United States Department of Labor
Employees' Compensation Appeals Board

J.F., Appellant	)	
and	)	**Docket No. 15-0037**
	)	**Issued: October 27, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 6, 2014 appellant, through counsel, filed a timely appeal from a July 7, 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 case.

ISSUE

The issue is whether appellant has more than five percent impairment of the left upper extremity for which he received a schedule award.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] OWCP's July 7, 2014 decision found that appellant had no more than 5 percent impairment of the left and no more than 14 percent impairment of the right arm, for which he had received schedule awards. On appeal, counsel only seeks the Board's review of the impairment found for the left arm.

FACTUAL HISTORY

On January 2, 2008 appellant, then a 55-year-old mail carrier, filed an occupational disease claim alleging that he developed bilateral hand conditions due to performing repetitive work tasks. OWCP accepted the claim for bilateral carpal tunnel syndrome and later expanded his claim to include bilateral hand osteoarthritis. Appellant received compensation benefits.[3]

Appellant was treated by Dr. Allen R. Berkowitz, a Board-certified orthopedic surgeon, on April 22, 2008 for bilateral hand pain and tingling. He reported working as a mail carrier. Dr. Berkowitz diagnosed bilateral carpal tunnel syndrome that was related to appellant's employment. On May 7, 2008 he noted that appellant underwent an electromyogram (EMG) and electrodiagnostic studies on May 7, 2008 which revealed mild double crush syndrome involving chronic irritation of the right greater than left C6 cervical radiculopathy and mild/early bilateral carpal tunnel syndrome. Dr. Berkowitz noted that appellant's bilateral carpal tunnel syndrome was not very symptomatic and advised that a portion of appellant's symptoms may be related to the cervical radiculopathy.

On July 2, 2010 appellant filed a claim for a schedule award. He submitted a January 29, 2010 report from Dr. Arthur Becan, a Board-certified orthopedic surgeon, who noted a history of injury. Dr. Becan advised that December 19, 2007 left wrist x-rays showed arthritic change along the radial ray of the wrist and in the first metacarpophalangeal (MCP) joint. His diagnoses included cumulative and repetitive occupational trauma, medial epicondylitis left elbow, carpal tunnel syndrome left hand, confirmed on EMG, and de Quervain's tenosynovitis left wrist. Dr. Becan noted the *Quick*DASH disability score was 11 percent for the left arm. He noted examination of both wrists revealed palmar wrist tenderness, Tinel's sign was positive, Phalen's sign was positive, Finkelstein's test was positive, range of motion testing of the left wrist was restricted and caused dorsal wrist pain on dorsiflexion, and ulnar deviation was restricted on palmar flexion. Dr. Becan noted examination of the left elbow revealed tenderness noted along the medial epicondyle and range of motion testing was restricted and caused medial elbow pain on flexion-extension and supination. Neurological testing including Semmes-Weinstein revealed decreased sensibility over the median nerve distribution of both hands. Grip strength testing *via* Jamar Hand Dynamometer at level 3 revealed 20 kilogram (kg) of force strength on the right versus 15 kg of force strength on the left. Pinch key testing was four kg in both hands. Dr. Becan opined that the work-related injury was the competent producing factor for the claimant's subjective and objective findings. Pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[4] (A.M.A., *Guides*) he noted for entrapment neuropathy of the median nerve at the wrist[5] appellant was a grade modifier 3 based on test findings of 3 based on the EMG/NCV of May 7, 2008, history was grade modifier 3, and grade modifier 3 for Physical Examination (GMPE) for decreased pinch strength.

[3] Appellant has prior claims for his arms including a claim for right ulnar neuropathy, with a date of injury of November 3, 2001, case file number xxxxxx465, for which he was granted a schedule award for 14 percent impairment of the right arm. In addition, he had a claim which was accepted for left medial epicondylitis, with a date of injury of February 7, 2005, case file number xxxxxx258.

[4] A.M.A., *Guides* (6th ed. 2008).

[5] *Id.* at 449, Table 15-23.

This yielded a default impairment of eight percent. Dr. Becan noted the *Quick*DASH score was 11 percent so the left arm impairment decreased to 7 percent.

With regard to left medial epicondylitis appellant was a class 1 with one percent default impairment. The grade modifier for Functional History (GMFH) (*Quick*DASH of 11 percent) was zero, the grade modifier for physical examination was not applicable, and the grade modifier zero for Clinical Studies (GMCS). Dr. Becan noted the net adjustment formula yielded -1 and the left arm impairment after net adjustment was zero.

