

FACTUAL HISTORY

The case was before the Board on a prior appeal.² As the Board noted, OWCP had accepted appellant's occupational disease claim for bilateral carpal tunnel syndrome (CTS) and ulnar nerve lesion resulting from her duties as a mail handler. With respect to a permanent impairment to a scheduled member, it issued a decision dated March 26, 2014 finding that appellant had three percent left arm permanent impairment and no right arm impairment. Appellant requested reconsideration. By decision dated September 8, 2014, OWCP denied modification of the schedule award decision.

In the prior appeal, the Board set aside the September 8 and March 26, 2014 OWCP decisions. Appellant had submitted reports from Dr. Carl Dyer, Jr., a Board-certified orthopedic surgeon.³ The Board found that the determination of three percent permanent left arm impairment, with no right arm impairment, was not based on an adequate medical background. As to the left arm, the Board found an OWCP medical adviser had not properly explained how Table 15-23 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) had been applied, particularly with respect to grade modifiers. For the right arm, the medical adviser did not discuss the relevant evidence or explain the opinion that appellant had no right arm permanent impairment. The Board remanded the case to OWCP to properly develop the medical evidence. The history of the case as provided by the Board in the February 3, 2015 decision is incorporated herein by reference.

On September 10, 2014 OWCP received a September 3, 2014 report from Dr. Dyer, who opined that appellant had five percent permanent impairment of each arm under the A.M.A., *Guides*. Dr. Dyer referred to his prior reports and enclosed a March 9, 2012 electromyogram report (EMG).⁴ He found appellant had reached maximum medical improvement as of September 3, 2014.

OWCP referred medical evidence to an OWCP medical adviser for an opinion as to the degree of permanent impairment. In a report dated February 5, 2015, the medical adviser identified Table 15-23 of the A.M.A., *Guides* and opined that he agreed with Dr. Dyer that appellant had five percent permanent impairment to each arm. He discussed the grade modifiers and found for test findings a grade modifier one, and for history and physical findings a grade modifier two. The medical adviser also found a grade modifier two for functional scale, resulting in a bilateral five percent permanent impairment under Table 15-23. He opined the date of maximum medical improvement was September 3, 2014.

By decision dated March 10, 2015, OWCP issued a schedule award for an additional two percent for a total of five percent permanent impairment to the left arm and two percent

² Docket No. 14-2034 (issued February 3, 2015).

³ The record indicated that appellant underwent right carpal tunnel release on February 13, 2013 and a left carpal tunnel release on May 6, 2013.

⁴ Dr. Dyer had opined in a February 11, 2014 report that appellant had five percent permanent right arm impairment, and opined that appellant had five percent permanent left arm impairment in an April 24, 2014 report.

permanent impairment for the right arm. The period of the award was 12.48 weeks to run for the period September 3 to November 29, 2014.

LEGAL PRECEDENT

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁵ Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.⁶ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁷

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.⁸ In Table 15-23, grade modifier levels (ranging from zero to four) 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.⁹

ANALYSIS

In the present case, both the attending orthopedic surgeon, Dr. Dyer, and OWCP medical adviser, opined that under the A.M.A., *Guides* appellant had five percent permanent impairment to each arm. As noted above, the application of Table 15-23 involves the determination of the appropriate grade modifiers for test findings, history, and physical findings. These grade modifiers are averaged to determine the overall grade modifier level and the appropriate default impairment. Once the default impairment is determined, it may be adjusted up or down by one percent based on the functional scale.

OWCP medical adviser explained that for each arm he would assign a grade modifier one based on the March 9, 2012 EMG form mild conduction delay, a grade modifier two for history based on appellant's symptoms, and a grade modifier two for physical findings of decreased

⁵ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁶ A. George Lampo, 45 ECAB 441 (1994).

⁷ See 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, Exhibit 1 (January 2010).

⁸ A.M.A., *Guides* 448-50.

⁹ *Id.*

sensation. This is in accord with Table 15-23 and the average grade modifier is 1.66, rounded up to a grade modifier 2. The default impairment is five percent under Table 15-23 for grade modifier 2.¹⁰ There is no adjustment based on functional scale, as the medical adviser found the functional scale was also grade modifier two (moderate).

The Board finds that the opinion of OWCP medical adviser who, based on the findings of Dr. Dyer, found that appellant had five percent permanent impairment to each arm represents the weight of the medical evidence. It is consistent with Dr. Dyer's opinion and provides a clear explanation as to how Table 15-23 was applied.

The March 10, 2015 decision, however, failed to properly reflect the weight of the medical evidence regarding the right arm. Appellant had previously received a schedule award for three percent left arm permanent impairment on March 26, 2014. Therefore appellant would be entitled to an additional two percent for the left arm,¹¹ but for the right arm, appellant had not previously received a schedule award. The March 10, 2015 decision finds appellant has only two percent right arm impairment. It is not clear whether OWCP erroneously had determined appellant previously received a schedule award for three percent impairment to the right arm.

Since the medical evidence establishes a five percent right arm permanent impairment, the case will be remanded to OWCP for proper issuance of a schedule award for an additional three percent impairment to the right arm in accord with the probative medical evidence of record. On return of the case record, OWCP should properly issue the schedule award for the right arm.

CONCLUSION

The Board finds the evidence does not establish more than five percent left arm impairment. The case is remanded to OWCP for proper issuance of a schedule award for an additional three percent permanent impairment to the right arm in accord with the medical evidence of record.

¹⁰ *Id.* at 449, Table 15-23.

¹¹ It is well established that benefits payable under 5 U.S.C. § 8107(c) are reduced by the period of compensation paid under a prior schedule award if the current impairment duplicates the prior impairment rating. *T.S.*, Docket No. 09-1308 (issued December 22, 2009); 20 C.F.R. § 10.404(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 10, 2015 is affirmed with respect to the left arm. As to the right arm, the decision is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: November 3, 2015
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board