United States Department of Labor
Employees' Compensation Appeals Board

G.J., Appellant	)	
and	)	**Docket No. 15-1151**
	)	**Issued: January 27, 2016**
U.S. POSTAL SERVICE, BARBARA JORDAN POST OFFICE, Houston, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 27, 2015 appellant filed a timely appeal from the April 14, 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 this case.

ISSUE

The issue is whether appellant sustained more than nine percent permanent impairment of his left upper extremity, for which he previously received schedule awards.

FACTUAL HISTORY

On August 10, 2004 appellant, then a 40-year-old motor vehicle operator, filed a traumatic injury claim alleging that on August 5, 2004, while pushing a container onto a vehicle, he suffered from shoulder pain and a stiff neck. On September 15, 2004 OWCP accepted his claim for cervical strain and left shoulder impingement syndrome. Appellant received

[1] 5 U.S.C. § 8101 *et seq.*

continuation of pay from August 5 to September 19, 2004 and returned to full duty on September 24, 2004.

Appellant submitted a February 27, 2013 impairment determination wherein Dr. Cheng Lee, a chiropractor, assessed appellant with five percent whole person impairment due to clinical evidence of intervertebral disc herniations (at C3-C4, C4-C5, and C5-C6, and C6-C7). He noted that appellant presented without signs of radiculopathy at that time, but had nonuniform loss of motion segment integrity. Appellant also concluded that appellant had zero percent upper extremity impairment according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*).[2]

On March 25, 2013 appellant filed a claim for a schedule award.

On April 8, 2013 OWCP referred appellant's case, along with Dr. Lee's report, to an OWCP medical adviser to assess the date of maximum medical improvement, functional loss of use, and percentage of impairment of an injured member in accordance with the A.M.A., *Guides.* In response, the medical adviser noted that while Dr. Lee's assessment of whole person impairment for the cervical spine may be a correct evaluation, FECA does not allow a schedule award for the spine nor for the whole person, and that therefore a diagnosed injury originating in the spine may be considered only to the extent that it results in permanent impairment of the extremities. He noted that spinal nerve injury is best determined using *The Guides Newsletter* July/August 2009.[3] The medical adviser recommended referral for a second opinion evaluation.

On May 31, 2013 OWCP referred appellant to Dr. Zvi Kalisky, a Board-certified physiatrist, for a second opinion evaluation. On June 18, 2013 it also referred appellant to Dr. Goran A. Jezic, also a Board-certified physiatrist, for an additional second opinion examination.

In a June 18, 2013 report, Dr. Jezic determined that there was electrodiagnostic evidence of mild median sensorimotor mononeuropathy at both wrists, demyelinating only, right slightly more pronounced than left, consistent with the clinical diagnosis of carpal tunnel syndrome. He noted that otherwise normal electrodiagnostic evaluation of the upper extremities and cervical paraspinal muscles.

In a June 17, 2013 report, Dr. Kalisky reviewed the results of his physical examination and the medical evidence, including the tests done by Dr. Jezic. He listed impressions of left shoulder sprain/strain with impingement syndrome and cervical sprain/strain with chronic neck pain and no objective physical or electrodiagnostic findings of radiculopathy. Dr. Kalisky listed the date of maximum medical improvement as February 27, 2013, the date of his impairment rating evaluation with Dr. Lee. He noted that, based on appellant's loss of range of motion in his left shoulder, per Table 15-34, of the A.M.A., *Guides*[4] appellant had three percent upper extremity impairment for flexion, three percent upper extremity impairment for abduction, and two percent for internal rotation with a total of eight percent upper extremity impairment.

[2] A.M.A., *Guides* 564, Table 17-2.

[3] *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009).

[4] A.M.A., *Guides* 475.

