United States Department of Labor
Employees' Compensation Appeals Board

C.I., Appellant	)	
and	)	**Docket No. 15-0285**
	)	**Issued: August 7, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Coppell, TX, 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 H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 19, 2014 appellant filed a timely appeal from a July 28, 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 met her burden of proof to establish a ratable impairment of the left leg and an impairment of the left arm greater than 13 percent, for which she received a schedule award.

FACTUAL HISTORY

On May 15, 2008 appellant, then a 36-year-old mail processing clerk, fell on her left knee and hand in the performance of duty. OWCP initially accepted the claim for contusion of the left

[1] 5 U.S.C. § 8101 *et seq.*

knee and lower leg, left wrist contusion, left wrist sprain, and left knee and leg sprain of unspecified sites. Later, it accepted reflex sympathetic dystrophy (RSD) of the upper extremity and left chronic pain syndrome. OWCP also authorized an August 23, 2010 left wrist arthroscopy. Appellant worked intermittently and received compensation benefits.

In a December 20, 2012 report, Dr. Ronnie Shade, a Board-certified orthopedic surgeon, provided an impairment rating. He noted appellant's history of injury and examined the left wrist and knee. On physical examination of the left arm and wrist Dr. Shade found mild asymmetry, swelling of digits, no effusion or crepitus, tenderness and guarding, abnormal hypersensitivity, and decreased range of motion with stiffness of the left shoulder, elbow, wrist, and digits. He advised that appellant was vascularly intact with cool dry skin and thinning hair. Examination of the left knee revealed lateral joint line tenderness, no patellar apprehension, no effusion, swelling, or locking. Dr. Shade advised that using the complex regional pain syndrome (CRPS) table of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[2] appellant had 38 percent impairment rating of the left arm. He assigned a grade modifier of 2 for Functional History (GMFH), grade modifier of 3 for Physical Examination (GMPE), and grade modifier of 3 for Clinical Studies (GMCS).[3] Dr. Shade then calculated the net adjustment by adding the GMFE, GMPE, and GMCS and dividing by three. He calculated a net adjustment of 2.67 which he rounded to 3. Dr. Shade advised that using Table 15-26 appellant had a class 3 impairment and used clinical judgment to determine that she had a 38 percent impairment rating of the arm. For the left leg, he evaluated the impairment using range of motion. Dr. Shade advised that appellant's flexion was 100 degrees. Using Table 16-23 he advised that she had 10 percent lower extremity impairment.[4] Dr. Shade assessed a grade 1 modifier for functional history and determined that there was no adjustment giving appellant a 10 percent left leg impairment. He listed December 20, 2012 as the date of maximum improvement.

On April 24, 2013 appellant requested a schedule award.

By letter dated May 2, 2013, OWCP advised appellant of the type of evidence needed to establish entitlement to a schedule award.

By decision dated June 17, 2013, OWCP denied appellant's request for a schedule award, finding that the evidence of record was insufficient to establish a permanent impairment to a scheduled member due to the accepted work injury.

By letter dated November 8, 2013, appellant requested reconsideration and resubmitted Dr. Shade's impairment rating.

On March 10, 2014 an OWCP medical adviser reviewed Dr. Shade's report and found that his report did not meet the requirements of the A.M.A., *Guides*. Dr. Shade noted that his report did not contain descriptions of abnormality that were adequate to establish the diagnosis of

[2] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009).

[3] *Id*. at 406-11.

[4] *Id*. at 549.

reflex sympathetic dystrophy utilizing Table 15-24 and Table 15-25 as required. He recommended that appellant undergo a second opinion impairment evaluation.

On March 12, 2014 OWCP referred appellant, together with the medical record and a statement of accepted facts to Dr. Sofia Weigel, a Board-certified physiatrist, for a second opinion evaluation. In an April 24, 2014 report, Dr. Weigel noted appellant's history of injury and examined her. On physical examination of the left shoulder, wrist, and additional joints of the proximal arm she noted that there was no erythema, effusion, swelling, or warmth. Dr. Weigel advised that there was decreased shoulder range of motion, but noted that there was a lot of guarding which prevented true range of motion from being tested. She further noted that there was a positive impingement sign, a painful arc, and mild pain over the acromioclavicular joint and bicipital tendon. Dr. Weigel highlighted severe decreased range of motion to less than 10 degrees at all joints of the first and second digit. She noted that there was positive pain over the carpometacarpal joints (CMC) and positive pain with palpation of the flexor and extensor tendons. Dr. Weigel advised that, under the A.M.A., *Guides*, appellant had 13 percent impairment of the left arm under Table 15-26 for a diagnosis of CRPS.[5] Using Table 15-24, page 453, she verified that appellant had CRPS and verified that the condition had been diagnosed by two other physicians. Dr. Weigel noted that, using Table 15-25, page 453, she identified five objective criteria points for CRPS which placed appellant in class 1 with a default seven percent impairment rating. She assigned a grade modifier of 3 for functional history, finding that appellant had pain and needed assistance with self-care. Dr. Weigel did not assign a grade modifier for physical examination, finding that results were not consistent. She assigned a grade modifier of 1 for clinical studies finding that clinical studies confirmed the diagnosis of mild pathology. Dr. Weigel then found a net adjustment of two, which moved from the default grade C to grade E for 13 percent impairment of the left arm. On examination of the left knee she noted inconsistent active range of motion with some rigidity, pain over the medial joint line, and mild pain over the lateral joint line. Dr. Weigel further noted that there was no swelling, warmth, erythema, popping, clicking, or locking. She advised that, using Table 16-3, page 509, for knee strain appellant was in class 0 because there were no significant objective findings at maximum medical improvement. Dr. Weigel concluded that there was no impairment of the left leg.