For left de Quervain's tenosynovitis appellant was a class 1 for one percent default impairment. The grade modifier for functional history was zero (*Quick*DASH of 11 percent), the grade modifier for physical examination was not applicable and the grade modifier for clinical studies (x-ray) was 1. The net adjustment formula yielded a -1. The left upper extremity impairment after net adjustment was one percent impairment. Dr. Becan combined left arm impairment was eight percent with maximum medical improvement reached on January 29, 2010.

In a July 29, 2010 report, an OWCP medical adviser disagreed with Dr. Becan, asserting that Dr. Becan overrated the grade modifiers in each category. Dr. Becan provided a grade modifier of 3 in each category when evaluating carpal tunnel syndrome. The medical adviser found the grade modifiers noted by Dr. Becan were not supported by his examination findings. He noted the grade modifier for clinical studies would be 1 and not 3 as noted by Dr. Becan as the May 27, 2008 EMG revealed only early bilateral carpal tunnel syndrome. The medical adviser advised that the grade modifier for functional history was 1 and not 3 as appellant's pain level was 4 out of 10 in each hand and the *Quick*DASH score was normal at 11 percent. He indicated that Table 15-23 provides that a *Quick*DASH score of 11 percent equals a zero grade modifier. The medical adviser recommended a second opinion.

On September 13, 2010 OWCP referred appellant to Dr. Robert Franklin Draper, a Board-certified orthopedic surgeon, for a second opinion regarding permanent impairment. In a September 30, 2010 report, Dr. Draper noted appellant's history of injury and medical treatment. He noted that motor function was normal for the bilateral deltoids, biceps, triceps, wrist extensors, wrist flexors, finger extensor, finger flexors, and grip strength. Tested reflexes were equal and symmetrical, with normal light touch sensation at C2-8 and T1 dermatomes. Examination of the elbows revealed flexion of 150 degrees, forearm supination of 85 degrees, and forearm pronation was 80 degrees. Examination of the wrists revealed wrist extension of 80 degrees, flexion of 80 degrees, ulnar deviation of 40 degrees, and radial deviation of 30 degrees. The fingers of the left hand showed range of motion for the distal interphalangeal joint for the index, middle, ring, and little finger of 70 degrees, range of motion for the proximal interphalangeal joint for the index, middle, ring, and little finger of 100 degrees, and the range of motion for the MCP joint for the index, middle, ring, and little finger of 90 degrees. Dr. Draper noted Tinel's sign was negative over the medial and ulnar nerve of the left hand and wrist, there was no thenar or hypothenar atrophy of the left hand, grip strength was +4.5 for the left hand, but he did not believe appellant put forth maximal effort. Appellant had normal light touch at the tip of the left index and little fingers. His diagnoses included mild left carpal tunnel syndrome and mild arthritis of the left first MCP joint. Dr. Draper calculated the impairment rating for bilateral carpal tunnel syndrome under Table 15-21, page 439, of the A.M.A., *Guides* for peripheral nerve

impairment. Using the table for below the mid-forearm, he noted appellant had mild sensory deficit for a class C or one percent left arm impairment. Dr. Draper noted a grade modifier for functional history of 1, a grade modifier for physical examination of 1 and a grade modifier for clinical studies of 1 for a net adjustment of zero. He concluded that appellant was a class 1 with an adjustment of zero which yields a default grade C for one percent impairment of the left arm for mild carpal tunnel syndrome.

In a report dated May 9, 2011, an OWCP medical adviser reviewed Dr. Draper's report and indicated that Table 15-21 was inapplicable in rating appellant's arm impairment for the accepted carpal tunnel syndrome. He opined that Dr. Draper should have used Table 15-23, page 449, of the A.M.A., *Guides,* to rate carpal tunnel syndrome. The medical adviser recommended that Dr. Draper redo his calculations. Additionally, he noted that osteoarthritis of the hands was also accepted and should be considered in the evaluation.

