United States Department of Labor
Employees' Compensation Appeals Board

T.P., Appellant	)	
and	)	**Docket No. 14-1200**
	)	**Issued: September 5, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Greensboro, NC, 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
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 25, 2014 appellant filed a timely appeal from the October 28, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. One hundred and eighty days from October 28, 2013, the date of OWCP's decision, was April 26, 2014. Since using April 29, 2014, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is April 25, 2014, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. §§ 8101-8193.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than five percent permanent impairment of his left arm or more than five percent permanent impairment of his right arm, for which he received a schedule award.

FACTUAL HISTORY

On February 24, 1993 OWCP accepted that appellant, then a 34-year-old letter carrier, sustained bilateral carpal tunnel syndrome due to the performance of his repetitive work duties.[3] On October 29, 2009 it accepted that he sustained bilateral/lateral and medial epicondylitis due to his work.

On March 25, 2011 appellant filed a claim for a schedule award due to his accepted work injuries.

In a June 9, 2011 report, Dr. Anthony J. Defranzo, an attending Board-certified orthopedic surgeon, provided an opinion that appellant had seven percent impairment to both arms under the standards of the sixth edition on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). He stated that under Table 15-4 on page 399 appellant fell under the diagnosis-based rating for class 1 bilateral/lateral and medial epicondylitis, which equaled two percent permanent impairment of appellant's left arm and two percent permanent impairment of his right arm. Dr. Defranzo discussed appellant's impairment rating due to bilateral carpal tunnel syndrome under Table 15-23 on page 449 and concluded that appellant had a five percent permanent impairment of his left arm and a five percent permanent impairment of his right arm due to this condition. He stated:

> "[Appellant] has had nerve conduction studies that have been interpreted as borderline normal. Looking at his motor latencies, in our laboratory, a motor latency greater than four is abnormal. [Appellant] has had abnormal motor conduction with a motor latency recorded in 1994 of 4.3 on the right and an abnormal motor latency recorded in 1995 of 4.5 on the left.[4] These are abnormal motor conduction blocks documented by nerve conduction study. They are mildly abnormal motor conduction blocks but they are abnormal motor conduction blocks. That qualifies [appellant] as a grade 2 or class 2 B2 that should give him an impairment of somewhere between four percent or six percent of each upper extremity due to his carpal tunnel syndrome. He was given a five percent permanent impairment of each upper extremity due to his carpal tunnel syndrome."

In a June 22, 2011 report, Dr. H.G. Hogshead, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, reviewed the June 9, 2011 impairment rating of

[3] On June 2, 1993 appellant underwent right carpal tunnel release surgery. On September 16, 1996 he underwent left carpal tunnel release surgery. The procedures were authorized by OWCP.

[4] It does not appear that these test results are currently in the record.

Dr. Defranzo. He stated that Dr. Defranzo's assessment of appellant's impairment due to epicondylitis was reasonable, but noted that he disagreed with the assessment of appellant's impairment due to carpal tunnel syndrome. Dr. Hogshead stated, "[Appellant] does not acknowledge earlier electrodiagnostic testing studies and normal physical examinations: November 8, 1994."[5] He noted that Dr. Defranzo repeatedly referred to motor blocks rather than motor delays and stated that this was "a significant distinction in class 1 or class 2" under Table 15-23 on page 449. Dr. Hogshead noted that Dr. Defranzo did not provide the physical examination and Semmes-Weinstein graduation of sensory loss. He concluded that three percent impairment to each arm due to carpal tunnel syndrome was "a reasonable compromise." Adding the two percent impairment to each arm due to epicondylitis to the three percent impairment in each arm due to carpal tunnel syndrome meant that appellant had five percent impairment of his left and right arms.

In a July 1, 2011 decision, OWCP granted appellant schedule awards for five percent permanent impairment of his left and right arms. The awards ran for 31.2 weeks and were based on the June 22, 2011 opinion of Dr. Hogshead.

In a June 21, 2012 letter, appellant requested reconsideration of his schedule award claim. He argued that OWCP did not adequately consider the severity of his carpal tunnel test results as found by Dr. Defranzo.

In an August 7, 2012 decision, OWCP affirmed its July 1, 2011 decision, noting that appellant did not meet his burden of proof to establish that he had more than five percent impairment to each arm. It found that Dr. Hogshead's impairment rating was proper.

In a July 26, 2013 letter, appellant requested reconsideration of his claim. He again argued that OWCP did not adequately consider the severity of his carpal tunnel test results.

