United States Department of Labor
Employees' Compensation Appeals Board

E.G., Appellant	)	
and	)	**Docket No. 15-1739**
	)	**Issued: January 28, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Bridgeport, CT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 14, 2015 appellant timely appealed the March 18, 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.[2]

ISSUE

The issue is whether appellant has greater than two percent permanent impairment of the right upper extremity and greater than three percent permanent impairment of her left upper extremity.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The current record includes evidence received after OWCP issued its March 18, 2015 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1) (2014).

FACTUAL HISTORY

Appellant, a 55-year-old sales and service associate, has an accepted claim for bilateral carpal tunnel syndrome (CTS) and left de Quervain's syndrome, which arose on or about January 1, 2011.[3] She underwent a left carpal tunnel release on January 15, 2013, followed by a right carpal tunnel release on March 19, 2013. Appellant also underwent a left de Quervain's release on February 5, 2014.[4] Dr. Michael R. Redler, a Board-certified orthopedic surgeon, performed all three surgical procedures, which OWCP had authorized. Following her latest surgery, appellant resumed her full-time, regular duties effective March 31, 2014. Dr. Redler discharged her from his care on June 27, 2014.

On July 25, 2014 appellant filed a claim for a schedule award (Form CA-7). OWCP acknowledged receipt of the claim on July 31, 2014, and further advised that appellant should have her physician submit an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2009).

In an August 29, 2014 form report, Dr. Redler found five percent impairment of each wrist. He advised that appellant had reached maximum medical improvement (MMI) as of June 27, 2014. Dr. Redler noted that the rating was based on appellant's loss of motion, strength deficit, abnormal clinical findings, residual discomfort, and her continued difficulty with activities of daily living. Although the form report indicated that the rating was based on the A.M.A., *Guides*, Dr. Redler did not identify which edition of the A.M.A., *Guides* he used or otherwise explain how he arrived at his five percent bilateral wrist impairment rating.

OWCP forwarded the case to its district medical adviser (DMA), who advised that he was unable to provide an impairment rating based on the then-current medical evidence. Consequently, it referred appellant for a second opinion examination.

Dr. Balazs B. Somogyi, a Board-certified orthopedic surgeon and OWCP referral physician, examined appellant on January 13, 2015 and diagnosed work-related bilateral CTS and left de Quervain's syndrome. He also noted that appellant was status post three wrist/hand surgeries. Dr. Somogyi found no abnormalities related to de Quervain's syndrome. However, he found two percent impairment of the right upper extremity and three percent impairment of the left upper extremity due to CTS. Dr. Somogyi rated appellant pursuant to Table 15-23, Entrapment/Compression Neuropathy Impairment, A.M.A., *Guides* 449 (6th ed. 2009). The rating was based, in part, on appellant's August 15, 2012 preoperative upper extremity electrodiagnostic (EMG/NCV) studies, which revealed moderate bilateral median nerve entrapment at the wrist affecting sensory and motor nerve fibers. Dr. Somogyi indicated that the test results represented a grade 1 modifier based on conduction delay. Next, he found that appellant's history of bilateral mild intermittent symptoms represented a grade 1 modifier. With respect to physical findings, Dr. Somogyi assigned a grade modifier of 1 on the right side and 2

[3] Appellant attributed her condition to sorting mail, counting money, and typing on a computer.

[4] The February 5, 2014 procedure also included excision of a deep mass from appellant's left wrist.

on the left side.[5] The average of the three grade modifiers on the left and right sides equaled 1.[6] Dr. Somogyi noted that under Table 15-23, A.M.A., *Guides* 449 (6th ed. 2009), the default upper extremity rating for grade 1 impairment is two percent.

Dr. Somogyi then factored in the results of appellant's *Quick*DASH study.[7] On the right side, she had a score of 30, which Dr. Somogyi explained was in the mild range and represented a grade modifier of 1.[8] Appellant's left side *Quick*DASH score was 50, which was in the moderate range and represented a grade modifier of 2.[9] Although the right side functional scale score did not justify a rating adjustment, the left side score warranted a positive adjustment of 1. As such, appellant's right upper extremity rating was the default rating of two percent, and her left upper extremity rating was adjusted upward from two (default) to three percent.

In a report dated February 4, 2015, Dr. Morley Slutsky, the DMA, similarly found two percent impairment of the right upper extremity and three percent impairment of the left upper extremity under Table 15-23, A.M.A., *Guides* 449 (6th ed. 2009).[10] He also found that appellant had reached MMI as of January 13, 2015; the date of Dr. Somogyi's second opinion examination.

OWCP provided Dr. Redler an opportunity to review and comment on the impairment ratings provided by Dr. Somogyi and the DMA. In a February 18, 2015 response, Dr. Redler reiterated that his five percent rating was based on appellant's final clinical examination, loss of motion, strength deficit, abnormal clinical findings, residual discomfort, and continued difficulty with activities of daily living. He also noted that the A.M.A., *Guides* was "only a guideline."

By decision dated March 18, 2015, OWCP granted a schedule award for two percent permanent impairment of the right upper extremity and three percent permanent impairment of the left upper extremity. The award covered a period of 15.6 weeks. OWCP explained that the

[5] The left side assessment (2) was based on evidence of decreased sensation.

[6] Left = 1.33 (1+1+2 ÷ 3). Right = 1 (1+1+1 ÷ 3).

