United States Department of Labor
Employees' Compensation Appeals Board

V.D., Appellant	)	
and	)	**Docket No. 14-26**
	)	**Issued: March 21, 2014**
U.S. POSTAL SERVICE, HOMEWOOD STATION, Pittsburgh, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
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 October 1, 2013 appellant, through his representative, filed a timely appeal from the September 19, 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 review this decision.

ISSUE

The issue is whether appellant has more than a three percent impairment of his left upper extremity or has any impairment of his right upper extremity.

FACTUAL HISTORY

On December 26, 1999 appellant, a 45-year-old mail carrier, filed an occupational disease claim alleging that his carpal tunnel syndrome was causally related to casing and carrying mail. OWCP accepted his claim for bilateral carpal tunnel syndrome.

[1] 5 U.S.C. § 8101 *et seq.*

In 2013 appellant filed a schedule award claim. Dr. Michael J. Platto, a Board-certified physiatrist, evaluated his impairment. He examined appellant on August 1, 2013. Dr. Platto related appellant's complaints and described his findings on physical examination. He noted the results of nerve conduction studies and x-rays.

Dr. Platto referred to Table 15-23, page 449 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). With respect to the left upper extremity, test findings showed evidence of a motor conduction block. Appellant's history was one of mild intermittent symptoms. Physical examination showed decreased sensation. These criteria gave appellant a default rating of five percent, indicating a moderate impairment. Noting appellant's *Quick*DASH score of 65, severe on the functional scale, Dr. Platto modified appellant's rating to six percent. With respect to the right upper extremity, test findings showed a slight conduction delay. Appellant was essentially asymptomatic and he had no physical findings. These criteria indicated that appellant had no impairment.

Dr. Platto noted that part of appellant's degenerative joint disease in the left wrist was preexisting, going back to his teenage years, when he noted stiffness. Rather than determine impairment from a diagnosis of post-traumatic degenerative joint disease in Table 15-3, page 397, he decided to use range of motion as an alternative stand-alone method. With 12 degrees of wrist extension, 2 degrees of radial deviation and 16 degrees of ulnar deviation, Dr. Platto found that appellant had a 14 percent impairment due to loss of motion. Combining this loss with the 6 percent loss for carpal tunnel syndrome yielded a total left upper extremity impairment of 10 percent.

An OWCP medical adviser reviewed Dr. Platto's calculations and agreed there was no basis for an impairment rating based on the right wrist. With respect to the left upper extremity, he explained that none of the testing met the A.M.A., *Guides*' criteria for motor conduction block[2] but did show conduction delay. The medical adviser noted that Dr. Platto did not perform the required two-point discrimination testing for decreased sensation. As a result, appellant's default impairment value was two percent, and the *Quick*DASH score increased this percentage to the next higher value. The medical adviser concluded that appellant had a three percent impairment of the left upper extremity.

In a decision dated September 19, 2013, OWCP issued a schedule award for a three percent impairment of the left upper extremity and a zero percent impairment of the right.

Appellant's representative argues that preexisting conditions are to be included in impairment ratings, and OWCP's medical adviser ignored the preexisting degenerative condition in appellant's left wrist.

[2] Sensory and motor palm values were not provided, and the compound motor action potential was not below 4mV (with a normal needle electromyogram). *See* A.M.A., *Guides* 487.

LEGAL PRECEDENT

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

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.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

The Board has held that preexisting conditions are to be included in determining the degree of impairment of the affected member of the body.[8]

ANALYSIS

There is no dispute with respect to the right upper extremity. Dr. Platto, the evaluating physiatrist, found no impairment under the A.M.A., *Guides*. Test findings showed a slight conduction delay. Appellant was essentially asymptomatic and he had no physical findings. Under Table 15-23, page 449, these criteria indicate no impairment. OWCP's medical adviser agreed. Accordingly, the Board will affirm OWCP's September 19, 2013 decision on the issue of right upper extremity impairment.

OWCP's medical adviser found that Dr. Platto assigned the wrong default impairment rating for appellant's left upper extremity. He explained that test findings did not show a motor conduction block under the criteria described on page 487 of the A.M.A., *Guides*. Conduction delays, on the other hand, were established. As a consequence, with an undisputed history of only mild intermittent symptoms, the default impairment value under Table 15-23, page 449, is two percent, which indicates a mild impairment.[9]

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[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

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

[6] 20 C.F.R. § 10.404; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

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

[8] *Richard Kirk*, Docket No. 98-207 (1999) (remanding case for further development on whether any preexisting condition would increase the upper extremity impairment).

[9] This is so even with physical findings of decreased sensation, which OWCP's medical adviser noted was not supported with two-point discrimination.

OWCP's medical adviser modified this value to three percent based on appellant's *Quick*DASH score of 65. A functional score greater than 60, however, is not consistent with mild impairment. The A.M.A., *Guides* states that such would suggest either the presenting diagnosis is incorrect or a second diagnosis, including symptom magnification, has been overlooked.[10] Given the inconsistency, the Board will remand the case for clarification from OWCP's medical adviser on whether a functional scale in the severe range should modify the default impairment value of a mild impairment. The A.M.A., *Guides* state that, if the functional scale is one grade higher than the grade assigned to the condition, the higher value is the appropriate impairment rating.[11] Here, the functional scale is so much higher that Table 15-23 does not even include it as a modifier for mild impairment.

Clarification is also required on the issue of preexisting conditions. The Board has held that preexisting conditions are to be included in determining the degree of impairment of the affected member of the body. Dr. Platto noted a preexisting degenerative joint disease in the left wrist and included the impairment therefrom in his rating for the left upper extremity, but OWCP's medical adviser did not address the issue.

Under the sixth edition of the A.M.A., *Guides*, if there are multiple diagnoses, the examiner should determine if each should be considered or if the impairments are duplicative. If there are multiple diagnoses within a specific region, then the most impairing diagnosis is rated because it is probable this will incorporate the functional losses of the less impairing diagnosis. "In rare cases," the examiner may combine multiple impairments within a single region if the most impairing diagnosis does not adequately reflect the losses. When uncertain about which method to choose or whether diagnoses are duplicative, the evaluator should calculate the impairment using different alternatives and choose the method or combination of methods that gives the most clinically accurate impairment rating.[12]

Dr. Platto used range of motion to evaluate the preexisting condition and combined that impairment with the impairment from carpal tunnel syndrome. The A.M.A., *Guides* states that peripheral nerve impairment may be combined with diagnosis-based impairments at the upper extremity level as long as the diagnosis-based impairment does not encompass the nerve impairment.[13] That section, however, does not explicitly state that peripheral nerve impairment may be combined with range of motion.

The Board will remand the case for a supplemental opinion from OWCP's medical adviser clarifying the issues above. After such further development of the medical evidence as may be necessary, OWCP shall issue a *de novo* decision on appellant's schedule award claim for the left upper extremity.

[10] A.M.A., *Guides* 445.

[11] *Id*. at 449.

[12] *Id*. at 419.

[13] *Id*.

CONCLUSION

The Board finds that appellant has no impairment of his right upper extremity. The Board also finds that the case is not in posture for decision on the extent of his left upper extremity impairment. Further development of the medical evidence is warranted.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2013 decision of the Office of Workers' Compensation Programs is affirmed on the issue of right upper extremity impairment and is set aside on the issue of left upper extremity impairment. The case is remanded for further action.

Issued: March 21, 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