In a June 9, 2011 addendum report, Dr. Draper noted reviewing appellant's chart and the medical adviser's comments. He concurred that Table 15-23, page 449 of A.M.A., *Guides* was appropriate to calculate impairment. Dr. Draper referenced that table and noted, with regard to the left arm, appellant was a grade modifier 1 for clinical studies, a grade modifier 1 for functional history, and a grade modifier 1 for physical examination. He noted using the net adjustment formula that appellant was a grade 1 modifier with a default value of two percent impairment. With regard to the left MCP joint mild osteoarthritis, pursuant to the A.M.A., *Guides,* Dr. Draper used Table 15-2, page 392, post-traumatic degenerative joint disease, which was a class 1 with a default value of C, for six percent impairment of the thumb digit. He noted the grade modifier for functional history was 1, the grade modifier for physical examination was 1, and the grade modifier for clinical studies was 2. The net adjustment formula yielded +1, which correlated with grade D for seven percent impairment for the left thumb MCP joint for mild osteoarthritis. Under Table 15-12, page 421, Impairment Values Calculated from Digit Impairment, seven percent digit impairment of the thumb converted to three percent arm impairment. Dr. Draper calculated total left arm impairment of five percent.

In June 22, 2011 and February 9, 2012 reports, the medical adviser concurred with Dr. Draper's determination. He noted appellant had five percent impairment of the left arm.

On April 30, 2012 OWCP granted appellant a schedule award for five percent impairment of the left upper extremity. The period of the award was from September 30, 2010 to January 17, 2011. On May 7, 2012 appellant requested an oral hearing which was held on August 13, 2012. In a decision dated September 26, 2012, an OWCP hearing representative affirmed the April 30, 2012 decision.

Appellant appealed to the Board. In a June 25, 2013 order remanding case, the Board set aside the September 26, 2012 decision.[6] It instructed OWCP to combine claim file numbers xxxxxx465, xxxxxx258, and xxxxxx584 and issue a *de novo* decision.

[6] Docket 13-684 (issued June 25, 2013).

In a decision dated October 23, 2013, OWCP found that appellant had no more than five percent impairment of the left arm for which he received a schedule award.[7]

On October 29, 2013 appellant requested an oral hearing which was held on April 14, 2014. He submitted an April 28, 2014 update of Dr. Becan's January 29, 2010 report. Dr. Becan added an impairment rating for appellant's left hand arthritis to his January 29, 2010 findings on examination. He found seven percent impairment for entrapment neuropathy of the left median nerve at the wrist, zero percent impairment for left medial epicondylitis, one percent impairment for left de Quervain's tenosynovitis, and three percent impairment for left thumb MCP joint arthritis, for a combined left arm impairment of 11 percent.[8]

In a decision dated July 7, 2014, the hearing representative affirmed the decision dated October 23, 2013. He found that appellant had no more than 5 percent impairment of the left and no more than 14 percent impairment of the right arm, for which he had received schedule awards.

LEGAL PRECEDENT

The schedule award provision of FECA[9] and its implementing federal regulations[10] 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.[11] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.[12] It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.[13]

The A.M.A., *Guides* provide a specific rating process for entrapment neuropathies such as carpal tunnel or cubital tunnel.[14] This rating process requires that the diagnosis of a focal

[7] OWCP also found that appellant had no more than 14 percent permanent impairment of the right arm for which he had received a schedule award. For the left arm, it noted that he had previously received a payment totaling $10,502.70 based on a 2007 pay rate, but that he was owed an additional $421.15 based on his pay rate as of September 30, 2010. As noted, *infra*, the left arm schedule award ran from September 30, 2010 to January 17, 2011.

[8] Dr. Becan found this pursuant to Table 15-2, page 392 of the A.M.A., *Guides*. He stated that this was a default grade C digit impairment of six percent. Dr. Becan stated that the net adjustment formula yielded +1 which changed the default rating to seven percent digit impairment which converted to three percent impairment of the left arm.

[9] 5 U.S.C. § 8107.

[10] 20 C.F.R. § 10.404.

[11] *Id.* at § 10.404(a).

[12] A.M.A., *Guides* (6th ed. 2009).

[13] *Tammy L. Meehan*, 53 ECAB 229 (2001).

[14] A.M.A., *Guides* 432-50.

neuropathy syndrome be documented by sensory or motor nerve conduction studies or EMG. The A.M.A., *Guides* do not allow additional impairment values for decreased grip strength, loss of motion, or pain.[15] Table 15-23 provides a compilation of the grade modifiers for test findings, history, and physical findings which are averaged and rounded to the nearest whole number. This table also provides the range of impairment values as well as the function scale modifier which determines the impairment value within the impairment scale.[16]

ANALYSIS

On appeal, appellant contends that he is entitled to a schedule award greater than five percent permanent impairment of the left upper extremity. OWCP accepted his claim for bilateral carpal tunnel syndrome, bilateral hand osteoarthritis, right ulnar neuropathy, and left medial epicondylitis. On July 2, 2010 appellant filed a Form CA-7 claim for a schedule award. The Board finds that there is an unsolved conflict in medical opinion between the Dr. Draper, the second opinion physician, and Dr. Becan appellant's treating physician.

