United States Department of Labor
Employees' Compensation Appeals Board

J.L., Appellant	)	
and	)	**Docket No. 14-1896**
	)	**Issued: January 15, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Bedford Park, IL, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 25, 2014 appellant filed a timely appeal from the August 14, 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 more than two percent permanent impairment of her right arm, for which she received a schedule award.

FACTUAL HISTORY

On May 28, 2008 OWCP accepted that appellant, then a 54-year-old secretary, sustained temporary aggravation of right carpal tunnel syndrome, temporary aggravation of right de Quervain's/radial styloid tenosynovitis, and temporary aggravation of tendinitis of the right hand and wrist due to the performance of her repetitive work duties. It later accepted that she

[1] 5 U.S.C. §§ 8101-8193.

sustained additional work injuries including bilateral carpal tunnel syndrome, right lateral epicondylitis, and disorder of bursae and tendons in the right shoulder.

In a December 29, 2011 report, Dr. Samuel Chmell, an attending Board-certified orthopedic surgeon, indicated that, under Table 15-23 on page 449 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009), appellant had a 23 percent left arm impairment due to carpal tunnel syndrome. Under Table 15-32 through Table 15-34, she had 56 percent right arm impairment due to limited range of motion of her right wrist, elbow, and shoulder.

In an April 25, 2013 report, Dr. Chmell stated that his prior impairment rating was based not only on carpal tunnel syndrome but also on tenosynovitis of the right hand and wrist, disorder bursae/tendons of the right shoulder, and lateral epicondylitis of the right elbow. Appellant filed a claim for a schedule award and, in a February 7, 2014 decision, OWCP determined that she had not submitted sufficient medical evidence to establish that she sustained permanent impairment entitling her to schedule award compensation.[2]

Dr. Allan Brecher, a Board-certified orthopedic surgeon serving as an OWCP referral physician, discussed appellant's medical history and detailed the findings of his physical examination on June 27, 2014. In his June 30, 2014 report, he stated that, upon examination, appellant's right shoulder had full active range of motion and no signs of impingement. Appellant's left shoulder demonstrated adhesive capsulitis and she could only flex and abduct to 80 degrees, but had full internal and external rotation and adduction. She reported that she was tender over the first extensor compartment on the right, but not the left. Dr. Brecher indicated that sensibility was grossly intact and that appellant had no decreased motion of her fingers and hands. There was no catching or triggering and a positive Finkelstein test was only found on the right. Dr. Brecher stated that there was no epicondyle tenderness and that appellant "had full motion of the elbows, wrists, and fingers with good strength." He indicated that appellant no longer had carpal tunnel syndrome and that her last electromyogram (EMG) did not show any right carpal tunnel syndrome. Therefore, Dr. Brecher determined that appellant had no permanent impairment due to carpal tunnel syndrome. He concluded that appellant had two percent permanent impairment of her right arm under the standards of the sixth edition of the A.M.A., *Guides* and stated:

> "As for [appellant's] epicondylitis, that has also resolved, as has the right shoulder tend[i]nitis. Therefore, there is no impairment. [Appellant] does have continuing de Quervain tenosynovitis only on the right. Therefore, we look at Table 15-5, she has a class 1, grade D, functional history 2, physical exam[ination] 2, clinical studies 3, and [*Quick*DASH] score 52 gives her 2 percent upper extremity impairment. Therefore, [appellant's] regional impairment is 2 percent."[3]

[2] In a February 18, 2014 report, Dr. Chmell again asserted that his method of rating appellant's permanent impairment was valid.

[3] Regarding Dr. Chmell's April 25, 2013 report, Dr. Brecher stated that in the past Dr. Chmell had used the range of motion rating method, but noted that this was "not relevant as we are supposed to us diagnosis-related impairment." An attached worksheet indicates that Dr. Brecher used Table 15-5 to rate the diagnosed-based condition of right shoulder tendinitis.