Dr. Kalisky noted the other motions were normal. He then applied a grade modifier of 2 pursuant to Table 15-35 and noted that since appellant's functional history assessment is one unit higher than his grade of motion grade modifier, per Table 15-36 his range of motion impairment must be increased by a factor of 5 percent (to 8.4 percent), which is rounded to an 8 percent upper extremity impairment for his left shoulder.[5] With regard to his cervical spine, Dr. Kalisky utilized Table 1 of *The Guides Newsletter*, and noted that given the fact that there are no objective physical or electrodiagnostic findings of radiculopathy identified on his evaluation, the claimant belonged in class 0 for nerve root impairments at C5, C6, C7, C8, and T1 which gives him zero percent impairment for the right upper extremity and zero percent impairment for the left upper extremity. Then, he noted that combining the eight percent upper extremity impairment of the left shoulder with zero percent upper extremity impairment for left cervical radiculopathy, totaled eight percent upper extremity impairment for the left upper extremity and zero percent impairment for the right upper extremity.

On August 7, 2013 OWCP referred the case to a new OWCP medical adviser for an impairment evaluation. In an August 22, 2013 report, the new OWCP medical adviser utilized the findings in Dr. Kalisky's report, applied the shoulder regional grid from Table 15-5 for left diagnostic key factor strain/sprain,[6] and noted range of motion findings on Table 15-34 as follows: three percent impairment for 110 degrees of flexion, zero percent impairment for 60 degrees of extension, three percent impairment for 110 degrees of abduction, zero percent impairment for 50 degrees of adduction, two percent impairment for 60 degrees of internal rotation, and zero percent impairment for 90 degrees of external rotation.[7] He added these figures and determined that this yielded eight percent impairment for the left upper extremity. The medical adviser listed range of motion adjustment for functional history pursuant to Table 15-35 and Table 15-36,[8] noting range of motion grade modifier of 1, a functional history adjustment *Quick*DASH compatible with functional history grade 2, for a functional history grade adjustment of 1 (2-1 = 1 higher). He then noted the adjustment as 5 percent of 8 percent equaled 0.4 percent, or no movement. The medical adviser concluded that the final impairment figure was for eight percent impairment of the left upper extremity.

On August 7, 2013 OWCP asked its medical adviser to revisit the award considering the one percent schedule award of the left upper extremity in appellant's case number xxxxxx939. In an October 18, 2013 addendum, the medical adviser, noted that he reviewed the previous schedule award, that appellant had one percent impairment for left upper extremity based on left middle finger tenosynovitis and eight percent impairment for range of motion deficit, and that when these figures are combined, appellant has nine percent impairment of the left upper extremity.

On September 18, 2013 appellant filed another claim for a schedule award.

[5] *Id*. at 477.

[6] *Id*. at 401.

[7] *Id*. at 475.

[8] *Supra* note 5.

On November 8, 2013 OWCP issued a schedule award for eight percent impairment of the left upper extremity. It noted that appellant had previously received a schedule award for one percent impairment of left upper extremity based on an injury to his middle finger under OWCP case number xxxxxx939.

On July 18, 2014 appellant filed a claim for an additional schedule award.

On February 2, 2015 OWCP referred appellant to Dr. David Poindexter, a Board-certified physiatrist, for a second opinion. Dr. Poindexter examined appellant on February 17, 2015 and diagnosed cervical spine sprain/strain and left shoulder sprain/strain. He agreed with the prior assessment that appellant reached maximum medical improvement on February 27, 2013. Utilizing Table 15-34 of the A.M.A., *Guides* (6th ed. 2009), Dr. Poindexter noted that appellant had 130 degrees of flexion which equaled three percent upper extremity impairment, extension of 55 degrees which equaled zero percent upper extremity impairment, abduction of 110 degrees which equaled three percent upper extremity impairment, adduction of 50 degrees which equaled zero percent impairment upper extremity impairment, internal rotation of 50 degrees which equaled two percent upper extremity impairment and external rotation of 80 degrees which equaled zero percent upper extremity impairment.[9]

Adding these figures together, Dr. Poindexter determined that appellant had an eight percent impairment of the left upper extremity. He noted a grade 1 modifier for range of motion[10] and a functional history adjustment of grade 1,[11] and determined that this yielded no modification of the impairment rating. Dr. Poindexter further discussed appellant's cervical spine sprain/strain. He found no evidence of objective radiculopathy with sensation and noted that motor testing was normal in bilateral upper extremities from C5 through C8 nerve distribution. Dr. Poindexter determined that under FECA and *The Guides Newsletter*, July/August 2009, appellant would receive zero percent left and right upper extremity impairment rating for his cervical strain/sprain.

