M.A., *Guides*, finding that appellant had a grade modifier of 3 for GMFH, a grade modifier of 2 for GMPE and a grade modifier of 3 for GMCS. Dr. Weigel then subtracted the grade modifier of 3 from the above categories for a total net adjusted grade of one, which resulted in a change from a grade C to grade B impairment or 28 percent. This equated to a 10 percent digital impairment of the right upper extremity at Table 15-12, page 421. As this finding was rendered in accordance with the applicable tables and protocols in the A.M.A., *Guides* for rating right upper extremity impairments based on digital impairments, the Board finds that Dr. Weigel and OWCP’s medical adviser properly rated a 10 percent right upper extremity impairment for appellant’s accepted right thumb/right wrist osteoarthritis condition.

The Board finds that the record supports that appellant has no more than a 10 percent right upper extremity impairment, for which she received a schedule award. OWCP’s medical adviser concurred with Dr. Weigel’s assessment that appellant had 10 percent right upper extremity impairment under the A.M.A., *Guides* based on the right thumb CMC resection arthroplasty. OWCP properly found in its May 20, 2013 decision that appellant had a 10 percent permanent impairment of the right upper extremity.

Appellant may request an increased schedule award, at any time, based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

### **LEGAL PRECEDENT -- ISSUE 2**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by OWCP or by submitting relevant and pertinent evidence not previously considered by OWCP.<sup>14</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>15</sup>

---

<sup>13</sup> A.M.A., *Guides* 387.

<sup>14</sup> 20 C.F.R. § 10.606(b). *See generally* 5 U.S.C. § 8128(a).

<sup>15</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

**ANALYSIS -- ISSUE 2**

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has she advanced a relevant legal argument not previously considered by OWCP. She did not submit any medical evidence with her request for reconsideration. Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP and did not abuse its discretion in refusing to reopen her claim for a review on the merits.

**CONCLUSION**

The Board finds that appellant has no more than a 10 percent impairment of the right arm, for which she received a schedule award. The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 20 and May 20, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 9, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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