United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 15-1194**
	)	**Issued: October 26, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Carol Stream, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 24, 2015 appellant filed a timely appeal from a February 20, 2015 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 claim.

ISSUE

The issue is whether appellant has more than six percent permanent impairment of the right upper extremity and six percent of the left upper extremity for which she received schedule awards.

On appeal appellant asserts that the award for the left wrist is incorrect because OWCP medical adviser incorrectly stated that a left wrist triangular fibrocartilage complex (TFCC) tear was not an accepted condition.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 26, 2009 appellant, then a 44-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that repetitive job duties caused bilateral carpal tunnel syndrome, bilateral shoulder pain, and groin and lower back pain. She stopped work on September 18, 2009 and did not return.

After appellant's claim was initially denied in decisions dated November 19, 2009 and June 16, 2010, on December 17, 2010, OWCP accepted the claim for bilateral carpal tunnel syndrome, left wrist ganglion cyst, left wrist TFCC tear, and bilateral shoulder overuse syndrome. Appellant received wage-loss compensation through December 13, 2009, and retired on disability effective December 13, 2010.[2]

On January 31, 2011 appellant began treatment with Dr. Eugene P. Lopez, an attending Board-certified orthopedic surgeon, who diagnosed bilateral carpal tunnel syndrome, bilateral shoulder impingement syndrome, and left dorsal wrist ganglion cyst. Dr. Lopez advised that all were employment related. On July 15, 2011 he performed right carpal tunnel decompression. Dr. Lopez continued to submit follow-up reports describing appellant's condition. On March 14, 2011 he additionally diagnosed lumbar disc herniation.

In a request received by OWCP on November 28, 2011, appellant requested that her claim be expanded to include back and hip conditions. In January 2012 OWCP referred her to Dr. Allan M. Brecher, Board-certified in orthopedic surgery, for a second opinion evaluation. Following physical examination, Dr. Brecher diagnosed bilateral carpal tunnel syndrome, ganglion of the left wrist, and TFCC tear of the left wrist. He advised that appellant did not have any current shoulder, hip, or low back conditions related to her employment. Dr. Brecher concluded that she could perform sedentary duties with restrictions.

OWCP determined that a conflict in medical evidence had been created between the opinions of Dr. Lopez and Dr. Brecher regarding whether appellant had additional employment-related conditions and regarding her capacity to work. In April 2012 it referred her to Dr. Richard E. Erickson, a Board-certified orthopedic surgeon, for an impartial evaluation. In a May 6, 2012 report, Dr. Erickson reviewed the record and provided examination findings. He advised that appellant had no residuals of the right carpal tunnel surgery and had no shoulder or other upper extremity problem attributable to her federal employment. Dr. Erickson noted a recent lumbar MRI scan and indicated that she had no physical findings suggesting radiculopathy or back pain disproportionate to mild degenerative disc disease. He indicated that appellant's current low back and hip pain was associated with her being overweight or secondary to the natural aging process. Dr. Erickson concluded that she could perform modified mail handler duties and provided limitations on a May 2, 2012 work capacity evaluation.

[2] A May 4, 2009 electrodiagnostic study of both upper extremities indicated moderate right median neuropathy at the carpal tunnel and mild median neuropathy at the left. A December 21, 2009 magnetic resonance imaging (MRI) scan of the left wrist was suggestive of a tear of the TFCC. Appellant submitted a Form CA-7 claim for compensation through December 17, 2010. The record does not indicate that OWCP issued a decision regarding her claim for compensation between December 13, 2009 and December 17, 2010.

By decision dated May 16, 2012, OWCP found that the weight of the medical evidence rested with the impartial medical opinion of Dr. Erickson and denied appellant's claim for employment-related back or hip conditions.[3]

On May 27, 2012 appellant underwent a functional capacity evaluation (FCE). OWCP forwarded the results to Dr. Erickson, and in a July 6, 2012 report, Dr. Erickson advised that, based on the FCE, appellant had the capacity to perform all mail handler duties. On an attached work capacity evaluation, he indicated that she could work eight hours a day.

A left shoulder MRI scan study on October 11, 2012 demonstrated a partial thickness tear. On October 24, 2012 Dr. Lopez noted the MRI scan findings. He advised that appellant could perform light-duty work with restrictions.

