United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 14-879**
	)	**Issued: September 9, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Greenfield, WI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On March 7, 2014 appellant filed a timely appeal from a January 24, 2014 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 case.

ISSUE

The issue is whether appellant has more than two percent permanent impairment of each upper extremity, for which he received schedule awards.

On appeal, appellant contends that he has five percent impairment of each upper extremity as Dr. John A. Schneider, an attending Board-certified orthopedic surgeon, provided sufficient reasoning for his rating. Dr. Schneider explained that appellant had dead nerves as a result of his carpal tunnel syndrome that would never regenerate.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that appellant, then a 67-year-old letter carrier, sustained bilateral carpal tunnel syndrome under OWCP File No. xxxxxx440 and right thumb A1 trigger finger under OWCP File No. xxxxxx435 as a result of his repetitive work duties.[2] Appellant underwent authorized left carpal tunnel release on June 3, 2011, right carpal tunnel release on September 13, 2011 and right thumb trigger finger release on March 9, 2012 performed by Dr. Schneider. On April 16, 2012 he filed a claim for a schedule award.

By letter dated April 23, 2012, OWCP advised appellant that the medical evidence was insufficient to establish his schedule award claim. It requested that he submit a medical report determining the extent of his impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a Wisconsin state form report dated May 7, 2012, Dr. Schneider advised that appellant had five percent impairment of each hand due to his accepted employment-related severe bilateral carpal tunnel syndrome. In a May 21, 2012 Wisconsin state form report, he stated that appellant's five percent impairment of each hand was based on the sixth edition of the A.M.A., *Guides*.

On November 25, 2012 Dr. Christopher Gross, an OWCP medical adviser, reviewed the medical record. He noted appellant's authorized surgeries and stated that no recent physical examination findings were provided from March 21 to May 21, 2012. Dr. Gross stated that, when these reports were provided, he would be happy to determine the extent of permanent partial impairment and date of maximum medical improvement.

By letter dated December 4, 2012, OWCP requested that Dr. Schneider provide his physical examination findings for the period noted by Dr. Gross.

Dr. Schneider submitted a copy of his May 21, 2012 Wisconsin state form report.

On February 11, 2013 Dr. Gross again reviewed the medical record and reiterated his prior finding that he could not determine the extent of permanent impairment and date of maximum medical improvement in the absence of recent physical examination findings from March 21 to May 21, 2012.

By letter dated April 19, 2013, OWCP requested that appellant contact Dr. Schneider to provide a report regarding the extent of his employment-related permanent impairment based on the sixth edition of the A.M.A., *Guides*.

In a May 16, 2013 Wisconsin state form report, Dr. Schneider reiterated that appellant had five percent impairment of each wrist. He advised that appellant had one percent impairment of the right thumb based on the sixth edition of the A.M.A., *Guides*. In a narrative report also dated May 16, 2013, Dr. Schneider found that physical examination of the bilateral

[2] On June 11, 2012 OWCP doubled appellant's claims under File Nos. xxxxxx440 and xxxxxx435 into a master file assigned File No. xxxxxx440, as both claims involved right wrist/hand injuries and the same treating physician.

upper extremities revealed 2+ radial pulse with brisk capillary refill to the fingertips. There was intact sensation including, two-point discrimination at five millimeters throughout the radial and ulnar aspect of all fingers which were symmetrical bilaterally. Grip strength average was 94 pounds on the right and 79 pounds on the left. Pinch strength average was 21 pounds on the right and 20 pounds on the left. There was full composite finger flexion and extension. There was no triggering. The right thumb surgical incision at the Al pulley was well healed and nontender. There was no hypersensitivity. The bilateral carpal tunnel surgical incisions were well healed and nontender. There was no hypersensitivity or dysesthesias. Range of motion of the wrist and forearm was full and nontender. Dr. Schneider assessed status post bilateral carpal tunnel releases and right thumb Al pulley release. He concluded that appellant's preoperative carpal tunnel symptoms and right trigger thumb had resolved.

On July 21, 2013 Dr. Gross reviewed the medical record. He noted Dr. Schneider's finding that appellant had resolved preoperative carpal tunnel symptoms and right trigger thumb. Dr. Gross determined that a resolution of triggering following surgery resulted in a class 0 diagnosis with zero percent permanent impairment. In contrast, he stated that Dr. Schneider incorrectly assigned one percent impairment for this diagnosis. Dr. Gross stated that, on examination, appellant had normal sensation with no mention of positive Phalen's and Tinel's signs. No muscle atrophy was noted. Based on Table 15-23 on page 449 of the sixth edition of the A.M.A., *Guides*,[3] Dr. Gross determined that appellant had mild bilateral carpal tunnel syndrome. He noted that appellant no longer had pain or numbness/tingling and therefore assessed a grade modifier of zero. Dr. Gross stated that the base impairment did not need to be adjusted, resulting in two percent impairment of each upper extremity. He concluded that appellant reached maximum medical improvement on May 21, 2012, the date of Dr. Schneider's prior examination.

In an August 8, 2013 decision, OWCP granted appellant a schedule award for two percent impairment of each upper extremity.

On September 3, 2013 appellant requested a review of the written record by an OWCP hearing representative.

In a January 24, 2014 decision, an OWCP hearing representative affirmed the August 8, 2013 decision. He found that Dr. Gross' July 21, 2013 report constituted the weight of the medical opinion evidence.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing federal 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, functions and organs of the body.

