United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 15-1121**
	)	**Issued: August 12, 2015**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Columbia, MO, Employer	)	

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 21, 2015 appellant, through counsel, filed a timely appeal from a February 23, 2015 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 sustained more than one percent permanent impairment of the right upper extremity for which she received a schedule award.

FACTUAL HISTORY

On August 9, 2012 appellant, then a 49-year-old painter, alleged that she sustained a right hand and wrist injury as a result of painting an excessive amount of trim work on that date. By

[1] 5 U.S.C. § 8101 *et seq.*

decision dated April 24, 2013, OWCP accepted the claim for right tenosynovitis of the hand and wrist. Appellant sought treatment with Dr. David Volgas, a Board-certified orthopedic surgeon, and was released to regular work-related activities on April 3, 2013.

On December 10, 2013 appellant filed a claim for a schedule award (Form CA-7).

By letter dated January 30, 2014, OWCP routed a statement of accepted facts (SOAF) and the case file to Dr. Daniel Zimmerman, Board-certified in internal medicine serving as an OWCP district medical adviser (DMA), for review and determination regarding whether appellant sustained a permanent partial impairment of the right upper extremity and date of maximum medical improvement (MMI).

In a January 30, 2014 report, Dr. Zimmerman reported that there was no medical documentation at or near the date of MMI by which an impairment rating could be processed using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[2] He requested OWCP refer appellant for a second opinion evaluation.

By letter dated February 11, 2014, Dr. Zimmerman stated that appellant was eligible for consideration of an impairment rating due to tenosynovitis of the right hand and wrist. He further stated that no digit diagnosis had been accepted under this claim, File No. xxxxxx803.

OWCP referred appellant and the case file, to Dr. Kevin D. Komes, Board-certified in physical medicine and rehabilitation, for a second opinion evaluation on March 11, 2014.

On March 11, 2014 Dr. Komes reviewed the case record and summarized the relevant medical and diagnostic reports. He noted that appellant was last evaluated on April 3, 2013 at the Orthopedic Clinic where she described her pain as 0 out of 10. It was determined that she had reached MMI. Dr. Komes provided findings on physical examination and noted a tendon deformity of the right 5th digit and decreased sensation on the longitudinal side of the 3rd digit. Examination revealed the ability to oppose fingers and make a fist, as well as the ability to extend all fingers except for the 5th digit. Dr. Komes identified appellant's range of motion (ROM) at the wrist showing 60 degrees of flexion and extension, 10 degrees of radial deviation, and 20 degrees of ulnar deviation. Grip strength was 30 pounds on the right and 60 pounds on the left on the third setting. Dr. Komes further stated that no triggering was noted of the digits.

Using Table 15-3, Wrist Regional Grid, of the sixth edition of the A.M.A., *Guides*, Dr. Komes found that appellant's wrist tenosynovitis was classified under the diagnosis-based condition of wrist sprain/strain and therefore fell under class 1.[3] He determined that appellant had a grade modifier of 1 for functional history and grade modifier of 0 for physical examination. Dr. Komes stated that the clinical studies grade modifier was not applicable. Applying the net adjustment formula, he subtracted 1, the numerical value of the class, from the numerical value of the grade modifier for each applicable component (functional history and

[2] A.M.A., *Guides* (2009).

[3] *Id.* at 395.

physical examination) and then added those values, resulting in a net adjustment of -1 ((1-1) + (0-1)).[4] Application of the net adjustment formula meant that movement was warranted one place to the left of class 1 default value grade C to grade B based on Table 15-3. Therefore, the diagnosis-based impairment rating for appellant's right wrist sprain/strain -- tenosynovitis, yielded one percent impairment of the upper right extremity.[5] The date of MMI was noted as April 3, 2013.

