

**United States Department of Labor
Employees' Compensation Appeals Board**

M.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 14-2052
Issued: February 11, 2015**

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
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 29, 2014 appellant, through her representative, filed a timely appeal from a July 7, 2014 schedule award decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 more than three percent permanent impairment of the right arm, for which she received a schedule award.

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

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On February 8, 2006 OWCP accepted that appellant sustained bilateral carpal tunnel syndrome caused by her work duties. An electrodiagnostic study was done on December 13, 2005. Appellant underwent right carpal tunnel repair, flexor tenolysis, and tenosynovectomy on July 31, 2006. On August 16, 2006 the claim was expanded to include bilateral tenosynovitis of the hand and wrist and later expanded to include bilateral synovitis and acquired right trigger finger. The claim was adjudicated by OWCP under file number xxxxxx544. A separate claim, file number xxxxxx726, was also accepted for bilateral tenosynovitis of the hand and wrist. The claims were combined on August 16, 2006.² Additional upper extremity electrodiagnostic studies were performed on June 27 and December 26, 2006.

In a September 26, 2008 decision, OWCP terminated appellant's wage-loss and medical benefits. An OWCP hearing representative affirmed this decision on May 14, 2009, and in a December 23, 2009 merit decision, OWCP denied modification of the May 14, 2009 decision. On May 7, 2010 OWCP denied appellant's request for merit review.

On October 2, 2012 appellant filed a schedule award claim under file number xxxxxx444. A June 14, 2012 electrodiagnostic study demonstrated mild left radial sensory nerve compromise at the wrist with no evidence of median or ulnar nerve compromise of either wrist. In an August 14, 2012 report, Dr. Nicholas Diamond, an attending osteopath, discussed his review of medical records, including electrodiagnostic studies dated December 13, 2005, June 27 and December 26, 2006 and June 14, 2012. He noted examination findings and diagnosed right carpal tunnel syndrome and right flexor tenosynovitis. Dr. Diamond indicated that, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),³ Table 15-23, Entrapment Compression Neuropathy Impairment, appellant had six percent right arm impairment. He chose grade modifiers from the table as appropriate, indicating that appellant had a test findings grade modifier of 1, a history modifier of 3 and a physical findings modifier of 3. He averaged the grade modifiers, chose the default value of five percent and, based on appellant's *QuickDASH* score of 75 percent, increased the right upper extremity impairment to six percent.

On October 8, 2012 Dr. Lance Yarus, an osteopath, noted a past history of bilateral carpal tunnel syndrome. He stated that appellant's current problem related to her left hand, described physical examination findings, and diagnosed de Quervain's disease. Dr. Yarus advised that appellant had not reached maximum medical improvement.

In a report dated December 4, 2012, Dr. Arnold T. Berman, an OWCP medical adviser and a Board-certified orthopedic surgeon, reviewed the medical evidence including the reports

² On March 16, 2007 OWCP accepted left shoulder sprain/strain under file number xxxxxx209. Under file number xxxxxx209, by decision dated December 9, 2010, appellant was granted a schedule award for a four percent impairment of the left upper extremity. On August 10, 2012 she filed an occupational disease claim, adjudicated by OWCP under file number xxxxxx005. After an initial denial, the claim was accepted for de Quervain's tenosynovitis of the left wrist and aggravation of preexisting bilateral carpal tunnel syndrome.

³ A.M.A., *Guides* (6th ed. 2008).

from Dr. Diamond and Dr. Yarus. He indicated that, until maximum medical improvement was reached, a schedule award determination could not be made. On February 13, 2013 OWCP asked Dr. Diamond to review Dr. Berman's report and advise, within 30 days, whether maximum medical improvement had been reached. Copies of the letter were provided to appellant and her attorney.

In a decision dated April 1, 2013, OWCP noted that Dr. Diamond had not provided a requested supplementary report. It denied appellant's schedule award claim because the medical evidence did not establish that maximum medical improvement had been reached.

On April 4, 2013 appellant requested a hearing. In January 7 and February 13, 2013 treatment notes, Dr. Yarus reiterated his findings for appellant's left hand. In an April 15, 2013 report, Dr. Diamond stated that, based on his August 14, 2012 examination findings, appellant reached maximum medical improvement at that time.

By decision dated July 2, 2013, an OWCP hearing representative set aside the April 1, 2013 decision. She noted that appellant had three upper extremity claims and instructed OWCP to combine all claims, prepare an updated statement of accepted facts, and refer appellant for a second opinion evaluation with regard to whether she had reached maximum medical improvement and to provide an impairment evaluation.