In a June 9, 2011 addendum report, Dr. Draper reviewed the medical adviser's comments and agreed that he used the wrong tables to calculate appellant's impairment rating. He concurred with the medical adviser's impairment rating. Dr. Draper noted that for the left arm under Table 15-23, page 449, Entrapment/Compression Neuropathy Impairment, appellant was a grade modifier 1 for clinical studies, a grade 1 modifier for functional history, and a grade modifier 1 for physical examination. He noted using the net adjustment formula appellant was a grade 1 modifier with a default value of two percent impairment. With regard to the left MCP joint mild osteoarthritis, pursuant to the A.M.A., *Guides*, Dr. Draper used Table 15-2, page 392, post-traumatic degenerative joint disease, which was a class 1 with a default value of C, for six percent impairment of the thumb. He noted the grade modifier for functional history was 1, the grade modifier for physical examination was 1, and the grade modifier for clinical studies was 2. The net adjustment formula yielded +1, which correlated with grade D for seven percent impairment for the left thumb MCP joint for mild osteoarthritis. Under Table 15-12, page 421, Impairment Values Calculated from Digit Impairment, seven percent digit impairment of the thumb converted to three percent arm impairment. Dr. Draper calculated total left arm impairment of five percent.

By contrast, Dr. Becan noted that pursuant to Table 15-23, page 449 of the A.M.A., *Guides*[17] for entrapment neuropathy of the median nerve at the left wrist[18] appellant was a grade modifier 3 based on test findings of the EMG/NCV of May 7, 2008, history was grade modifier 3, and grade modifier 3 for physical examination for decreased pinch strength. This yielded a default impairment of eight percent. Dr. Becan noted the *Quick*DASH score was 11 percent so the arm impairment decreased to seven percent. With regard to left medial epicondylitis, appellant was a class 1 with one percent default impairment. The grade modifier for functional

[15] *Id*. at 433.

[16] *See id*. at 449, 448-50.

[17] *Supra* note 4.

[18] *Supra* note 5.

history (*Quick*DASH of 11 percent) was zero, the grade modifier for physical examination was not applicable, and the grade modifier zero for clinical studies was zero. Dr. Becan noted the net adjustment formula yielded -1 and the left arm impairment, after net adjustment, was zero. For left de Quervain's tenosynovitis appellant was a class 1 for one percent default impairment. The grade modifier for functional history was zero (*Quick*DASH of 11 percent), the grade modifier for physical examination was not applicable, and the grade modifier for clinical studies (x-ray) was 1. The net adjustment formula yielded a -1. The left upper extremity impairment after net adjustment was one percent impairment. In a supplemental report dated April 28, 2014, Dr. Becan added an impairment rating for appellant's left hand arthritis to his January 29, 2010 findings on examination. He found an additional three percent impairment for left thumb MCP joint arthritis, for a combined left upper extremity impairment of 11 percent.[19]

Section 8123(a) of FECA provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[20] When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.[21] The Board finds that the impairment calculation report of Dr. Beacon is well rationalized and sufficiently detailed to result in a conflict with the opinion of Dr. Draper. Therefore, OWCP shall refer appellant to an impartial medical specialist to resolve the medical conflict regarding the extent of permanent impairment arising from his accepted employment injury.

In order to resolve the conflict in the medical opinions, the case will be remanded to OWCP for referral of appellant, together with the case record and a statement of accepted facts, to an impartial medical specialist for a determination regarding the extent of appellant's left arm impairment as determined in accordance with the relevant standards of the A.M.A., *Guides*.[22] After such further development as OWCP deems necessary, a *de novo* decision should be issued regarding the extent of appellant's upper extremity impairment.

[19] Dr. Becan found this pursuant to Table 15-2, page 392 of the A.M.A., *Guides*. He noted that this was a default grade C digit impairment of six percent. Dr. Becan found that the net adjustment formula yielded +1 which changed the default rating to seven percent digit impairment which converted to three percent impairment of the left arm. He did not indicate that he conducted a current examination of appellant in updating his January 29, 2010 report.

[20] 5 U.S.C. § 8123(a).

[21] *William C. Bush*, 40 ECAB 1064, (1989).

[22] *See Harold Travis*, 30 ECAB 1071, 1078-79 (1979).

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further development in accordance with this decision.

Issued: October 27, 2015
Washington, DC

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

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

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