In an October 28, 2013 decision, OWCP affirmed the August 7, 2012 schedule awards.

LEGAL PRECEDENT

The schedule award provision of FECA[6] and its implementing regulations[7] 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

[5] The record contains a November 8, 1994 report in which Dr. Defranzo stated, "[Appellant] has normal [electromyogram] nerve conduction studies." However, the record does not appear to contain the actual full report of any testing performed on November 8, 1994.

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404 (1999).

appropriate standard for evaluating schedule losses.[8] The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.[9]

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[10] In 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.[11]

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the shoulder, the relevant portion of the arm for the present case, reference is made to Table 15-4 (Elbow Regional Grid) beginning on page 398. After the class of diagnosis (CDX) is determined from the Shoulder Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for Functional History (GMFH), grade modifier for Physical Examination (GMPE) and grade modifier for Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12]

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[13]

ANALYSIS

On February 24, 1993 OWCP accepted that appellant, then a 34-year-old letter carrier, sustained bilateral carpal tunnel syndrome due to the performance of his repetitive work duties.[14] On October 29, 2009 it accepted that he sustained bilateral/lateral and medial epicondylitis due to his work. In a July 1, 2011 decision, OWCP granted appellant schedule awards for five percent impairment to his left and right arms. The awards were based on the June 22, 2011 opinion of Dr. Hogshead, a Board-certified orthopedic surgeon serving as an OWCP medical

[8] *Id*.

[9] FECA Bulletin No. 09-03 (issued March 15, 2009).

[10] *See* A.M.A., *Guides* 449, Table 15-23.

[11] A survey completed by a given claimant, known by the name *Quick*DASH, may be used to determine the Function Scale score. *Id.* at 448-49.

[12] *See* A.M.A., *Guides* (6th ed. 2009) 398-400, 405-11.

[13] *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[14] On June 2, 1993 appellant underwent right carpal tunnel release surgery. On September 16, 1996 he underwent left carpal tunnel release surgery. The procedures were authorized by OWCP.

adviser. Dr. Hogshead reviewed the physical findings and impairment ratings of Dr. Defranzo, a Board-certified orthopedic surgeon.[15]

The Board finds that the case is not in posture for decision as Dr. Hogshead did not adequately explain how his impairment rating comported with the relevant standards of the sixth edition of the A.M.A., *Guides*. Dr. Hogshead found that Dr. Defranzo's assessment of appellant's impairment due to epicondylitis was reasonable and adopted the position that appellant had two percent impairment to each arm due to this condition. However, he did not explain how he reached this conclusion. Dr. Hogshead did not make reference to Table 15-4 (Elbow Regional Grid) or explain which diagnosis-based class under the table was warranted by appellant's bilateral epicondylitis, nor did he identify grade modifiers or apply the net adjustment formula.[16] With respect to appellant's arm impairment due to bilateral carpal tunnel syndrome, Dr. Hogshead stated that Dr. Defranzo overstated the severity of appellant's carpal tunnel syndrome as evidenced by electrodiagnostic testing studies. However, he did not provide an adequate discussion of appellant's diagnostic testing with respect to the upper extremity nerve distributions. The Board notes that the record does not contain any reports detailing the results of diagnostic testing of appellant's upper extremities.[17] Dr. Hogshead indicated that three percent impairment in each arm due to carpal tunnel syndrome was "a reasonable compromise," but he did not explain this conclusion.[18]

Given these deficiencies, the case shall be remanded to OWCP for further development of the medical evidence with respect to appellant's impairment. After such further development as it deems necessary, OWCP shall issue an appropriate decision regarding appellant's permanent impairment to his upper extremities.

CONCLUSION

The Board finds that the case is not in posture for decision as to whether appellant has more than five percent impairment of each arm.

[15] Dr. Defranzo found that appellant had a seven percent permanent impairment of his left arm and a seven percent permanent impairment of his right arm.

[16] *See supra* note 12.

[17] Dr. Hogshead appears to have referenced a November 8, 1994 report in which Dr. Defranzo stated, "[Appellant] has normal [electromyogram] nerve conduction studies." However, the record does not appear to contain the actual full report of any testing performed on November 8, 1994.

[18] Dr. Hogshead added together his impairment ratings due to epicondylitis and carpal tunnel syndrome and concluded that appellant had five percent permanent impairment of his left arm and five percent permanent impairment of his right arm.

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 5, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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