On April 3, 2015 OWCP referred the case to an OWCP medical adviser. In an April 9, 2015 response, the medical adviser noted that Dr. Poindexter properly observed that FECA does not allow a schedule award for the spine, and therefore, a diagnosed injury originating in the spine may be considered only to the extent that it results in permanent impairment of the extremities, generally manifest as spinal nerve impairment. He noted that spinal nerve impairment is best described in *The Guides Newsletter*, and Dr. Poindexter determined no ratable impairment of spinal nerve as the sensory and motor examinations for spinal nerves C7 through C8 were intact in both upper extremities. The medical adviser also recommended a permanent impairment of the left upper extremity of eight percent based on appellant's injury to his left shoulder, agreeing with Dr. Poindexter's calculations. He found that appellant had already received a prior award of nine percent of the left upper extremity, and that therefore, no further award was due at this time.

[9] *Id.* at 475, Table 15-34.

[10] *Id.* at 477, Table 15-35.

[11] *Id.* at Table 15-36.

On April 14, 2015 OWCP denied appellant's claim for an additional schedule award.

LEGAL PRECEDENT

The schedule award provision of FECA[12] and its implementing regulations[13] set forth the number of weeks of compensation payable to employees sustaining permanent impairment for 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 insure equal justice under the law to all claimants, good administrative practice necessitates the use of single set of tables so that here 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.[14] The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.[15]

The sixth edition requires identifying the impairment Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Evidence (GMPE) and Clinical Studies (GMCS).[16] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[17]

Although the A.M.A., *Guides*, includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under FECA for injury to the spine.[18] A schedule award is not payable for the loss, or loss of use, of a part of the body that is not specifically enumerated under FECA.[19]

In 1960 amendments to FECA modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, as the schedule award provisions of FECA include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.[20]

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. For peripheral nerve impairments to the upper or

[12] 5 U.S.C. § 8107.

[13] 20 C.F.R. § 10.404.

[14] *Id.*

[15] *See A.A.*, Docket No. 15-898 (issued July 28, 2015).

[16] A.M.A., *Guides* 494-531.

[17] *Id.* at 521.

[18] *Pamela J. Darling*, 49 ECAB 286 (1998).

[19] *M.P.*, Docket No. 14-777 (issued July 18, 2014).

[20] *Thomas J. Engelhart*, 50 ECAB 319 (1999).

lower extremities resulting from spinal injuries, OWCP's procedures indicate that *The Guides Newsletter*, Rating Spinal Nerve Impairment Using the Sixth Edition (July/August 2009) is to be applied.[21] The Board has long recognized the discretion of OWCP to adopt and utilize various editions of the A.M.A., *Guides* for assessing permanent impairment.[22] In particular, the Board has recognized the adoption of this methodology for rating extremity impairment, including the use of *The Guides Newsletter*, as proper in order to provide a uniform standard applicable to each claimant for a schedule award for extremity impairment originating in the spine.[23]

After obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for a rationalized opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*.[24]

ANALYSIS

OWCP accepted appellant's claim for cervical strain and left shoulder impingement syndrome. It previously issued schedule awards totaling nine percent for permanent impairment of appellant's left upper extremity. Appellant requested an increased schedule award. The Board has evaluated the evidence, and finds that appellant has not established impairment greater than that for which he was previously awarded.

The Board notes that OWCP properly issued a schedule award for eight percent impairment on November 8, 2013, which when added to appellant's previous award of one percent permanent impairment, resulted in a total award of nine percent permanent impairment of the left upper extremity.

Dr. Lee assessed appellant with five percent whole person impairment.[25] However, as properly noted by the first OWCP medical adviser, FECA does not authorize the payment of schedule awards for the permanent impairment of the whole person.[26] OWCP referred appellant for second opinions, and Dr. Kalisky, after reviewing Dr. Jezic's diagnostic tests, determined that appellant had eight percent impairment of the left upper extremity based on loss of motion in the left shoulder. OWCP referred the case to an OWCP medical adviser, who agreed with Dr. Kalisky's calculations.