In a March 4, 2014 medical report, Dr. Neil Allen, Board-certified in internal medicine and neurology, reported that he had examined appellant on January 14, 2014 for her work-related accident on October 15, 2012. He summarized clinical studies, noted appellant's functional history, and provided findings on physical examination. Dr. Allen noted use of "Shoulder Range of Motion" Table 15-31 at pages 468-70, to calculate appellant's impairment rating based on the range of motion method. He identified 0 percent digit impairment of the 1st digit, 26 percent digit impairment of the 2nd digit, 26 percent digit impairment of the 4th digit, and 14 percent digit impairment of the 5th digit. Dr. Allen stated that the 52 percent calculated for the 2nd and 3rd digits converted to 9 percent upper extremity impairment.[6] He stated that the 40 percent calculated for the 4th and 5th digits converted to 4 percent upper extremity impairment. Thus, based on range of motion grade modifiers, appellant had 13 percent right upper extremity impairment consistent with a grade modifier of 2.[7] Dr. Allen stated that appellant's functional history qualified for a grade modifier of 2 based on a *Quick*DASH score of 64, pain with less than normal activity, and ability to perform self-care activities with modification but unassisted.[8] He stated that, according to page 390 of the A.M.A., *Guides*, range of motion could be used as a stand-alone rating when it reflected a more accurate impairment than the diagnosis-based impairment method. Dr. Allen further stated that, according to Table 15-26, because appellant's functional history grade modifier was equal to the range of motion grade modifier, the total range of motion impairment remained unchanged.[9] He did not provide a date of MMI.

OWCP properly routed the case file and the reports of Dr. Komes and Dr. Allen to Dr. Zimmerman, serving as the DMA, for review and a determination on whether appellant sustained a permanent partial impairment of the right upper extremity and date of MMI.

In a March 19, 2014 report, Dr. Zimmerman stated that the date of MMI was March 11, 2014, the date of Dr. Komes' examination. He stated that he agreed with Dr. Komes' impairment rating of one percent permanent impairment of the right upper extremity which was established by the grid diagnosis, grade modifier tables, and net adjustment formula under the A.M.A., *Guides*. Dr. Zimmerman further stated that Dr. Allen's report could not be considered for schedule award purposes as the physician provided impairment ratings for digits of the right

[4] *Id.* at 411.

[5] *Supra* note 3.

[6] *Id.* at 422.

[7] *Id.* at 477, Table 15-35.

[8] *Id.* at 406, Table 15-7.

[9] *Id.* at 477.

hand. He noted that OWCP had not accepted the digits as a diagnosis and thus could not be considered for a schedule award.

In an additional April 8, 2014 report, Dr. Zimmerman reiterated that Dr. Allen's report was unacceptable as an impairment rating. He noted that the report contained ratings for digits 1 through 5, but OWCP did not accept injuries to digits under this claim as noted in the SOAF. OWCP would have to accept diagnoses affecting the digits under this claim before they could be rated for impairment.

By decision dated May 2, 2014, OWCP granted appellant one percent permanent impairment of the right upper extremity. The date of MMI was noted as March 11, 2014. The award covered a period of 3.12 weeks from March 11 through April 1, 2014.

On May 9, 2014 appellant, through counsel, requested a telephone hearing before the Branch of Hearings and Review.

At the December 11, 2014 hearing, counsel for appellant argued that Dr. Allen provided detailed explanation pertaining to his impairment rating based on proper testing and the A.M.A., *Guides*. He stated that Dr. Allen properly explained that the range of motion method could be used when it reflected a more accurate impairment than the diagnosis-based impairment method. Counsel argued that the case should be remanded to a new DMA for evaluation or sent back to the prior DMA with instructions to adopt the range of motion findings provided by Dr. Allen.

By decision dated February 23, 2015, the Branch of Hearings and Review affirmed the May 2, 2014 schedule award decision finding that appellant was properly awarded one percent permanent impairment of the upper right extremity.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations 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.[10] 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 appropriate standard for evaluating schedule losses.[11]

The A.M.A., *Guides* provide a diagnosis-based method of evaluation utilizing the World Health Organization's International classification of Functioning, Disability and Health (ICF).[12]

[10] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[11] *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

[12] A.M.A., *Guides*, *supra* note 2 at 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

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. After the Class of Diagnosis (CDX) is determined for the diagnosed condition (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).[13] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[14] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[15]

In the sixth edition, diagnosis-based impairment is the primary method of evaluation for the upper extremity. A grid listing relevant diagnoses is provided for each region of the upper extremity: the digit region, the wrist region, the elbow region, and the shoulder region. A regional impairment will be defined by class and grade. The class is determined first by using the corresponding regional grid. The grade is initially assigned the default value for that class. This value may be adjusted slightly using nonkey grade modifiers such as functional history, physical examination, and clinical studies.[16]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP 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.[17]

ANALYSIS

OWCP accepted appellant's claim for right tenosynovitis of the hand and wrist. The issue is whether appellant sustained more than one percent permanent impairment of the upper right extremity for which she received a schedule award. The Board finds that appellant has not met her burden of proof to establish a greater right upper extremity impairment.

