United States Department of Labor
Employees' Compensation Appeals Board

E.S., Appellant	)	
and	)	**Docket No. 13-1309**
	)	**Issued: June 5, 2014**
U.S. POSTAL SERVICE, WESTCHESTER PROCESSING & DISTRIBUTION CENTER, White Plains, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 8, 2013 appellant filed a timely appeal of a February 26, 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 over the merits of this schedule award case.

ISSUE

The issue is whether appellant has greater than two percent right arm permanent impairment and four percent left arm permanent impairment, for which he received schedule awards.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

Appellant, a 55-year-old mail processor, has an accepted occupational disease claim for bilateral carpal tunnel syndrome. OWCP authorized surgery, which was performed on December 3, 2010 for the right side and on April 22, 2011 for the left side. Appellant stopped work on December 3, 2010 and returned to work on October 28, 2011. On April 26, 2012 he filed a claim for a schedule award.

Dr. Shankar Krishnamurthy, a treating Board-certified orthopedic surgeon, indicated in reports dated April 12 and June 4, 2012, that appellant had a 15 percent permanent impairment of both the left and right upper extremities.

On August 14, 2012 Dr. Henry J. Magliato, an OWCP medical adviser, reviewed Dr. Krishnamurthy's reports. He recommended referral of appellant to a second opinion examination as Dr. Krishnamurthy failed to reference the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*) in rating impairment.

In a December 11, 2012 report, Dr. Harvey L. Seigel, an office referral physician and Board-certified orthopedic surgeon, detailed appellant's medical history and findings on physical examination. He provided range of motion findings, a positive left wrist Phalen's test, bilaterally negative elbow and wrist Tinel's sign, negative bilateral transverse carpal ligament compression test and complaints of tenderness over the left wrist volar aspect. Dr. Seigel referred to Table 15-23[2] for entrapment/compression neuropathy impairment to find a five percent left upper extremity impairment and a two percent right upper extremity impairment using the sixth edition of the A.M.A., (*Guides*).

Under diagnostic test findings, Dr. Seigel found a grade modifier of one bilaterally due to conduction delays. He found a grade modifier of two under history for the left wrist due to significant intermittent symptoms and a grade modifier of one for the right wrist due to mild intermittent symptoms. Under physical findings, Dr. Seigel found a grade modifier of three for left wrist atrophy and a grade modifier of one for normal findings on the right wrist. For the left wrist, he rated the functional scale grade as mild for grade modifier two and for the right wrist, he rated the grade as mild for grade modifier one. Dr. Seigel noted the left wrist grade modifiers totaled seven, which when averaged equaled 2.33, which was rounded down to two.[3] He found the final left wrist rating category was grade two or a five percent left upper extremity impairment. For the right wrist, the grade modifiers totaled three (1+1+1) which when averaged placed appellant into the grade modifier of one for the right wrist. Dr. Seigel found five percent left upper extremity permanent impairment which was the default rating for grade modifier two. For the right wrist, the final rating was two percent impairment, which was the default rating for grade modifier one.

[2] A.M.A., *Guides* 449.

[3] Dr. Seigel incorrectly added the grade modifiers (1+2+3 = 6) but the error is harmless. The proper addition is six which renders two when averaged. Both the medical adviser and the second opinion placed the left wrist in the grade modifier category of 2.

On January 15, 2013 Dr. Magliato reviewed Dr. Seigel's report. He agreed with the two percent right upper extremity impairment but found four percent impairment for the left upper extremity impairment, rather than five percent. Dr. Magliato advised that, as the functional scale grade modifier was one, it moved the default grade one value to the left making the total permanent impairmant for the left wrist being four.

By decision dated February 26, 2013, OWCP granted appellant schedule awards for two percent right upper extremity impairment and four percent left upper extremity impairment. The period of the awards was from December 11, 2012 to April 21, 2013.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing regulations[5] 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.[6] Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.[7]

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).[8] The sixth edition requires identifying 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).[9] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[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

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id.*

[7] Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[8] A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): *A Contemporary Model of Disablement*.

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

[10] *Id*. at 521.

[11] *Supra* note 2.

Table 15-23, grade modifiers levels (ranging from zero to four) 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]

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 percentage of impairment using the A.M.A., *Guides*.[13]

ANALYSIS

OWCP accepted the claim for bilateral carpal tunnel syndrome and authorized carpal tunnel surgery, which was performed on December 3, 2010 for the right side and April 22, 2011 on the left side. Appellant filed a claim for a schedule award on April 26, 2012.

Dr. Krishnamurthy, a treating Board-certified orthopedic surgeon, advised that appellant had a 15 percent permanent impairment of both upper extremities. However, he failed to identify how he had determined appellant's impairment rating using the sixth edition of the A.M.A., *Guides*. The Board has held that estimates of permanent impairment are irrelevant and of diminished probative value when not based on the A.M.A., *Guides*.[14] Thus, Dr. Krishnamurthy's findings are insufficient to establish the extent of permanent impairment to appellant's arms.

Both Dr. Seigel and OWCP's medical adviser agreed as to the extent of appellant's right upper extremity impairment. They found that Table 15-23 (Entrapment/Compression Neuropathy Impairment) was appropriate to rate appellant's bilateral carpal tunnel syndrome.[15] Dr. Seigel and the medical adviser both placed the right wrist into a grade modifier of one for diagnostic test findings due to some nerve conduction delay;[16] grade modifier of two for history due to mild intermittent symptoms[17] and a grade modifier of one for normal physical findings.[18] The Board notes that, when these grade modifier values were added (1+2+0), they properly resulted in a total of three. Averaging this value of three by dividing three by three equaled one, which properly placed the right wrist into grade modifier of one.[19] The functional scale of mild,

[12] *Id*. at 448-450.

[13] *Tommy R. Martin*, 56 ECAB 273 (2005).

[14] *James R. Hill, Sr*., 57 ECAB 583 (2006).

[15] *See* note 8 at 449, Table 15-23.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *See id*. at 448-49

based on the *Quick*DASH score, appropriately rated appellant at the default values of two percent impairment for the right upper extremity.

Using Table 15-23 to determine the left upper extremity impairment, Dr. Seigel and OWCP's medical adviser identified a grade modifier of one for diagnostic test findings for delay in nerve conduction;[20] for history, appellant was placed in grade modifier two due to significant intermittent symptoms;[21] and for physical findings, Dr. Seigel placed appellant's left wrist in to a grade modifier of three due to findings of atrophy.[22] Under history, he found a grade modifier of one for mild intermittent symptoms.[23] The Board finds that OWCP properly found this to total six (1+2+3). Dividing this value by three results in the average grade modifier of two.[24] Next, the medical adviser found that the modifier for functional scale moved the impairment rating from five to four percent for the left upper extremity, based on the *Quick*DASH test results finding mild impairment.

The Board finds that OWCP properly determined that appellant had two percent right upper extremity impairment and four percent left upper extremity impairment under the sixth edition of the A.M.A., *Guides*. There is no other medical evidence in conformance with the sixth edition of the A.M.A., *Guides* that supports any greater impairment.

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 did not meet his burden of proof to establish more than two percent right upper extremity permanent impairment and four percent left upper extremity permanent impairment, for which he received schedule awards.

[20] *Supra* note 15.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 448-49.

[24] *See id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 26, 2013 is affirmed.

Issued: June 5, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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