In August 2013 OWCP combined file numbers xxxxxx209 and xxxxxx005 with the previously combined file numbers xxxxxx544 and xxxxxx726. It prepared and updated statement of accepted facts and set of questions and referred appellant to Dr. Robert Franklin Draper, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In an April 8, 2013 report, received by OWCP on September 3, 2013, Dr. Yarus indicated that appellant had reached maximum medical improvement with regard to her left upper extremity de Quervain's disease. He continued to submit reports describing her condition.

In a September 20, 2013 report, Dr. Draper noted his review of the statement of accepted facts and medical record. Physical examination of the right upper extremity demonstrated no hand atrophy and a negative Tinel's sign over the median and ulnar nerve and a negative Finkelstein's test at the right wrist. Normal light touch was noted over the tip of the right index and little fingers. Dr. Draper diagnosed right carpal tunnel syndrome and flexor tenosynovitis, status post right carpal tunnel release, flexor tenolysis and tenosynovectomy in July 2006; left carpal tunnel syndrome; de Quervain's tenosynovitis of both wrists; and a strained left shoulder. With regard to the right carpal tunnel syndrome, he indicated that, under Table 15-23, appellant had a grade modifier of 1 for test findings, a modifier of 2 for history, and modifiers of 1 for physical examination and function. Dr. Draper averaged the modifiers, concluding that appellant had a grade 1 total modifier for two percent right upper extremity impairment. With regard to the right wrist de Quervain's synovitis, he found that, under Table 15-3, Wrist Regional Grid, appellant had a class one wrist sprain with a default value of one percent impairment. Dr. Draper applied the net adjustment formula which showed no increase and concluded that appellant had one percent impairment due to de Quervain's disease. With regard to the diagnosed right trigger finger, he found that under Table 15-2, Digital Regional Grid, for a diagnosis of stenosing tenosynovitis, as his examination showed no triggering, appellant was rated at class 0 for no

impairment. Dr. Draper added the two percent impairment for carpal tunnel syndrome and the one percent impairment for de Quervain's disease and concluded that appellant had a total three percent right upper extremity impairment.

On October 10, 2013 Dr. Morley Slutsky, an OWCP medical adviser, who is Board-certified in occupational medicine, reviewed the medical evidence, and asked for copies of all previous electrodiagnostic studies. These were provided on October 24, 2013. In an October 29, 2013 report, OWCP medical adviser noted his review of the complete medical record for all files. Regarding the right arm, he discussed Dr. Diamond's and Dr. Draper's physical examination findings. Dr. Slutsky provided an impairment rating grid and indicated that the preoperative electrodiagnostic test met the criteria described in the A.M.A, *Guides*, finding a grade 1 test modifier. He concluded that appellant had a grade modifier of 1 based on history and 0 for physical findings in light of appellant's normal two-point discrimination and light touch, with no motor strength deficits and no hand atrophy. Dr. Slutsky opined that the *QuickDASH* score was unreliable in light of normal clinical findings and indicated that he would use appellant's best efforts and consistent findings which indicated normal sensation and motor strength with no hand atrophy. He concluded that appellant had two percent impairment for right carpal tunnel syndrome under Table 15-23. Dr. Slutsky further indicated that, based on Dr. Draper's finding of no triggering, appellant had no impairment under Table 15-2 for right trigger finger. In regard to the diagnosis of de Quervain's tenosynovitis, he agreed with Dr. Draper's conclusion that appellant had one percent impairment under Table 15-3. Dr. Slutsky combined the two percent right upper extremity impairment for carpal tunnel syndrome with the one percent impairment for de Quervain's tenosynovitis, for a total right upper extremity impairment of three percent.⁴

By decision dated October 31, 2013, appellant was granted a schedule award for a three percent impairment of the right upper extremity. Appellant, through her attorney, timely requested a hearing. Her disability retirement claim was approved by the Office of Personnel Management on January 28, 2014. At the hearing, held on April 14, 2014, appellant testified regarding her physical condition and limitations. She indicated that she was currently receiving wage-loss compensation for an accepted left arm condition. Appellant's attorney confirmed that the instant claim was only in regard to her right arm. He maintained that, as it did not appear that Dr. Draper reviewed the preoperative electrodiagnostic studies, it was improper for OWCP medical adviser to rely on his report. Counsel asserted that Dr. Diamond's opinion should be credited or, in the alternative, a conflict in medical evidence should be found.

In a July 7, 2014 decision, OWCP hearing representative affirmed the October 31, 2013 decision.

LEGAL PRECEDENT

The schedule award provision of FECA, and its implementing federal regulations,⁵ set forth the number of weeks of compensation payable to employees sustaining permanent

⁴ Dr. Diamond, Dr. Draper, and Dr. Slutsky described physical examination findings and provided an impairment rating for the left upper extremity, not at issue in this appeal.

⁵ 20 C.F.R. § 10.404.

