United States Department of Labor
Employees' Compensation Appeals Board

P.W., Appellant	)	
and	)	**Docket No. 15-0822**
	)	**Issued: July 27, 2015**
U.S. POSTAL SERVICE, POST OFFICE, New Castle, DE, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 27, 2015 appellant, through counsel, filed a timely appeal from a December 5, 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 to review the merits of this case.

ISSUE

The issue is whether appellant has more than a two percent impairment of her right upper extremity, for which she had received a schedule award.

FACTUAL HISTORY

On March 19, 2007 appellant, a 53-year-old city carrier, sustained a traumatic injury in the performance of duty when she fell while delivering mail. She described the nature of her injury as large bruises over her right wrist and right buttocks. OWCP accepted her claim for

[1] 5 U.S.C. § 8101 *et seq.*

contusions to the back, right hand, and right wrist. It also accepted right radial styloid (de Quervain's) tenosynovitis.

On November 5, 2007 appellant underwent an OWCP authorized surgical release for de Quervain's tenosynovitis at the right wrist.

Appellant filed a claim for a schedule award on December 31, 2013. Dr. Nicholas P. Diamond, an osteopath, evaluated her impairment. In his history, he stated that she slipped and fell on March 19, 2007 injuring her right wrist and right shoulder. Dr. Diamond noted that x-rays of the right wrist were initially negative, but additional x-rays revealed a possible incomplete scaphoid fracture. Appellant was diagnosed with an acute avulsion fracture of the right wrist. An imaging study of the right shoulder revealed subacromial/subdeltoid bursitis and degenerative changes. Dr. Diamond noted that appellant underwent right shoulder surgery on June 14, 2010 for subacromial decompression, debridement of the rotator cuff, and debridement of a biceps tendon tear.

Dr. Diamond used the range of motion method to evaluate appellant's right shoulder. Flexion of 95 degrees, abduction of 85 degrees, adduction of 30 degrees, and internal rotation of 50 degrees described an 11 percent impairment of the right upper extremity. As appellant's functional history was severe, he increased the total impairment for an adjusted rating of 12 percent.

Using the diagnosis-based method to evaluate appellant's right wrist, Dr. Diamond noted a three percent default impairment value for wrist fracture, which he adjusted to five percent based again on a severe functional history as well as a moderate physical examination and clinical study. He combined the 12 percent range of motion impairment of the shoulder with the 5 percent diagnosis-based impairment of the wrist for a final upper extremity impairment of 16 percent.

An OWCP medical adviser reviewed Dr. Diamond's evaluation. He noted that the accepted condition was de Quervain's wrist tenosynovitis on the right with no evidence of any wrist fracture. Using the diagnosed-based method, the medical adviser noted a default impairment value of one percent for de Quervain's disease under Table 15-3. The adjustment factor for functional history was moderate, for physical examination was mild, and for clinical studies was moderate. The medical adviser therefore adjusted the default value two grades higher for a final upper extremity impairment of two percent.

The medical adviser explained that appellant did not have an accepted condition for the right shoulder, and x-rays showed only a questionable incomplete scaphoid. There was no evidence that appellant was ever treated for it or that it was ever accepted by OWCP. Therefore, the medical adviser concluded, Dr. Diamond's rating was not consistent with OWCP guidelines.

On June 4, 2014 OWCP issued a schedule award for a two percent impairment of appellant's right upper extremity.

Appellant, through counsel, requested an oral hearing on June 10, 2014 before an OWCP hearing representative, which was held on October 20, 2014. Appellant's counsel advised that he understood OWCP's problem relative to the shoulder since it was not accepted. He did feel,

however, that there was some evidence of a shoulder injury at the time of the accident. Unfortunately, the symptoms did not show up until somewhat after appellant's treatment for her wrist. Appellant's counsel agreed that there was some limit on the causation issue, but he thought there was some proof or support. He argued that even if there was insufficient medical support for the right shoulder condition, there was, at a minimum, a conflict on the impairment rating for the right upper extremity with respect to the wrist. Appellant's counsel suggested the need for a referee examination involving just the wrist. He added there was an obligation to develop whether the right shoulder condition was caused by the accident as well.

Following the hearing, appellant submitted additional medical evidence, including the June 14, 2010 operative report for her right shoulder surgery. The postoperative diagnoses were chronic impingement syndrome and massive irreparable rotator cuff tear with partial long head biceps tendon tear.