[21] *See G.N.*, Docket No. 10-850 (issued November 12, 2010); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1, n.5 (January 2010).

[22] *D.S.*, Docket No. 14-12 (issued March 18, 2014).

[23] *R.L.*, Docket No. 14-1479 (issued October 28, 2014); *see also E.D.*, Docket No. 13-2024 (issued April 24, 2014); *D.S.*, Docket No. 13-2011 (issued February 18, 2014).

[24] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (February 2013). *See also B.F.*, Docket No. 15-826 (issued November 5, 2015).

[25] The Board has held that, as a chiropractor may only qualify as a physician in the diagnosis and treatment of spinal subluxation, his or her opinion is not considered competent medical evidence in evaluation of other disorders, including those of the extremities, although these disorders may originate in the spine. As the chiropractor is not an extremity expert and there is no schedule award for the spine, a chiropractor's opinion in evaluating an extremity award case is of no probative medical value. *See N.B.*, Docket No. 15-1390 (issued November 6, 2015).

[26] *Y.M.*, Docket No. 13-1626 (issued November 13, 2013).

Applying Table 15-34 of the A.M.A., *Guides*, these physicians properly noted that appellant had three percent impairment based on 110 degrees of flexion, three percent impairment based on 110 degrees of abduction, and two percent impairment due to 60 degrees of internal rotation, which yielded eight percent impairment of the left upper extremity.[27] After making the appropriate adjustments pursuant to Table 15-35 and Table 15-36 of the A.M.A., *Guides*, Dr. Kalisky and OWCP's medical adviser noted that appellant's impairment rating would be adjusted and rounded to eight percent and therefore yielded no greater impairment.[28] The medical adviser then reviewed the record and noted that appellant had previously received a one percent permanent impairment award for left upper extremity due to left middle finger tenosynovitis. He therefore concluded that appellant had a total permanent impairment of the left upper extremity of nine percent.

The Board notes that none of the medical evidence submitted after the November 8, 2013 determination established that appellant had greater than nine percent permanent impairment of his left upper extremity. Dr. Poindexter examined appellant on February 17, 2015, and properly noted that, pursuant to Table 15-34 of the A.M.A., *Guides*, appellant had three percent impairment of his left upper extremity due to 130 degrees flexion, three percent impairment based on 110 degrees of abduction, and two percent impairment based on internal rotation of 50 degrees, which equaled a total impairment of the left upper extremity based on his shoulder injury of eight percent.[29] He noted no impairment based on extension, adduction, and external rotation.[30] Since appellant's range of motion and functional history grade modifier adjustments were both the same grade modifier of 1, no modification of his impairment was needed.[31] The medical adviser also agreed with these calculations. Further, he properly agreed with Dr. Poindexter's conclusion that there was no impairment based on appellant's cervical strain. FECA does not allow a schedule award for the spine, and a diagnosed injury originating in the spine may be considered only to the extent that it results in a permanent impairment of the extremities, generally manifesting itself as spinal nerve impairment, which is described in *The Guides Newsletter*. Both the medical adviser and Dr. Poindexter properly determined that there was no ratable impairment of the spinal nerve as the sensory and motor examinations for spinal nerves C7 through C8 were intact in both extremities.

The Board finds that Dr. Poindexter and OWCP medical adviser properly applied the A.M.A., *Guides* and determined that appellant had nine percent permanent impairment of his left upper extremity. Appellant has previously received a schedule award in this amount. Thus, the medical evidence does not establish that appellant is entitled to an additional schedule award.[32]

[27] *Supra* note 4 at 476.

[28] *Id.* at 477.

[29] *Id.*

[30] *Supra* note 9.

[31] *Id.* at 477, Table 15-35, Table 15-36.

[32] *See E.W.*, Docket No. 14-1977 (issued June 26, 2015).

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 not sustained greater than nine percent impairment of his left upper extremity, for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 14, 2015 is affirmed.[33]

Issued: January 27, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[33] James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.