

**United States Department of Labor
Employees' Compensation Appeals Board**

R.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Gainesville, GA, Employer**

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**Docket No. 15-1444
Issued: August 11, 2016**

Appearances:
*Lenin V. Perez, for the appellant*¹
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 June 23, 2015 appellant, through his representative, filed a timely appeal of a March 20, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has established more than two percent permanent impairment of his right arm.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 31, 2012 appellant, a 57-year-old letter carrier, filed an occupational disease claim (Form CA-2), alleging bilateral carpal tunnel syndrome causally related to his employment factors. On December 4, 2012 OWCP accepted bilateral carpal tunnel syndrome. Appellant stopped work on September 16, 2012 and returned to limited-duty work on September 17, 2012.

In a December 5, 2012 report, Dr. Benjamin N. Puckett, Board-certified in orthopedic surgery, stated that appellant was experiencing persistent bilateral hand pain, that the pain was causing him difficulty with lifting, grasping, and pinching, and that it was aggravated by any movement. He noted that the results of electromyogram (EMG) and nerve conduction velocity (NCV) tests showed moderate-to-severe compression of the left cubital tunnel in addition to moderate compression of bilateral carpal tunnel syndrome. Dr. Puckett diagnosed moderate bilateral carpal tunnel syndrome.

The claim was expanded on December 19, 2012 to include lesion of left ulnar nerve/cubital tunnel.

Dr. Puckett performed a left ulnar nerve transposition procedure at the elbow and left carpal tunnel release on January 31, 2013. Appellant received wage-loss compensation benefits from January 26 to March 8, 2013. On April 2, 2013 appellant was placed on the periodic rolls, effective March 9, 2013.

Appellant filed a Form CA-7 claim for a schedule award on December 15, 2014 based on a partial loss of use of his left and right upper extremities.³

Dr. Samy F. Bishai, a specialist in orthopedic surgery, stated in an October 15, 2014 report that appellant had 31 percent permanent impairment of the right upper extremity under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) sixth edition. He based this rating on the combined rating for 24 percent impairment for the right shoulder and 9 percent impairment for his right carpal tunnel syndrome, the only condition OWCP had accepted for the right upper extremity, in this claim. Dr. Bishai advised that on examination of the right wrist, hand, and forearm appellant had diminished sensation in the distribution of the median nerve with diminished sensation in the right thumb, index and middle fingers of the right hand. Appellant had a positive Tinel's sign and Phalen's test on the right side, with weakness in his right hand grip. Dr. Bishai stated that the results of an NCV study of the upper extremities appellant underwent on October 13, 2014 reflected right-sided carpal tunnel syndrome affecting the sensory components of the median nerve.

Dr. Bishai calculated the impairment rating for the accepted diagnosis of right carpal tunnel syndrome by relying on Table 15-23 at page 449.⁴ He found that under the heading of

³ The Board notes that the issue of permanent impairment from appellant's accepted left carpal tunnel and lesion of left ulnar nerve/cubital tunnel conditions was adjudicated by OWCP in a separate claim under case number xxxxxx365. The record also reflects that appellant has received prior schedule awards for right upper extremity impairments from shoulder impairments, totaling 15 percent. However, he has not previously received a schedule award for right carpal tunnel syndrome.

⁴ A.M.A., *Guides* 449.

“Test Findings” appellant had a grade modifier 2, for motor conduction block, under the heading of “History,” he rated a grade modifier 3, based on constant symptoms, and under the heading of “Physical Findings,” he found a grade modifier 3 for atrophy or weakness. Pursuant to the rating process set forth at page 448,⁵ Dr. Bishai determined that the average value for these modifiers, based on adding 2 plus 3 plus 3, divided by 3, equaled 2.66, which he rounded off to 3. This produced a mid-range impairment of 5 under Table 15-23. Given that appellant’s *QuickDASH* test score was 90, Dr. Bishai found that this yielded a mild grade modifier of 3, which produced nine percent impairment rating for right carpal tunnel syndrome.