[3] Table 15-23, page 449 of the sixth edition of the A.M.A., *Guides* is entitled Entrapment/Compression Neuropathy Impairment.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[6] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[7] Effective May 1, 2009, FECA adopted the sixth edition of the A.M.A., *Guides*[8] as the appropriate edition for all awards issued after that date.[9]

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).[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[11]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed through the medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[12]

ANALYSIS

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome and right thumb A1 trigger finger and authorized his left carpal tunnel release performed on June 3, 2011, severe right carpal tunnel release performed on September 13, 2011 and right thumb trigger finger release performed on March 9, 2012 by Dr. Schneider. Appellant received a schedule award for two percent impairment to each upper extremity. The Board finds that appellant failed to establish greater permanent impairment to either upper extremity.

Appellant has failed to submit any evidence by a treating physician finding greater impairment to the right and left upper extremities related to the accepted conditions. Dr. Schneider's May 16, 2013 Wisconsin state form report found that appellant had five percent impairment of each wrist and one percent impairment of the right thumb due to the accepted employment-related injuries under the sixth edition of the A.M.A., *Guides*. In a narrative report also dated May 16, 2013, he indicated that the bilateral upper extremities had 2+ radial pulse

[6] *Ausbon N. Johnson*, 50 ECAB 304 (1999).

[7] 20 C.F.R. § 10.404; *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

[8] A.M.A., *Guides* (6th ed. 2009).

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

[10] A.M.A., *Guides* 494-531.

[11] *Id.* at 521.

[12] *See C.K.*, Docket No. 09-2371 (issued August 18, 2010); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010). *Frantz Ghassan*, 57 ECAB 349 (2006).

with brisk capillary refill to the fingertips. Dr. Schneider found intact sensation including, two-point discrimination at five millimeters throughout the radial and ulnar aspect of all fingers which were symmetrical bilaterally. He reported that grip strength average was 94 pounds on the right and 79 pounds on the left. Dr. Schneider advised that pinch strength average was 21 pounds on the right and 20 pounds on the left. He found full composite finger flexion and extension, no triggering or hypersensitivity and a well healed and nontender right thumb surgical incision at the Al pulley. Dr. Schneider stated that the bilateral carpal tunnel surgical incisions were also well healed and nontender with no hypersensitivity or dysesthesias. He further stated that range of motion of the wrist and forearm was full and nontender. Dr. Schneider assessed status post bilateral carpal tunnel releases and right thumb Al pulley release. He concluded that appellant's preoperative carpal tunnel symptoms and right trigger thumb had resolved.

Although Dr. Schneider found that appellant had five percent impairment of each upper extremity and one percent impairment of the right thumb under the sixth edition of the A.M.A., *Guides*, this finding did not relate the physical findings nor did he cite to any of the tables or figures of the A.M.A., *Guides* to support his rating of appellant's impairment. As he did not explain in his May 16, 2013 report how his impairment rating comported with the A.M.A., *Guides*, it is of limited probative value.[13] Similarly, Dr. Schneider's remaining reports which found that appellant had five percent impairment of each hand based on the A.M.A., *Guides*, did not explain the basis for his rating.

The file was then properly routed to Dr. Gross, the medical adviser, for an opinion concerning the nature or percentage of permanent impairment in accordance with the A.M.A., *Guides*.[14] On July 21, 2013 he utilized Dr. Schneider's May 16, 2013 findings, referenced the sixth edition of the A.M.A., *Guides* and found that appellant had two percent impairment to each upper extremity and reached maximum medical improvement on May 21, 2013. Dr. Gross determined that a resolution of triggering following surgery resulted in a class 0 diagnosis with zero percent permanent impairment.[15] He stated that, in contrast Dr. Schneider incorrectly assigned a one percent impairment rating for this diagnosis. Dr. Gross explained that appellant had normal sensation with no mention of positive Phalen's and Tinel's signs or muscle atrophy. Utilizing Table 15-23 on page 449 of the A.M.A., *Guides*, he determined that appellant had mild bilateral carpal tunnel syndrome. Dr. Gross assessed a grade modifier of zero as appellant no longer had pain or numbness/tingling. He stated that there was no need to adjust the base impairment, which resulted in a two percent bilateral upper extremity impairment.

[13] *I.F.*, Docket No. 08-2321 (issued May 21, 2009) (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); *Linda Beale*, 57 ECAB 429 (2006) (when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of permanent impairment); *Tommy R. Martin*, 56 ECAB 273 (2005) (where the Board found that a physician's impairment calculation not sufficiently supported by the A.M.A., *Guides* is of diminished probative value).

[14] *See supra* note 12.

[15] A.M.A., *Guides*, Table 15-2, pages 392, Digit Regional Grid: Digit Impairments.

The Board finds that Dr. Gross' July 21, 2013 report properly applied the May 16, 2013 findings of Dr. Schneider to the A.M.A., *Guides* and established that appellant had no more than two percent permanent impairment of each upper extremity under the sixth edition of the A.M.A., *Guides*.

On appeal, appellant contended that Dr. Schneider had explained that he had dead nerves as a result of his carpal tunnel syndrome that would never regenerate. As stated, however, Dr. Schneider's reports are insufficient to establish entitlement to a greater amount of schedule award compensation because he did not cite to any of the tables or figures of the A.M.A., *Guides* to support his rating of appellant's 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 has failed to establish that he has more than two percent impairment of each upper extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board