On February 5, 2013 appellant filed a schedule award claim (Form CA-2). An August 21, 2013 electrodiagnostic study of the left upper extremity was interpreted as normal. In an October 17, 2013 report, Dr. Lopez advised that maximum medical improvement was reached on September 9, 2013. He performed an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).[4] Regarding the right upper extremity, Dr. Lopez evaluated appellant's impairment under Table 15-23, Entrapment/Compression Neuropathy. He found a test findings grade modifier of 1 for conduction delay of the right median nerve, a history modifier of 2 for significant intermittent symptoms, and a physical findings modifier of 2 for decreased sensation per monofilament and two-point discrimination tests on FCE. Dr. Lopez averaged these values and found a default impairment of five percent. He further modified appellant's rating based on her *Quick*DASH score of 66, finding a functional scale modifier of 3. This, combined with the condition modifier of 2, moved the rating one space to the right which resulted in six percent permanent right upper extremity impairment due to carpal tunnel syndrome.

Dr. Lopez then rated appellant's left upper extremity under Table 15-3, Wrist Regional Grid, for a diagnosis of TFCC injury of the left wrist. He found a class 1 impairment with a default rating of 8 percent, a functional history modifier of 3, due to a *Quick*DASH score of 66; a physical examination modifier of 1, due to tenderness; and no modifier for clinical studies. Dr. Lopez then applied the net adjustment formula and concluded that appellant had a total 10 percent impairment due to the left TFCC tear. He next rated appellant's left wrist under Table 15-3 for a diagnosis of ganglion cyst, finding a class 1 impairment with a default rating of 2 percent, with a functional history modifier of 3, a physical examination modifier of 1, and a clinical studies modifier of 1. After applying the net adjustment formula, Dr. Lopez concluded that appellant had an additional three percent impairment due to a left wrist ganglion cyst. He then combined the two left wrist ratings for 13 percent left arm impairment. Dr. Lopez additionally rated appellant's left wrist for the diagnosed carpal tunnel syndrome under Table 15-23. He found grade modifiers of 1 for test findings, 3 for history, and 2 for physical findings.

[3] OWCP also referenced file number xxxxxx063, accepted for bilateral wrist tendinitis and right carpal tunnel syndrome. The instant claim is adjudicated under file number xxxxxx871.

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

Dr. Lopez averaged these values, finding a default value of five percent. He found a functional scale modifier of 3, based on appellant's *Quick*DASH score, which moved the rating one space to the right. This resulted in six percent impairment for the left carpal tunnel syndrome. Dr. Lopez then combined the 13 percent left upper extremity impairment due to TFCC tear and ganglion cyst, with the 6 percent peripheral nerve impairment, and concluded that appellant had a total 18 percent impairment of the left upper extremity when utilizing the Combined Values Chart on page 604 of the A.M.A., *Guides*.

On January 14, 2014 OWCP asked its medical adviser to comment on Dr. Lopez's impairment evaluation. It stated that the accepted conditions were bilateral shoulder overuse syndrome; left ganglion cyst; left rupture of synovium, unspecified; and bilateral carpal tunnel syndrome.

In a January 20, 2014 report, Dr. David H. Garelick, a Board-certified orthopedic surgeon and OWCP medical adviser, indicated that he reviewed the medical record including Dr. Lopez's impairment evaluation and the reports from Drs. Brecher and Erickson. Regarding the right wrist, he agreed with Dr. Lopez's conclusion that under Table 15-23, appellant had six percent permanent impairment. Regarding the left wrist, the medical adviser also agreed with Dr. Lopez's impairment rating of six percent for left carpal tunnel syndrome. He, however, found that, as a TFCC tear had not been accepted as work related, appellant would not be entitled to a schedule award for that diagnosis. The medical adviser also found that since Dr. Lopez did not indicate in his November 18, 2013 treatment note that appellant's ganglion cyst had returned or that it was currently painful, that award was also disregarded. He concluded that appellant had six percent permanent impairment of each arm. The medical adviser found the date of maximum medical improvement for the right wrist occurred three months postoperatively, or October 15, 2011, and the date of maximum medical improvement for the left upper extremity occurred as of the date of the FCE on October 17, 2013.

