United States Department of Labor
Employees' Compensation Appeals Board

A.J., Appellant	)	
and	)	**Docket No. 15-1263**
	)	**Issued: December 21, 2015**
DEPARTMENT OF THE AIR FORCE, MATERIEL COMMAND, TINKER AIR FORCE BASE, OK, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 20, 2015 appellant filed a timely appeal of a February 10, 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.[2]

ISSUE

The issue is whether appellant established more than eight percent permanent impairment to the right upper extremity, for which he received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the February 10, 2015 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

OWCP accepted that appellant, then a 46-year-old painter, developed right carpal tunnel syndrome and right trigger finger as a result of his federal employment duties. He received compensation benefits[3] and OWCP authorized right hand surgery, which he underwent on August 14, 2013.

On June 18, 2014 appellant filed a claim for a schedule award (Form CA-7).

In a June 24, 2014 letter, OWCP notified appellant of the deficiencies of his schedule award claim. It afforded him 30 days to submit additional evidence, including a medical report containing a detailed description of his permanent impairment based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In an August 29, 2014 report, Dr. Joel Tupper, a Board-certified orthopedic surgeon and appellant's attending physician, determined that appellant had eight percent permanent impairment of the right upper extremity. He noted that appellant had a long history of issues related to the upper extremities. Dr. Tupper documented that appellant had bilateral cubital tunnel syndrome and right carpal tunnel syndrome based on an electromyography (EMG) dated April 30, 2001. Appellant underwent a left ulnar nerve submuscular transposition in May 2001 and a right carpal tunnel release and ulnar nerve transposition in June 2001. He recovered well and returned to full-duty work.

Appellant continued to have issues with dysesthesia and pain. He underwent an EMG and nerve conduction velocity (NCV) study on November 13, 2012 which demonstrated bilateral median nerve dysfunction at the carpal canal and bilateral decreased amplitude of the ulnar nerve sensory action potentials, consistent with the previous surgery. Dr. Tupper opined that this likely represented a permanent injury to the nerves.

Appellant developed increased carpal tunnel symptoms on the right along with a trigger finger of the ring finger. He was treated with a revision carpal tunnel release and trigger finger release on August 14, 2013. Appellant reported that the trigger finger was not painful and no longer triggered, but had some catching. He reported "persistent numbness in the fingers, right equal to left, that [was] mild most of the time, increased dramatically with power tools, particularly vibratory tools and [had] been consistent for several years." Appellant described no problems with significant pain or limited range of motion of the elbow, bilaterally.

Dr. Tupper tested appellant with two point discrimination and light touch to determine the degree of sensory loss. Appellant demonstrated sensory loss in all 10 digits, distal to the mid-portion of the middle phalanx, with 2 point discrimination greater than 7 millimeters (mm).

[3] Appellant filed claims for wage-loss compensation (Form CA-7) for intermittent periods commencing August 11, 2013. On November 1, 2013 OWCP notified him that a compensation payment in the amount of $1,914.47 would be issued to him for the period August 16 to September 7, 2013.

Based on Table 15-23,[4] page 449, the sixth edition of the A.M.A., *Guides*, Dr. Tupper placed appellant in a class 1 diagnosis for bilateral median and ulnar nerve entrapment. Dr. Tupper assigned a grade modifier 2 for clinical studies (GMCS) and physical examination (GMPE) for both the ulnar and median nerve entrapment. Regarding the ulnar nerve entrapment, he assigned a grade modifier 3 for functional history (GMFH) based on appellant's constant symptoms. Regarding the median nerve entrapment, Dr. Tupper assigned a grade modifier 2 for functional history for appellant's significant intermittent symptoms. He concluded that appellant had five percent permanent impairment of the bilateral upper extremities based on his ulnar nerve entrapment and five percent permanent impairment of the bilateral upper extremities based on his median nerve entrapment. Dr. Tupper concluded that appellant had a combined 10 percent permanent impairment to his bilateral upper extremities.

On December 8, 2014 an OWCP medical adviser reviewed a statement of accepted facts and the medical evidence of record. He found that appellant had reached maximum medical improvement as of August 29, 2014, the date of Dr. Tupper's report. The medical adviser concurred with Dr. Tupper's class 1E diagnosis of ulnar and median nerve entrapments based on Table 15-23 of the sixth edition of the A.M.A., *Guides* and his impairment rating of five percent permanent impairment of the right upper extremity for median nerve deficits and five percent permanent impairment of the right upper extremity for ulnar nerve deficits. He, however, explained that Dr. Tupper's combined impairment rating was incorrect as multiple entrapments were calculated by dividing the lesser impairment in half (five percent divided by two, equaling three percent) and then using that and the greater impairment (five percent) to calculate an eight percent combined impairment according to page 604 of the A.M.A., *Guides*.[5]

By decision dated February 10, 2015, OWCP granted appellant a schedule award for eight percent permanent impairment to the right upper extremity for 24.96 weeks for the period August 29, 2014 to February 19, 2015.

LEGAL PRECEDENT

The schedule award provisions of FECA[6] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized 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 OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[7] For schedule awards after

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

[5] Appendix A, page 604, of the sixth edition of the A.M.A., *Guides* is entitled Combined Values Chart.

