United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 14-1892**
	)	**Issued: February 2, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 28, 2014 appellant, through counsel, filed a timely appeal from a June 23, 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 the schedule award decision.

ISSUE

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

On appeal appellant's attorney asserts that a conflict in medical evidence has been created between appellant's physician and OWCP referral physician.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On September 28, 2009 appellant, then a 54-year-old mail handler/equipment operator, filed an occupational disease claim alleging that employment duties caused a trigger finger and acute pain in thumbs and index fingers of both hands.[2] On November 3, 2009 OWCP accepted trigger finger, index, acquired, right. On December 16, 2009 appellant underwent surgical release of the A1 pulley of the right index finger.

On July 6, 2011 appellant filed a schedule award claim.[3] He submitted a September 14, 2010 report, revised on May 4, 2011, in which Dr. Nicholas Diamond, an osteopath, advised that maximum medical improvement was reached on September 13, 2010. Dr. Diamond provided upper extremity physical examination findings. He diagnosed cumulative and repetitive trauma disorder; bilateral trigger thumbs; status post bilateral trigger thumb releases with residual osteoarthritis of the bilateral carpometacarpal, metacarpophalangeal (MCP), and interphalangeal (IP) joints; right index trigger finger; and status post right index trigger finger release with residual scar tissue and numbness. Dr. Diamond indicated that he evaluated appellant's impairment in accordance with Table 15-31 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).[4] He advised that right index finger flexion range of motion of the MCP joint was 50 for a 19 percent digit impairment; right index finger flexion of the proximal interphalangeal (PIP) joint was 90 for a 6 percent digit impairment, and distal interphalangeal (DIP) joint flexion was 15 for a 25 percent impairment. Dr. Diamond advised that the combined index finger impairment was 43 percent or 9 percent of the hand and 8 percent of the right upper extremity.

On October 17, 2011 Dr. Arnold T. Berman, Board-certified in orthopedic surgery and an OWCP medical adviser, reviewed the record, including Dr. Diamond's report. He concurred with Dr. Diamond that appellant had an eight percent right upper extremity impairment. In August 2012 OWCP asked Dr. Berman to refer to his previous report and advise whether the eight percent impairment should be reduced by the three percent previously awarded. In an August 30, 2012 response, an OWCP medical adviser indicated that the eight percent impairment should be reduced by the three percent previously given, which would yield a five percent right upper extremity impairment.

On October 12, 2012 appellant was granted a schedule award for an eight percent impairment of the right upper extremity, less three percent previously paid.[5] The award was for 15.6 weeks of compensation, to run from September 14, 2010 to January 1, 2011.

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[2] The record indicates that appellant had a previous claim, adjudicated by OWCP under file number xxxxxx116, accepted for bilateral trigger thumbs with surgical intervention on May 13, 1992. Under that claim he was granted a schedule award for a three percent hand impairment on the right and three percent on the left, for 14.64 total weeks of compensation, or 7.32 weeks for each hand. The instant case was adjudicated under file number xxxxxx212.

[3] Appellant had relocated to Florida.

[4] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008).

[5] *Supra* note 2.

Appellant, through his attorney, timely requested a hearing that was held on January 28, 2013. He did not appear at the hearing. Counsel noted that in his May 4, 2011 revision, Dr. Diamond found an 11 percent right upper extremity impairment. He argued that the schedule award decision was also in error, because the 1992 schedule award was for three percent hand impairment, not an upper extremity impairment, and that the compensation schedule was different for the hand and arm.

On May 1, 2013 an OWCP hearing representative remanded the case to OWCP. The hearing representative noted that subsequent to the hearing appellant submitted Dr. Diamond's revised report. On remand OWCP was to forward Dr. Diamond's revised report and explain whether appellant's impairment extended into his arm and provide an updated impairment rating, after which OWCP was to issue a *de novo* decision.