By decision dated February 20, 2015, appellant was granted a schedule award for six percent impairment of the right upper extremity and six percent impairment of the left, for 37.44 weeks of compensation, to run from October 17, 2013 to July 6, 2014.

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 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]

[5] 20 C.F.R. § 10.404.

[6] *Id.* at § 10.404(a).

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

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 (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 in section 15.4f of the A.M.A., *Guides*.[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 the 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 six percent impairment of the right upper extremity. The accepted right upper extremity conditions are carpal tunnel syndrome and bilateral shoulder overuse syndrome. On July 15, 2011 Dr. Lopez performed right carpal tunnel decompression. On February 5, 2013 appellant filed a schedule award claim.

In support of her schedule award claim, appellant submitted an October 17, 2013 report in which Dr. Lopez provided an impairment rating under Table 15-23 of the A.M.A., *Guides*.[14] Dr. Lopez indicated that appellant had a test findings grade modifier of 1, a history modifier of 2 and a physical findings modifier of 2. He then averaged the grade modifiers, chose the default

[8] *Supra* note 4 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 433-50.

[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).

[14] *Supra* note 4 at 449.

value of 5 percent and, based on appellant's *Quick*DASH score of 66, increased the right upper extremity impairment to six percent.

In a January 20, 2014 report, Dr. Garelick, the medical adviser, noted his review of the medical record including Dr. Lopez's report and agreed with his conclusion that appellant had six percent impairment under Table 15-23 due to right carpal tunnel syndrome. Both physicians properly applied the A.M.A., *Guides*. The medical evidence of record thus supports that appellant has six percent right arm impairment due to carpal tunnel syndrome. There is no medical evidence in accordance with the A.M.A., *Guides* to support that she was entitled to an additional right upper extremity award.

The Board also finds that appellant has six percent impairment of the left upper extremity due to the diagnosed carpal tunnel syndrome. As with the right upper extremity, Dr. Garelick reviewed Dr. Lopez's report and agreed that appellant had six percent impairment under Table 15-23 due to left carpal tunnel syndrome. Both physicians properly applied the A.M.A., *Guides*. There is no medical evidence in accordance with the A.M.A., *Guides* to support that she was entitled to an additional award for left carpal tunnel syndrome.

The Board, however, finds the case is not in posture for decision regarding whether appellant is entitled to an additional left arm award. The sixth edition of the A.M.A., *Guides* states that peripheral nerve impairment may be combined with diagnosis-based impairments at the upper extremity level as long as the diagnosis-based impairment does not encompass the nerve impairment.[15] Section 15.2 of the A.M.A., *Guides* further provides that, if a patient has two significant diagnoses, the examiner should use the diagnosis with the highest causally-related impairment rating for the impairment calculation.[16] If more than one diagnosis can be used, the diagnosis that provides the higher rating should be adopted.[17] In the case at hand, appellant has additional accepted left upper extremity conditions of ganglion cyst and TFCC tear, and Dr. Lopez incorrectly rated both accepted conditions rather than selecting the one with the higher rating, which he determined was the TFCC tear.

The January 14, 2014 request sent by OWCP to Dr. Garelick, the medical adviser, omitted that a TFCC tear was an accepted left arm condition. The medical adviser relied on the stated accepted conditions and found that appellant was not entitled to an additional award for TFCC tear because it had not been accepted.

Because Dr. Garelick did not correctly rate appellant's left arm for an accepted left TFCC tear, the case will be remanded for OWCP to obtain a supplemental report from him regarding whether appellant would be entitled to an additional left upper extremity schedule award for this or any other diagnosis-based impairment. After this and such further develop as OWCP deems necessary, it shall issue a *de novo* decision on the issue of appellant's entitlement to an additional left upper extremity schedule award.

[15] *Id*. at 419.

[16] *Id*. at 387; *see C.K.*, Docket No. 09-2371 (issued August 18, 2010).

[17] *James R. Hill*, 57 ECAB 583 (2006).

With regard to the right upper extremity, 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 six percent permanent impairment of the right upper extremity for which she received a schedule award. The Board further finds the case not in posture for decision regarding the degree of impairment of the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2015 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: October 26, 2015
Washington, DC

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

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

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