[6] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[7] *See Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000). *See also* 5 U.S.C. § 8107.

May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.[8]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability, and Health.[9] Under the sixth edition, the evaluator identifies the impairment Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE, and GMCS.[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[11]

ANALYSIS

The Board finds that appellant has not established that he sustained more than eight percent permanent impairment to the right upper extremity, for which he received a schedule award.

OWCP accepted that appellant developed right carpal tunnel syndrome and right trigger finger as a result of his federal employment duties. In a February 10, 2015 award of compensation, it granted him a schedule award for eight percent permanent impairment to the right upper extremity. OWCP is appellant's burden to submit sufficient evidence to establish the extent of permanent impairment.[12]

In an August 29, 2014 report, Dr. Tupper determined that appellant had eight percent permanent impairment of the right upper extremity. Appellant underwent EMG and NCV studies on November 13, 2012 which demonstrated bilateral median nerve dysfunction at the carpal canal and bilateral decreased amplitude of the ulnar nerve sensory action potentials, consistent with the previous surgery. Dr. Tupper opined that this likely represented a permanent injury to the nerves.

Appellant developed increased carpal tunnel symptoms on the right along with a trigger finger of the ring finger. He was treated with a revision carpal tunnel release and trigger finger release on August 14, 2013. Dr. Tupper tested appellant with two point discrimination and light touch and found sensory loss in all 10 digits, distal to the mid-portion of the middle phalanx, with two point discrimination greater than 7 mm.

[8] *See D.T.*, Docket No. 12-503 (issued August 21, 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[9] A.M.A., *Guides* 3 (6th ed., 2009).

[10] *Id.* at 494-531.

[11] *See R.V.*, Docket No. 10-1827 (issued April 1, 2011).

[12] *See Annette M. Dent*, 44 ECAB 403 (1993).

Based on Table 15-23,[13] page 449, the sixth edition of the A.M.A., *Guides*, Dr. Tupper placed appellant in a class 1 diagnosis for bilateral median and ulnar nerve entrapment. Dr. Tupper assigned a grade modifier 2 for clinical studies and physical examination for both the ulnar and median nerve entrapment. For the ulnar nerve entrapment, he assigned a grade modifier 3 for functional history based on appellant's constant symptoms. Regarding the median nerve entrapment, Dr. Tupper assigned a grade modifier 2 for functional history for appellant's significant intermittent symptoms. He concluded that appellant had five percent permanent impairment of the bilateral upper extremities based on his ulnar nerve entrapment and five percent permanent impairment of the bilateral upper extremities based on his median nerve entrapment. Dr. Tupper concluded that appellant had a combined 10 percent permanent impairment to his bilateral upper extremities.

In accordance with its procedures, OWCP properly referred the evidence of record to an OWCP medical adviser who reviewed the clinical findings of Dr. Tupper on December 8, 2014 and determined that appellant had eight percent permanent impairment of the right upper extremity under the sixth edition of the A.M.A., *Guides*. The medical adviser concurred with Dr. Tupper's class 1E diagnosis of ulnar and median nerve entrapments based on Table 15-23 of the sixth edition of the A.M.A., *Guides* and his impairment rating of five percent permanent impairment of the right upper extremity for median nerve deficits and five percent permanent impairment of the right upper extremity for ulnar nerve deficits. He, however, explained that Dr. Tupper's combined impairment rating was incorrect as multiple entrapments were calculated by dividing the lesser impairment in half (five percent divided by two, equaling three percent) and then using that and the greater impairment (five percent) to calculate eight percent combined impairment according to page 604 of the A.M.A., *Guides*.

The medical adviser discussed how he arrived at his conclusion by listing specific tables and pages in the A.M.A., *Guides*. According to the sixth edition of the A.M.A., *Guides*, page 450,[14] with multiple entrapments the nerve qualifying for the larger impairment is given the full impairment. This is combined with 50 percent of the rating of the second nerve and the combined value is determined by using the Combined Values Chart on page 604. OWCP's medical adviser properly interpreted Example 15-19 on page 450 and the Combined Values Chart on page 604 to find that appellant qualified for eight percent permanent impairment to the right upper extremity. The Board finds that the medical adviser in this case properly applied the standards of the A.M.A., *Guides*. The medical adviser's opinion is the weight of medical evidence and supports that appellant does not have a greater right upper extremity impairment than the eight percent previously awarded. Thus, the Board finds that OWCP properly relied upon the opinion of its medical adviser in denying appellant's claim for an additional schedule award.

There is no probative medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant has more than eight percent permanent

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

[14] *See* Example 15-19, page 450, of the sixth edition of the A.M.A., *Guides* entitled *Multiple Entrapments*.

impairment to the right upper extremity. Accordingly, appellant has not established that he is entitled to a schedule award greater than that previously awarded.[15]

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 not established that he sustained more than an eight percent permanent impairment to the right upper extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[15] FECA provides for reduction of compensation for subsequent injury to the same body member. It provides that schedule award compensation is reduced by the compensation paid for an earlier injury where the compensation in both cases are for impairment of the same member or function and where it is determined that the compensation for the later disability in whole or part would duplicate the compensation payable for the preexisting disability. 5 U.S.C. § 8108; 20 C.F.R. § 10.404(c).