The revised medical report from Dr. Diamond, also dated May 4, 2011, contained an additional page that was not submitted in June 2011. The newly submitted report indicated that under Table 15-21 appellant had a class 1 mild sensory deficit of the right palmar digital of the thumb of one percent. After applying grade modifiers and the net adjustment formula, Dr. Diamond advised that appellant had no thumb impairment and a final right upper extremity impairment of 11 percent.

By report dated August 21, 2013, Dr. Berman, an OWCP medical adviser, reviewed the record and the newly submitted report from Dr. Diamond. He maintained that Dr. Diamond's findings were not consistent with appellant's clinical picture and could not be accepted as valid. Dr. Berman recommended that appellant be referred for a second opinion evaluation.

In September 2013 OWCP referred appellant to Dr. William Dinenberg, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an October 7, 2013 report, Dr. Dinenberg noted his review of the statement of accepted facts, medical record, and appellant's complaints of numbness or weakness in grip and arm curl and numbness in the right forearm. He provided physical examination findings, noting no atrophy and negative Phalen's, Tinel's, and carpal tunnel compression tests bilaterally, and tenderness over the A1 pulley. Range of motion of the right index finger yielded 0 degrees of extension to 70 degrees of flexion of the DIP joint; 0 degrees to 90 degrees of the PIP joint; and extension from +20 degrees to 90 degrees of flexion of the MCP joint. Dr. Dinenberg diagnosed status post work-related bilateral trigger thumbs now status post trigger thumb release times two and right index finger trigger digit now status post trigger digit release. He advised that the right hand impairment did not extend into appellant's right arm. Dr. Dinenberg indicated that, in accordance with Table 15-2 of the A.M.A., *Guides*, Digit Regional Grid Impairments, for a diagnosis of digital stenosing tenosynovitis, appellant had a class 1 impairment. He found grade modifiers of 2 for functional history and physical examination which resulted in +2 for a grade E impairment of eight percent of the index finger. Dr. Dinenberg found that a digital impairment of eight percent was equivalent to a two percent hand impairment or a one percent upper extremity impairment. He indicated that the three percent hand impairment previously awarded for the right thumb would be added to the two percent right index finger hand impairment, to yield a total five percent hand impairment which was equal to a five percent upper extremity impairment.

On November 12, 2013 Dr. Berman reviewed Dr. Dinenberg's report and agreed with his conclusion. He indicated that appellant was not entitled to a schedule award greater than the eight percent right upper extremity impairment previously awarded.

By decision dated November 25, 2013, OWCP found that appellant was not entitled to an additional schedule award. Appellant, through his attorney, timely requested a hearing, that was held on April 14, 2014. At the hearing, not attended by appellant, the attorney reiterated previous arguments and asserted that a conflict in medical evidence had been created between Drs. Diamond and Dinenberg. In September 9, 2014 correspondence, appellant indicated that he continued to have pain, weakness, and numbness in both thumbs and in his right hand and arm. By decision dated June 23, 2014, an OWCP hearing representative affirmed the November 25, 2013 decision.

LEGAL PRECEDENT

The schedule award provision of FECA,[6] and its implementing federal 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[8] For decisions issued after May 1, 2009, the sixth edition is used to calculate schedule awards.[9]

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 (ICF).[10] Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment class for the Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[11] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[12] The sixth edition of the A.M.A., *Guides* also provides that, under certain circumstances, range of motion may be selected as an alternative approach in rating impairment.

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id*. at 10.404(a).

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

[10] A.M.A., *Guides*, *supra* note 4 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

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

[12] *Id*. at 411.

An impairment rating that is calculated using range of motion may not be combined with a diagnosis-based impairment and stands alone as a rating.[13]

OWCP 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.[14]

ANALYSIS

The Board finds that the weight of the medical evidence establishes that appellant has no more than a five percent impairment of his right upper extremity. The Board finds that Dr. Diamond's revised report dated May 4, 2011, submitted on February 5, 2013, is of diminished probative value because it was based on a physical examination completed on September 14, 2010 and not on new physical examination findings. The September 14, 2010 physical examination findings constitute stale medical evidence and cannot create a conflict with Dr. Dinenberg, whose physical examination findings are more recent by three years.[15]

OWCP accepted that appellant sustained right trigger finger, index, acquired, under this claim, adjudicated under file number xxxxxx212 and bilateral trigger thumbs, adjudicated under claim number xxxxxx116. Under claim number xxxxxx116, he was granted a schedule award for three percent hand impairment on the right and a three percent impairment on the left, which yielded 7.32 weeks compensation for each hand.[16] On February 6, 2014 appellant was granted a schedule award for an additional five percent impairment of the right upper extremity under claim number xxxxxx212, for an additional 15.6 weeks of compensation.