In an August 4, 2014 report, Dr. David H. Garelick, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, indicated that he agreed with Dr. Brecher's assessment that appellant had two percent permanent impairment of her right arm under the standards of the sixth edition of the A.M.A., *Guides.*

In an August 14, 2014 decision, OWCP granted appellant a schedule award for two percent permanent impairment of her right arm. The award ran for 6.24 weeks from June 27 to August 9, 2014 and was based on the impairment rating contained in the June 30, 2014 report of Dr. Brecher, OWCP referral physician, as affirmed by the August 4, 2014 report of Dr. Garelick, OWCP medical adviser.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing regulations[5] 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 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.[6] The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.[7]

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. With respect to the shoulder, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the Class of Diagnosis (CDX) is determined from the Shoulder Regional Grid (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). The Net Adjustment Formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[8] 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.[9]

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999).

[6] *Id*.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability*, Chapter 2.808.5(a) (February 2013).

[8] *See* A.M.A., *Guides* (6th ed. 2009) 401-11. Table 15-5 also provides that, if motion loss is present for a claimant who has certain shoulder diagnoses, impairment may alternatively be assessed using Section 15.7 (range of motion impairment). Such a range of motion impairment stands alone and is not combined with a diagnosis impairment. *Id.* at 405, 475-78. The range of motion method may also be used to evaluate impairment for certain diagnosis-based conditions of the digits, wrists, and elbows. *Id.* at 391-400, 468-74, 476-78.

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

It is well established that proceedings under FECA are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[10]

ANALYSIS

OWCP accepted that appellant sustained temporary aggravation of right carpal tunnel syndrome, temporary aggravation of right de Quervain's/radial styloid tenosynovitis, and temporary aggravation of tendinitis of the right hand and wrist due to the performance of her repetitive work duties over time. It later accepted that she sustained additional work injuries, including bilateral carpal tunnel syndrome, right lateral epicondylitis, and disorder of bursae and tendons in the right shoulder.

In an August 14, 2014 decision, OWCP granted appellant a schedule award for a two percent permanent impairment of her right arm. The award was based on the impairment rating contained in the June 30, 2014 report of Dr. Brecher, a Board-certified orthopedic surgeon serving as an OWCP referral physician, as affirmed by the August 4, 2014 report of Dr. Garelick, a Board-certified orthopedic surgeon serving as an OWCP medical adviser.

In his June 30, 2014 report, Dr. Brecher detailed his June 27, 2014 examination of appellant and concluded that she had a two percent permanent impairment of her right arm under the standards of the sixth edition of the A.M.A., *Guides.* The Board finds that his second opinion report is in need of clarification for several reasons.

In his report, Dr. Brecher stated that appellant's right epicondylitis and right shoulder tendinitis had resolved, but that her right de Quervain tenosynovitis, a thumb/wrist condition, had not resolved. He then proceeded to rate the ostensibly resolved right shoulder tendinitis condition under Table 15-5 on page 402 without explaining why he chose this diagnosis-based condition as the primary condition for rating. Although Dr. Brecher provided grade modifiers in rating this condition under Table 15-5, he did not provide adequate explanation for how he chose the grade modifiers for functional history, physical examination and clinical studies.[11] He indicated that various accepted conditions had resolved, including bilateral carpal tunnel syndrome, but did not provide adequate discussion as to why he opined they had resolved. Dr. Brecher commented upon the rating by Dr. Chmell by discounting his use of range of motion rather than the diagnosis of carpal tunnel syndrome noting such rating is not relevant "as we are supposed to use diagnosis-related impairment."[12]

For these reasons, the case shall be remanded to OWCP for further clarification of Dr. Brecher's opinion that appellant only has two percent permanent impairment of her right

[10] *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[11] *See supra* note 9.

[12] It should be noted that Dr. Brecher discounted the range of motion rating method employed by Dr. Chmell, an attending Board-certified orthopedic surgeon, without fully explaining his opinion. The Board notes that Table 15-5 of the sixth edition provides that the range of motion rating method may, in some cases, be used for certain diagnosis-based conditions of the digits, wrists, elbows, and shoulders as an alternative rating method. A.M.A., *Guides* 391-405, 468-78.

arm. After carrying out this development, OWCP shall issue an appropriate decision regarding appellant's entitlement to schedule award compensation.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish more than two percent permanent impairment of her right arm, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: January 15, 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