OWCP's medical adviser reviewed Dr. Weigel's report on June 27, 2014 and agreed that the 13 percent impairment of the left upper extremity and 0 percent impairment of the left lower extremity were acceptable based on the A.M.A., *Guides*.

By decision dated July 28, 2014, OWCP issued a schedule award for 13 percent permanent impairment of the left arm and found that there was no ratable impairment of the left leg. The period of the award was from July 27 to August 23, 2014.

LEGAL PRECEDENT

Section 8107 of the FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule

[5] *Id*. at 454.

award for the permanent impairment of the scheduled member or function.[6] Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[7] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.[8]

Section 8123 of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.[9] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[10]

ANALYSIS

OWCP accepted appellant's claim for contusion of the left knee and lower leg, left wrist contusion, left wrist sprain, and left knee and leg sprain of unspecified sites, reflex sympathetic dystrophy of the upper limb, and left chronic pain syndrome. On July 28, 2014 it granted appellant a schedule award for 13 percent permanent impairment of the left arm. OWCP also found no ratable impairment of the left leg. The Board finds that a conflict in medical opinion exists between Dr. Shade and Dr. Weigel concerning the degree of permanent impairment to appellant's upper and lower extremities caused by her accepted conditions.

In his January 20, 2012 report, Dr. Shade advised that appellant had 38 percent impairment of the left upper extremity and 10 percent impairment of the left lower extremity. With respect to the left wrist, he found that appellant had a class 3 impairment based on the criteria for CRPS. Dr. Shade rated a grade modifier 2 for functional history, grade modifier 3 for physical examination, and grade modifier 3 for clinical studies.[11] He calculated a net adjustment of 2.67 which he rounded to 3 and used clinical judgment to determine that appellant had 38 percent impairment of the left arm. For the left leg, Dr. Shade evaluated the impairment using range of motion. He advised that appellant's flexion was 100 degrees. Using Table 16-23 Dr. Shade advised that appellant had 10 percent lower extremity impairment.[12] He assessed a

[6] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

[7] 20 C.F.R. § 10.404(a).

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

[9] 5 U.S.C. § 8123; *see Charles S. Hamilton*, 52 ECAB 110 (2000).

[10] *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

[11] A.M.A., *Guides* 406-11.

[12] *Id*. at 549.

grade 1 modifier for functional history and determined that there was no adjustment giving appellant 10 percent left leg impairment.

Dr. Shades' impairment opinions contrasted with the opinion of Dr. Weigel, who found in her April 24, 2014 report that appellant had 13 percent left upper extremity impairment and no ratable impairment to the left lower extremity. Dr. Weigel noted that appellant had a class 1 CRPS diagnosis with a grade C default impairment of seven percent. She explained how appellant met the diagnostic criteria under Table 15-24 and Table 15-25. Dr. Weigel then allowed a grade modifier 3 for functional history since appellant was experiencing pain and needed some assistance with self-care, a grade 1 modifier for clinical studies secondary to imaging studies showing mild pathology, and no modifier for physical examination modifier because the results were not consistent. She determined that this resulted in a net adjustment of two and indicated that this moved the default rating to grade E, or 13 percent impairment of the left arm. In calculating the lower left extremity, Dr. Weigel used Table 16-3, finding that appellant had no impairment because there were no significant objective findings in the left leg. She noted no basis on which to rate impairment of the left leg.

The Board finds that a conflict exists between Dr. Shade and Dr. Weigel regarding whether appellant had a ratable impairment of the left lower extremity or more than 13 percent impairment of the left upper extremity for which she received a schedule award.[13] On remand OWCP should refer appellant to an appropriate Board-certified specialist for an impartial medical evaluation to determine whether she had a ratable impairment of the left lower extremity or more than 13 percent impairment of the left upper extremity. After such further development as deemed necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for a decision due to an outstanding conflict of medical evidence.

[13] *Supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2014 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded to OWCP for additional development consistent with this decision.

Issued: August 7, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board