United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 14-602**
	)	**Issued: July 29, 2014**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTE TERMINAL ISLAND, San Pedro, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 16, 2014 appellant filed a timely appeal of a December 3, 2013 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 34 percent impairment of his right upper extremity for which he received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 27, 2012 appellant, then a 39-year-old correctional officer, filed a traumatic injury claim alleging that he injured his right arm on January 26, 2012 when performing self-defense training in the performance of duty. The medical evidence indicates that he had a severe fracture and dislocation of his right wrist in 2000 resulting in surgical open reduction with internal fixation and an external fixation at the right distal forearm and wrist. A magnetic resonance imaging (MRI) scan on March 2, 2012 demonstrated severe post-traumatic osteoarthritis of the distal radius and ulna as well as the first and second row of carpal bones and a severe degeneration of the triangular fibrocartilage. Appellant underwent nerve conduction velocity and electromyogram (EMG) on March 14, 2012 which demonstrated left carpal tunnel syndrome and dysesthesia. OWCP accepted appellant's claim for sprain of the elbow and forearm, wrist sprain and temporary aggravation of osteoarthritis of the right wrist on March 26, 2012.

On May 24, 2012 appellant underwent right wrist fusion due to very severe traumatic osteoarthritis due to trauma and previous surgery. OWCP accepted the additional conditions of right carpal tunnel syndrome on August 15, 2012. Appellant underwent a right carpal tunnel release on September 17, 2012.

Appellant requested a schedule award on July 31, 2013. Appellant's attending physician, Dr. Saeed Malekafzali, a Board-certified orthopedic surgeon, completed a report dated July 29, 2013 finding that appellant had reached maximum medical improvement. He noted appellant's nonemployment-related wrist injury in 2000, his employment injury on January 26, 2012 and the wrist fusion on May 24, 2012. Dr. Malekafzali found that appellant had a normal cervical spine, full range of motion of his shoulders with mild impingement syndrome and strong muscles around the shoulder girdles with no evidence of muscle atrophy in his arms. Appellant demonstrated full range of motion of his elbows. His right wrist demonstrated 10 degrees of extension, negative 10 degrees of volar flexion and radial deviation of negative 5 degrees, ulnar deviation of 10 degrees and 10 degrees of dorsiflexion. Appellant's radial carpal, ulnar carpal and radial and ulnar joints were completely fused with mild tenderness at the ulnar carpal joint. He also demonstrated grip strength of 50 pounds on the right, his dominant hand and 80 on the left. Appellant's hand examination was normal. X-rays of his wrist demonstrated a completely fused right wrist with a good quality of bone. Dr. Malekafzali found complete ankylosis of the right wrist in a functional position with one centimeter muscle atrophy of the right forearm compared to the left and 40 pounds of measurable weakness of the right forearm and hand compared to the left due to wrist fusion.

Dr. Malekafzali stated that he was applying the fifth and sixth editions of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He determined that appellant had one percent impairment due to loss of pronation and three percent impairment due to loss of supination. Dr. Malekafzali found 30 percent impairment due to ankylosing of his right wrist. He found upper extremity weakness of 10 percent due to atrophy and loss of grip strength. Dr. Malekafzali concluded that appellant had 44 percent impairment of the upper extremity and provided two pages of the fifth edition of the A.M.A., *Guides* in support of his conclusion.

OWCP referred this report to OWCP's medical adviser on August 16, 2013. On August 23, 2013 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed the medical records and found appellant had 10 degrees of dorsiflexion and 5 degrees of ulnar deviation. He determined that appellant had 34 percent impairment of the right upper extremity based on his right wrist arthrodesis and carpal tunnel syndrome and reached maximum medical improvement on July 29, 2013 based on Table 15-3 of the sixth edition of the A.M.A., *Guides*.[2]

By decision dated December 3, 2013, OWCP granted appellant a schedule award for 34 percent impairment of his right upper extremity.

LEGAL PRECEDENT

The schedule award provision of FECA[3] and its implementing regulations[4] 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*.[5]

In addressing upper extremity impairments, the sixth edition requires identification of the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[6]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the medical consultant for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the medical consultant providing rationale for the percentage of impairment specified.[7]

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[2] A.M.A., *Guides* 397, Table 15-3.

[3] 5 U.S.C. §§ 8101-8193, 8107.

[4] 20 C.F.R. § 10.404.

[5] For new decisions issued after May 1, 2009, OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6th ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[6] A.M.A., *Guides* 411.

[7] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

ANALYSIS

Appellant's attending physician, Dr. Malekafzali found that he had 44 percent impairment of the right upper extremity due to his accepted employment injuries. However, he applied the fifth edition of the A.M.A., *Guides* rather than the appropriate edition the sixth. The sixth edition of the A.M.A., *Guides* was in effect as of May 1, 2009.[8] Dr. Malekafzali's report is of limited probative value in determining appellant's permanent impairment for schedule award purposes.

OWCP properly referred the medical evidence of record to Dr. Harris for application of the sixth edition of the A.M.A., *Guides*. Dr. Harris concluded that appellant had 34 percent impairment of his right upper extremity based on wrist arthrodesis and carpal tunnel syndrome. He cited to Table 15-3 of the A.M.A., *Guides*.[9] This table provides that wrist arthrodesis results in a default impairment of 30 percent with a function position. Dr. Harris did not provide any explanation of how he reached his impairment rating of 34 percent. He did not address the grade modifiers or any factors which led him to increase the impairment rating from the default. In regard to appellant's carpal tunnel syndrome, Dr. Harris did not reference the correct section of the A.M.A., *Guides*, Table 15-21, or in any way calculate this impairment. The Board is unable to determine how Dr. Harris reached his impairment rating under the sixth edition of the A.M.A., *Guides*.

The Board finds that the case is not in posture for decision as neither of the physicians properly explained how he arrived at the impairment rating. The Board will thus remand the case for proper application of the A.M.A., *Guides* regarding the extent of appellant's permanent impairment of the right upper extremity. After such development as it deems necessary, OWCP shall issue a *de novo* decision on the extent of the permanent impairment of appellant's right upper extremity.

CONCLUSION

The Board finds that this case is not in posture for decision and requires additional development of the medical evidence by OWCP.

[8] An opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of diminished probative value in determining the extent of permanent impairment. *I.F.*, Docket No. 08-2321 (issued May 21, 2009).

[9] A.M.A., *Guides* 397, Table 15-3.

ORDER

IT IS HEREBY ORDERED THAT the December 3, 2013 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: July 29, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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