The Board notes that Dr. Komes properly evaluated appellant's right arm impairment under the relevant standards of the sixth edition of the A.M.A., *Guides*. In his March 11, 2014 report, Dr. Komes provided a detailed medical history, examination findings, and clinical studies to calculate an impairment rating for permanent residuals of the right upper extremity. He indicated that, according to the Wrist Regional Grid, Table 15-3 on page 395, appellant's tenosynovitis fell under the diagnosis-based category of wrist sprain/strain which had a default value of one percent under class 1.[18] Dr. Komes further found that, under the grade modifier

[13] *Id.* at 385-419.

[14] *Id.* at 411.

[15] *Id*. at 23-28.

[16] *Id.* at 387.

[17] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (February 2013).

[18] *Supra* note 3.

scheme, appellant's condition meant that her impairment rating moved one space to the left of the default value on Table 15-3 which equaled one percent impairment of the right upper extremity.

Dr. Komes explained that appellant had a grade modifier of 1 for functional history and grade modifier of 0 for physical examination with no applicable grade modifier for clinical studies. Applying the net adjustment formula, he properly subtracted 1, the numerical value of the class, from the numerical value of the grade modifier for each applicable component (functional history and physical examination) and then added those values, resulting in a net adjustment of -1 ((1-1) + (0-1)).[19] Application of the net adjustment formula meant that movement was warranted one place to the left of class 1 default value grade C to grade B based on Table 15-3. Therefore, the diagnosis-based impairment rating for appellant's right wrist sprain/strain -- tenosynovitis, yielded one percent impairment of the upper right extremity.[20]

The Board finds that Dr. Zimmerman, serving as the DMA, properly reviewed Dr. Komes' report and applied the appropriate tables and grading schemes of the A.M.A., *Guides* in determining that appellant had no more than one percent permanent impairment of the right upper extremity for which she received a schedule award.[21] Moreover, Dr. Zimmerman correctly noted the date of MMI as March 11, 2014 as the determination of the date ultimately rests with the medical evidence[22] and is usually considered to be the date of the evaluation by the physician which is accepted as definitive by OWCP.[23]

Appellant argues that she is entitled to greater impairment based on the findings made in Dr. Allen's report. Dr. Allen's March 1, 2014 report calculated 13 percent right upper extremity impairment utilizing the range of motion method based on Table 15-31 for Finger Range of Motion.

Dr. Allen based his impairment rating on conditions not accepted by OWCP as employment related. His report was routed to Dr. Zimmerman, who noted the above defects. Dr. Zimmerman correctly noted that the individual digits were not accepted work-related injuries and impairment should be based only on the accepted condition of right tenosynovitis of the hand and wrist.[24] It is appellant's burden of proof to establish that she suffers from additional injuries as a result of the accepted employment-related injury.[25] Dr. Zimmerman properly found that appellant's impairment rating should be calculated pursuant to the preferred diagnosis-based

[19] *Supra* note 4.

[20] *Supra* note 3.

[21] *W.M.*, Docket No. 11-1156 (issued January 27, 2012).

[22] *L.H.*, 58 ECAB 561 (2007).

[23] *Mark Holloway*, 55 ECAB 321, 325 (2004).

[24] *G.I.*, Docket No. 11-30 (issued October 13, 2011).

[25] *See Charlene R. Herrera*, 44 ECAB 361 (1993).

impairment method utilized by Dr. Komes and the DMA properly explained that Dr. Allen's report could not be used as the basis for appellant' schedule award claim.[26]

Thus, the Board finds that appellant has one percent permanent impairment of the upper right extremity.[27] There is no probative evidence showing a greater 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 no more than one percent permanent impairment of the upper right extremity.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated February 23, 2015 is affirmed.

Issued: August 12, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[26] *D.U.*, Docket No. 13-2086 (issued February 11, 2014).

[27] *V.W.*, Docket No. 09-2026 (issued February 16, 2010); *L.F.*, Docket No. 10-343 (issued November 29, 2010).