In a decision dated December 5, 2014, the hearing representative affirmed OWCP's June 4, 2014 schedule award decision. The hearing representative noted that appellant's right shoulder rotator cuff condition, which arose after the March 19, 2007 work injury, was not to be included in the impairment rating. Also, x-ray evidence did not establish the presence of a scaphoid fracture. The hearing representative found that the weight of the medical evidence rested with the opinion of the medical adviser.

On appeal, appellant's counsel argues there is a conflict between Dr. Diamond and the medical adviser on the percentage impairment of the right upper extremity, and a direct conflict concerning the wrist impairment. He argues there is *prima facie* evidence to establish that appellant's right shoulder condition was work related, and that OWCP should further develop whether her right shoulder condition is compensable.

LEGAL PRECEDENT

The schedule award provision of FECA[2] and the implementing regulations[3] 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.[4]

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. OWCP has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the appropriate standard

[2] *Id*. at § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

for evaluating schedule losses.[5] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[6]

Impairment ratings for schedule awards include those conditions accepted by OWCP as employment related and any preexisting permanent impairment of the same member or function.[7]

ANALYSIS

The Board notes that OWCP has accepted appellant's claim for the condition of right radial styloid (de Quervain's) tenosynovitis. OWCP did not accept as employment related any right shoulder condition or a fracture of the right wrist. As neither of these conditions caused any preexisting permanent impairment of the right upper extremity, they may not be included in appellant's impairment rating, as per FECA procedures.[8]

Dr. Diamond, the evaluating osteopath, based his impairment rating solely on appellant's right shoulder condition and wrist fracture. He did not evaluate her impairment based on the accepted condition of de Quervain's tenosynovitis. As this is contrary to FECA procedures, Dr. Diamond's impairment rating carries little, if any, probative weight.

An OWCP medical adviser recognized that OWCP had accepted de Quervain's tenosynovitis. He used the diagnosis-based approach to evaluate impairment due to the accepted medical condition. Diagnosis-based impairment is the primary method of evaluation for the upper extremities. The first step is to choose the diagnosis that is most applicable for the region being assessed.[9] Specific criteria for that diagnosis determine which class is appropriate: no objective problem, mild problem, moderate problem, severe problem, very severe problem approaching total function loss. The A.M.A., *Guides* assigns a default impairment rating for each diagnosis by class, which may be slightly adjusted using such grade modifiers or nonkey factors as functional history, physical examination, and clinical studies.[10]

The Wrist Regional Grid appears on page 395 of the A.M.A., *Guides*. The condition of de Quervain's disease is included under wrist sprain/strain. The default impairment value for this condition is one percent of the upper extremity, with a range of zero to two percent. This means that the highest impairment rating any claimant may receive for de Quervain's tenosynovitis is two percent, which is what OWCP awarded.

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[5] *Supra* note 3; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

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

[7] *Id*., Chapter 2.0808.5.d.

[8] *Id.*

[9] A.M.A., *Guides* 387, 389 (6th ed. 2009).

[10] *Id*. at 497.

Accordingly, the Board finds that appellant has no more than a two percent impairment of her right upper extremity causally related to the accepted tenosynovitis. The Board will therefore affirm OWCP's December 5, 2014 decision.

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.

On appeal, appellant's counsel argues that there remains an unresolved condition between Dr. Diamond and OWCP medical adviser. While it is true that Dr. Diamond and the medical adviser offered different impairment ratings of the right upper extremity, with respect to the right wrist in particular, there is no conflict warranting referral to an impartial medical specialist under 5 U.S.C. § 8123(a).[11] Dr. Diamond did not follow FECA procedures when he rated impairment based, in part, on a wrist fracture that OWCP had not accepted as employment related. His impairment rating is, therefore, insufficient to create a conflict with the impairment rating given by the medical adviser, who properly approached the evaluation based on the accepted condition of de Quervain's tenosynovitis.[12]

CONCLUSION

The Board finds that appellant has no more than two percent impairment of her right upper extremity, for which she received a schedule award.

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.0810.11.b (September 2010).

[12] The Board has jurisdiction over only final adverse decisions of OWCP issued under FECA. *See* 5 U.S.C. § 8149; and 20 C.F.R. §§ 501.2(c) and 501.3

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 27, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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