The OWCP medical adviser reviewed Dr. Bishai’s report and found that appellant had a total of two percent permanent impairment of his right upper extremity pursuant to the sixth edition of the A.M.A., *Guides*. He stated that appellant had tingling, numbness, and pain in hands and noted that EMG studies confirmed bilateral carpal tunnel syndrome of moderate severity, which yielded grade 2 impairment. Based on Table 15-23, page 449 of the A.M.A., *Guides*,⁶ OWCP’s medical adviser found that his impairment yielded a grade modifier of 1 for test findings, applied with a default of two percent right upper extremity impairment.

By decision dated March 20, 2015, OWCP awarded appellant a schedule award for two percent permanent impairment of the right arm. The award ran for 6.24 weeks, covering the period March 9 to April 21, 2013.

LEGAL PRECEDENT

The schedule award provision of FECA⁷ and its implementing regulations⁸ 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.⁹ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.¹⁰

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

⁵ *Id.* at 448.

⁶ *Id.* at 449.

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

⁹ *Id.*

¹⁰ *Veronica Williams*, 56 ECAB 367, 370 (2005).

and Health (ICF).¹¹ 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).¹² The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹³

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.¹⁴ In Table 15-23, grade modifiers levels (ranging from zero to four) are described for the categories of 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.¹⁵

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.¹⁶

ANALYSIS

In this case, OWCP accepted the conditions of bilateral carpal tunnel syndrome and lesion of left ulnar nerve/cubital tunnel. Appellant filed a claim for a schedule award and OWCP evaluated the claim for permanent impairment pertaining to the accepted right carpal tunnel syndrome condition. The record reflects that permanent impairment for the left upper extremity impairment has been adjudicated under a separate OWCP file number xxxxxx365.

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

As noted above, impairment due to carpal tunnel syndrome is evaluated pursuant to Table 15-23, which sets forth grade modifier levels for Test Findings, History, and Physical Findings. These grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value.¹⁷ Dr. Bishai, in his October 15, 2014 report, evaluated appellant's impairment under the categories of Test Findings, History, and Physical Findings, as

¹¹ A.M.A., *Guides*, *supra* note 4 at 3, section 1.3, the ICF: A Contemporary Model of Disablement.

¹² *Id.* at 385-419

¹³ *Id.* at 411.

¹⁴ *Id.* at 449.

¹⁵ *Id.* at 448-50.

¹⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

¹⁷ *Supra* note 15.

required by Table 15-23. He concluded that appellant had nine percent permanent impairment of the right upper extremity due to his right carpal tunnel condition. Pursuant to its procedures, OWCP then referred Dr. Bishai's report to its medical adviser for review.

In its March 20, 2015 decision, OWCP based its schedule award on the December 29, 2014 report of its medical adviser, who rated two percent permanent impairment for right carpal tunnel syndrome. However, OWCP's medical adviser only calculated a grade modifier for test findings based on an EMG study showing moderate carpal tunnel and failed to evaluate the categories of history and physical findings. Thus, his impairment rating was not rendered in conformance with the procedures outlined above.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done. Once OWCP undertakes to develop the medical evidence it has the responsibility to do so in a proper manner.¹⁸

The Board sets aside OWCP's March 20, 2015 decision and remands the case for clarification from the medical adviser as to whether appellant had additional impairment of his right upper extremity related to his right carpal tunnel syndrome, as indicated by Dr. Bishai's December 29, 2014 report, pursuant to the appropriate guidelines. On remand, OWCP should instruct its medical adviser to clearly indicate how he reached his ratings. After such further development of the record as it deems necessary, OWCP shall issue a *de novo* decision.

On appeal appellant's representative contends that a conflict exists in the medical opinion evidence regarding the degree of permanent impairment to appellant's right upper extremity requiring referral to an impartial medical examiner. The Board however concludes that the case is not in posture for decision as the medical evidence of record has not been fully developed.

CONCLUSION

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

¹⁸ See *L.S.*, Docket No. 14-1460 (issued January 2, 2015).

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2015 decision of the Office of Workers' Compensation Programs be set aside and the case is remanded to OWCP for further action consistent with this decision of the Board.

Issued: August 11, 2016
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