

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

D.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 14-1093
Issued: October 6, 2014**

Appearances:

*Alan J. Shapiro, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 10, 2014 appellant, through her representative, filed a timely appeal from the February 10, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a 10 percent impairment of her left arm.

FACTUAL HISTORY

On September 14, 2009 appellant, then a 38-year-old mail handler, sustained a traumatic injury in the performance of duty while pushing a wire cage. OWCP accepted her claim for left wrist sprain. It later expanded its acceptance to include a tear of the triangular fibrocartilage complex (TFCC) and other joint derangement of the left wrist.

¹ 5 U.S.C. § 8101 *et seq.*

On January 19, 2010 appellant underwent a left wrist ulnar shortening osteopathy and arthroscopy with partial synovectomy.

In 2013 she filed a schedule award claim. On March 11, 2013 Dr. Stuart J. Goodman, a Board-certified neurologist, evaluated her impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). He found a moderate functional history under Table 15-7, page 406, a moderate physical examination under Table 15-8, page 408, and moderate clinical studies under Table 15-9, page 410. Referring to Table 15-10, page 412, "Methodology for Determining the Grade in an Impairment Class," Dr. Goodman found that appellant had a class 3 or severe impairment of 28 percent, or two percent less than the default impairment value for that class.

Dr. Arnold T. Berman, an OWCP medical adviser, reviewed the impairment evaluation on April 23, 2013 and noted that Dr. Goodman did not make a calculation based upon a diagnosis. Instead, he immediately went to the adjustment grids, which cannot be used until an initial diagnosis-based estimate is made. Using Table 15-3, page 396, Dr. Berman observed that the default impairment value for a documented TFCC injury was eight percent of the upper extremity, mild impairment. As to the adjustment grids, the medical adviser agreed with Dr. Goodman that appellant had a moderate functional history (symptoms with normal activities), a moderate physical examination (moderate decrease in range of motion), and moderate clinical studies (confirming the diagnosis and moderate pathology). These adjustment factors increased the default impairment value of eight percent to 10 percent under Table 15-3, page 396.

On June 5, 2013 OWCP issued a schedule award for a 10 percent impairment of the left upper extremity. The period of the award ran for 31.2 weeks.

On February 10, 2014 an OWCP hearing representative affirmed, finding that the weight of the medical evidence rested with the rating performed by Dr. Berman.

LEGAL PRECEDENT

The schedule award provision of FECA² and the implementing regulations³ set forth the compensation payable to injured employees who sustain permanent impairment from the 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.⁴

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

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

standard for evaluating schedule losses.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

ANALYSIS

Diagnosis-based impairment is the primary method of evaluation for the upper extremities. The first step is to choose the diagnosis that is most applicable for the region being assessed. Selection of the optimal diagnosis requires judgment and experience. If more than one diagnosis can be used, the highest causally related impairment rating should be used; this will generally be the more specific diagnosis. Typically, one diagnosis will adequately characterize the impairment and its impact on activities of daily living.⁷

Specific criteria for that diagnosis determine which class of impairment is appropriate: no objective problem, mild problem, moderate problem, severe problem, or very severe problem approaching total function loss. The A.M.A., *Guides* assigns a default impairment rating for each diagnosis by class. This default rating may be slightly adjusted using such factors as functional history, physical examination and clinical studies.⁸

Dr. Berman, OWCP's medical adviser, correctly noted that Dr. Goodman, the evaluating neurologist, did not accomplish the first step in the process: he did not identify the applicable diagnosis or locate its default impairment rating under Table 15-3, the Wrist Regional Grid. OWCP accepted appellant's claim for left wrist sprain, tear of the left TFCC, and other joint derangement. Appellant's impairment could be rated under the diagnosis of left wrist sprain/strain, but the highest rating she could receive for that diagnosis is two percent of the upper extremity.⁹ TFCC offers a higher default impairment rating of eight percent and is an accurate diagnosis of the accepted condition. The Board finds that this is the most appropriate diagnosis upon which to rate appellant's impairment.

Dr. Berman agreed with Dr. Goodman that all of the adjustment factors -- functional history, physical examination, and clinical studies -- were moderate and would adjust the default impairment rating slightly higher. As a matter of procedure, however, the Board notes that, if a particular adjustment factor has already been used to determine the impairment class under the regional grid, it may not be used again to adjust the default impairment value.¹⁰ Here, clinical studies documenting appellant's TFCC injury were used to place her TFCC impairment in the class 1 or mild category, which has a default impairment rating of eight percent. Clinical studies cannot be used again, therefore, to adjust this default rating higher or lower. Nonetheless,

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

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010).

⁷ A.M.A., *Guides* 387, 389 (6th ed. 2009).

⁸ *Id.* at 497.

⁹ *Id.* at 395.

¹⁰ *Id.* at 411 (Method, 2.b).

moderate functional history and physical findings both move the default rating slightly higher to 10 percent under Table 15-3, page 396. A 10 percent impairment of the upper extremity is the highest impairment rating for a TFCC tear.

Accordingly, the Board finds that appellant has no more than a 10 percent impairment of her left arm. The Board will affirm OWCP's February 10, 2014 decision.

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 has no more than a 10 percent impairment of her left upper extremity, for which she has received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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