[7] The *Quick*DASH (Disabilities of the Arm, Shoulder and Hand) consists of 11 questions regarding one's upper extremity symptoms (pain/tingling/difficulty sleeping) and the ability to perform certain activities such as opening a tight or new jar or using a knife to cut food. *See* A.M.A., *Guides* 482-86 (6th ed. 2009), Section 15.9. Based on the individual responses, a score is calculated from 0 to 100. The *Quick*DASH score is then used to determine an appropriate grade modifier based on functional history. *See* A.M.A., *Guides* 445 (6th ed. 2009), Section 15.4f.

[8] A.M.A., *Guides* 449 (6th ed. 2009), Table 15-23.

[9] *Id.*

[10] Dr. Slutsky is Board-certified in occupational medicine. He concurred in all aspects of Dr. Somogyi's January 14, 2015 rating except the grade modifiers assigned for physical findings. The DMA assigned a grade modifier of 0 on the right side and 1 on the left side. However, this discrepancy did not impact the final impairment rating. The DMA's calculation resulted in 0.67 (1+1+0 ÷ 3) on the right and 1 (1+1+1 ÷ 3) on the left side. After appropriate rounding (up/down), both the DMA and Dr. Somogyi found an average grade modifier of 1, which represented a default upper extremity impairment of 2 percent. *See supra* note 6; Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3b (2010) (Rounding); A.M.A., *Guides* 449 (6th ed. 2009), Table 15-23.

schedule award was based on the recent reports from Dr. Somogyi and the DMA. It further explained that appellant's physician, Dr. Redler, did not provide a rating in accordance with the A.M.A., *Guides*.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[11] FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[12] Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[13]

ANALYSIS

Appellant's claim is accepted for bilateral CTS and left de Quervain's syndrome. She underwent bilateral carpal tunnel releases in 2013, and a left de Quervain's release in 2014. When Dr. Somogyi examined appellant on January 13, 2015, he found no abnormalities related to de Quervain's syndrome. Consequently, appellant's impairment rating was based exclusively on her residuals due to bilateral CTS.

Having undergone bilateral carpal tunnel releases in 2014, appellant's impairment rating under Table 15-23, A.M.A., *Guides* 449 (6th ed. 2009) must be premised on positive preoperative electrodiagnostic evidence of CTS.[14] In this regard, Dr. Somogyi and the DMA properly used appellant's August 15, 2012 upper extremity EMG/NCV for purposes of rating compression neuropathy under Table 15-23. Also, both physicians found appellant had an average grade modifier of 1 based on test findings, history, and physical findings, which corresponds to a default upper extremity impairment of two percent under Table 15-23. The final step in the rating process was to factor in functional scale based on appellant's *Quick*DASH score. On the right side she scored 30 (mild) and on the left she scored 50 (moderate), which represented grade modifiers 1 and 2, respectively.[15] The result was that appellant's right side impairment remained

[11] For complete loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

[12] 20 C.F.R. § 10.404.

[13] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[14] *See* Section 15.4f, Entrapment Neuropathy, A.M.A., *Guides* 445-46, 448-49 (6th ed. 2009). "Test findings are the 'key factor' for determining impairment in this section." *Id.* at 446.

[15] A.M.A., *Guides* 449 (6th ed. 2009), Table 15-23.

at the default rating of two percent, and her left side impairment was adjusted upward to three percent.[16]

Appellant argued that Dr. Somogyi's second opinion evaluation did not accurately reflect the extent of her bilateral upper extremity impairment. She noted that Dr. Redler had treated her since 2012, and thus, was more aware of her declining condition. The Board notes that OWCP provided Dr. Redler ample opportunity to submit an impairment rating in accordance with the A.M.A., *Guides* (6th ed. 2009). However, neither his August 29, 2014 nor his February 18, 2015 reports included an adequate explanation of how he arrived at his finding of five percent bilateral wrist impairment. Given Dr. Redler's failure to provide an acceptable impairment rating, OWCP referred appellant to Dr. Somogyi for an evaluation under the A.M.A., *Guides* (6th ed. 2009).[17]

Ultimately, both Dr. Somogyi and the DMA agreed that appellant had two percent impairment of the right upper extremity and three percent impairment of the left upper extremity under Table 15-23, A.M.A., *Guides* 449 (6th ed. 2009). The Board finds that Dr. Somogyi's January 14, 2015 bilateral upper extremity impairment rating is consistent with the A.M.A., *Guides* (6th ed. 2009). Appellant has not demonstrated permanent impairment in excess of what she has already been awarded. Accordingly, OWCP's March 18, 2015 schedule award shall be affirmed.

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

Appellant has not established that she has greater than two percent permanent impairment of the right upper extremity and greater than three percent permanent impairment of her left upper extremity.

[16] If the grade modifier assigned to the functional scale score is equal to the grade assigned for the condition -- in this case grade 1 -- the default value (two percent) within that grade is the appropriate final rating. However, if the functional scale score is 1 grade higher or lower than the grade assigned the condition, the lower or higher value, respectively, is the appropriate impairment rating. A.M.A., *Guides* 449 (6th ed. 2009), Section 15.4f.

[17] *See supra* note 13 at Part 2 -- Claims, *Developing & Evaluating Medical Evidence*, Chapter 2.810.9b(5) and (6) (June 2015).

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 28, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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