Section 15.2 of the A.M.A., *Guides* provide that diagnosis-based impairment is the primary method of evaluation for the upper extremities.[17] Table 15-2, Digit Regional Grid, is the appropriate table for use in finger impairments.[18] Dr. Dinenberg properly utilized Table 15-2 in his analysis.

In his October 7, 2013 report, Dr. Dinenberg reported physical examination findings. He diagnosed status post work-related bilateral trigger thumbs now status post trigger thumb release times two and right index finger trigger digit now status post trigger digit release. Dr. Dinenberg advised that the right hand impairment did not extend into appellant's right arm and indicated

[13] *Id*. at 390. The A.M.A., *Guides* explains that diagnoses in the grid that may be rated using range of motion are followed by an asterisk.

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

[15] *See W.M.*, Docket No. 12-773 (issued March 29, 2013).

[16] *Supra* note 2.

[17] A.M.A., *Guides*, *supra* note 4 at 387-90.

[18] *Id.* at 391-94.

that, in accordance with Table 15-2, for a diagnosis of digital stenosing tenosynovitis,[19] appellant had a class 1 impairment. He found grade modifiers of 2 for functional history and physical examination which resulted in +2 under the net adjustment formula, for a grade E impairment of eight percent of right the index finger. As found in Table 15-12, Impairment Values Calculated from Upper Extremity Impairment,[20] Dr. Dinenberg determined that a digital impairment of eight percent was equivalent to a two percent hand impairment or a one percent upper extremity impairment. He indicated that the three percent hand impairment previously awarded for the right thumb would be added to the two percent right index finger hand impairment, to yield a total five percent hand impairment which was equal to a five percent upper extremity impairment under Table 15-11, Impairment Values Calculated from Upper Extremity Impairment.[21]

The Board finds that Dr. Dinenberg's opinion that appellant has five percent right upper extremity impairment at the time of his examination is sufficiently well rationalized and constitutes the weight of medical opinion in regard to appellant's right upper extremity impairment. Dr. Berman, an OWCP medical adviser, agreed with Dr. Dinenberg's conclusion that appellant had a five percent right upper extremity impairment.

Lastly, the Board notes that it is irrelevant whether the 1992 schedule award was for the hand or upper extremity (arm). What is clear is that appellant received schedule awards for a total impairment of 22.92 weeks of compensation, 7.32 weeks in claim number xxxxxx116 for right trigger thumb, and 15.6 weeks under claim number xxxxxx212 claim for right trigger finger. Based on Dr. Dinenberg's conclusion, appellant is entitled to a five percent right upper extremity impairment, or 15.6 weeks compensation, which is less than the 22.92 weeks previously awarded.[22] Appellant therefore did not establish additional 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 more than eight percent permanent impairment of the right upper extremity.

[19] Section 15.2a of the A.M.A., *Guides* provide that in determining diagnosis-based upper extremity impairment, the first step is to choose the diagnosis that is most applicable for the region begin assessed. If more than one diagnosis can be use, the highest causally related impairment rating should be used. Typically one diagnosis will adequately characterize the impairment and its impact on activities of daily living. *Id.* at 389.

[20] *Id*. at 421.

[21] *Id*. at 420.

[22] Section 8107 (c) of FECA indicates that 100 percent disability of the arm yields 312 weeks compensation; 100 percent disability of the hand yields 244 weeks of compensation. 5 U.S.C. § 8107(c).

ORDER

IT IS HEREBY ORDERED THAT the June 23, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board