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.⁶ For decisions issued after May 1, 2009, the sixth edition will be used.⁷

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).⁸ Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment Class of Diagnosis condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).⁹ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹⁰

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.¹¹ In Table 15-23, grade modifier levels (ranging from 0 to 4) 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.¹²

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to 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.¹³

ANALYSIS

The Board finds that appellant has not established that she has greater than a three percent impairment of the right upper extremity. The accepted right arm conditions are carpal tunnel syndrome, tenosynovitis of the right hand and wrist, and right acquired trigger finger. On

⁶ *Id.* at 10.404(a).

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁸ A.M.A., *Guides*, *supra* note 3 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

⁹ *Id.* at 385-419.

¹⁰ *Id.* at 411.

¹¹ *Id.* at 449.

¹² *Id.* at 448-50.

¹³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

July 31, 2006 appellant underwent right carpal tunnel repair, flexor tenolysis, and tenosynovectomy.

On October 2, 2012 appellant filed a schedule award claim and submitted an August 14, 2012 report in which Dr. Diamond discussed his review of medical records, including electrodiagnostic studies. Dr. Diamond described physical examination findings and provided an impairment rating under Table 15-23 of the A.M.A., *Guides*.¹⁴ He indicated that appellant had a test findings grade modifier of 1, a history modifier of 3, and a physical findings modifier of 3. Dr. Diamond then averaged the grade modifiers, chose the default value of five percent and, based on appellant's *QuickDASH* score of 75 percent, increased the right upper extremity impairment to six percent.

In a September 20, 2013 report, Dr. Draper, an OWCP referral physician, noted that physical examination of the right upper extremity demonstrated no hand atrophy with negative Tinel's and Finkelstein's tests and that light touch over the tip of the right index and little fingers was normal. He diagnosed right carpal tunnel syndrome and flexor tenosynovitis. Dr. Draper indicated that, with regard to appellant's right carpal tunnel syndrome, under Table 15-23, she had a grade modifier of 1 for test findings, a modifier of 2 for history, and modifiers of 1 for physical examination and function. He averaged the modifiers, concluding that appellant had a grade 1 total modifier for two percent right upper extremity impairment. Dr. Draper found that for the right wrist de Quervain's synovitis, under Table 15-3, Wrist Regional Grid, appellant had a class 1 wrist sprain with a default value of one percent impairment. He applied the net adjustment formula which showed no increase and concluded that appellant had one percent impairment due to de Quervain's disease. With regard to the accepted right trigger finger, Dr. Draper indicated that, as he found no triggering of physical examination, appellant had no impairment. He added the two percent impairment for carpal tunnel syndrome and the one percent impairment for de Quervain's disease and concluded that appellant had a total three percent right upper extremity impairment.

In a comprehensive October 29, 2013 report, Dr. Slutsky, OWCP medical adviser, noted his review of the complete medical record for all files. Regarding the right arm, he discussed Dr. Diamond's and Dr. Draper's physical examination findings. Dr. Slutsky provided an impairment rating grid and indicated that the preoperative electrodiagnostic test met the criteria described in the A.M.A., *Guides*, finding a grade 1 test modifier, which was also found by both Dr. Diamond and Dr. Draper. OWCP medical adviser indicated that appellant had a history modifier of 1 and a 0 modifier for physical findings, in light of Dr. Draper's examination findings of normal two-point discrimination and light touch, no motor strength deficits and no hand atrophy. Dr. Slutsky opined that the *QuickDASH* score reported by Dr. Diamond was unreliable in light of normal clinical findings. He concluded that appellant had two percent impairment for right carpal tunnel syndrome. Dr. Slutsky further indicated that, based on Dr. Draper's finding of no triggering, appellant had no impairment for the right trigger finger diagnosis. In regard to the diagnosis of de Quervain's tenosynovitis, he agreed with Dr. Draper's conclusion that appellant had one percent impairment under Table 15-3. Dr. Diamond reported no impairment for this diagnosis. Dr. Slutsky combined the two percent right upper extremity

¹⁴ *Supra* note 3 at 449.

impairment for carpal tunnel syndrome with the one percent impairment for de Quervain's tenosynovitis, for a total right upper extremity impairment of three percent.

Although appellant's attorney argues that a conflict in medical evidence has been created between Dr. Diamond and Dr. Draper, the medical record better supports the conclusion of OWCP medical adviser who based his comprehensive October 29, 2013 report on both Dr. Diamond's and Dr. Draper's reports. The Board concludes that OWCP medical adviser applied the appropriate sections of the A.M.A., *Guides* to the clinical findings of record.¹⁵ Therefore, OWCP's July 7, 2014 decision affirming the October 31, 2013 schedule award is proper under the law and facts of this case.

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 a three percent impairment of the right upper extremity for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2015
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹⁵ See *W.M.*, Docket No. 11-1706 (issued March 20, 2012).