United States Department of Labor
Employees' Compensation Appeals Board

C.Q., Appellant	)	
and	)	**Docket No. 15-1933**
	)	**Issued: January 27, 2016**
DEPARTMENT OF VETERANS AFFAIRS, PUGET SOUND HEALTH CARE SYSTEM, Seattle, WA, 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 September 28, 2015 appellant filed a timely appeal of a June 8, 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish permanent impairment of her right upper extremity entitling her to a schedule award.

FACTUAL HISTORY

On July 30, 2013 appellant, then a 35-year-old health technician, filed an occupational disease claim (Form CA-2) alleging that repetitive use of her right forearm and hand in the performance of her job duties, while conducting venipunctures, had resulted in injury. Dr. Nilda

[1] 5 U.S.C. § 8101 *et seq.*

Arbelo, a Board-certified family practitioner, examined appellant on July 29 and August 5, 2013 and described appellant's complaints of right wrist, thumb and forearm injury as a result of her work as a phlebotomist. She diagnosed tendinitis of the right forearm and wrist with paresthesia component. Appellant underwent nerve conduction studies and electromyography (EMG) of the right arm on August 7, 2013 which were normal.

On August 19, 2013 OWCP accepted appellant's claim for radial styloid tenosynovitis of the right thumb and tendinitis of the right forearm and wrist.

Appellant underwent a magnetic resonance imaging (MRI) scan on October 23, 2013 which demonstrated mild tenosynovitis of the extensor pollicis tendons consistent with a history of de Quervain's tendinitis as well as heterogeneous triangular fibrocartilage with either fraying or a small tear. On December 12, 2013 Dr. William L. Clark, a Board-certified orthopedic surgeon and hand surgeon, diagnosed de Quervain's tenosynovitis associated with repetitive overuse. He recommended a first dorsal compartment release.

On January 15, 2014 Dr. Clark performed an authorized first dorsal compartment release and synovectomy. He found that the first dorsal compartment had significant tenosynovitis with inflamed tendons. Dr. Clark noted the radial sensory nerve overlying the first dorsal compartment appeared inflamed, enlarged and slightly erythematous.

In a report dated May 1, 2014, Dr. Clark noted that appellant was experiencing a delayed recovery. He attributed her condition to inflammation and irritation of the radial sensory nerve. Dr. Clark released appellant to return to work four hours a day. On June 12, 2014 he noted that appellant continued to experience pain. Dr. Clark reported a negative Finkelstein's test, but hypersensitivity over the radial aspect of her wrist with decreased sensation and paresthesia of the radial sensory nerve. He applied an immobilization cast. On July 11, 2014 Dr. Clark diagnosed Wartenberg syndrome or continued and persistent irritation of the radial sensory nerve. He examined appellant on August 21, 2014 and found negative Finkelstein's test, decreased hypersensitivity and dysesthesias over the radial sensory nerve.

In a note dated September 23, 2014, Dr. Clark found that appellant had no signs of de Quervain's tenosynovitis. He reported that appellant continued to exhibit dysesthesias in the radial sensory nerve distribution. Dr. Clark diagnosed radial sensory nerve irritation/ Wartenberg's syndrome. He also diagnosed diffuse wrist and hand pain without significant osteoarthritis. Dr. Clark opined that appellant had partial impairment and was partially disabled.

OWCP referred appellant for a second opinion evaluation on October 31, 2014 with Dr. Alfred Blue, a Board-certified orthopedic surgeon. Dr. Blue examined appellant on November 18, 2014. He described her work duties and history of injury. Dr. Blue performed a physical examination and found that appellant's de Quervain's disease had resolved and that appellant had reached maximum medical improvement with regard to this condition. He concluded that appellant had no objective complaints. Dr. Blue stated that appellant had a loss of wrist extension and loss of motion due to pain. He could not explain her loss of grip strength. Dr. Blue found strong evidence of low effort and inconsistent behavior during his examination and in reviewing her physical capacity evaluation.

In a December 4, 2014 report, Dr. Clark reviewed appellant's physical capacity evaluation and noted the report of poor effort and pain behavior on a statistically significant level. He recommended that appellant return to modified duty. Dr. Clark opined that pain from Wartenberg's syndrome or peripheral nerve pain might cause pain behavior without significant objective findings.

Appellant provided Dr. Clark with Dr. Blue's report on February 12, 2015. On February 24, 2015 Dr. Clark diagnosed first dorsal compartment tenosynovitis and radial sensory nerve inflammation or Wartenberg's syndrome. He did not agree that appellant's right wrist was normal and did not believe that she could return to her full-time date-of-injury position. Dr. Clark agreed that appellant did not have objective findings that could be quantified and that her symptoms were basically subjective. He concluded, "With respect to permanent impairment, I would agree with Dr. Blue in that she does not have the physical criteria as outlined in the [American Medical Association, *Guides to the Evaluation of Permanent Impairment*[2]] to warrant permanent impairment…. It is only to say that she does not have findings based on specific and detailed criteria in [the A.M.A., *Guides*] to warrant a ratable/calculable impairment."

Appellant filed a claim for compensation (Form CA-7) requesting a schedule award on March 3, 2015.

In a report dated March 12, 2015, Dr. Alvin Nayan, a physician Board-certified in preventative medicine, noted appellant's history of injury and medical treatment. He diagnosed regional impairment diagnosis following a first dorsal compartment release, post de Quervain's tenosynovitis release with persistent positive Finkelstein's test and minor limitation of movements. Dr. Nayan found swelling on the extensor tendon of the thumb and soreness on appellant's surgical scar. He found loss of range of motion of the right wrist. Dr. Nayan reported negative Finkelstein's test, Tinel's sign, Phalen's test and median nerve compression test. He found obvious weakness on resisted thumb range of motion, but no muscle atrophy. Dr. Nayan applied the A.M.A., *Guides* finding that appellant had a class 1, midrange default value of seven in accordance with Table 15-3.[3] He determined that appellant's functional history grade modifier was 2, as was her physical examination grade modifier. Dr. Nayan indicated that her clinical studies grade modifier was based on MRI scan findings of chronic inflammation of the extensor tendons as well as mild tenosynovitis of the extensor pollicis longus. He opined that appellant's net adjustment was +2 and that she had nine percent impairment of her right upper extremity.

Dr. Nayan completed a report on May 14, 2015 and again diagnosed right de Quervain's tenosynovitis and first dorsal compartment release. He opined that appellant had significant objective findings based on her operative report as well as physical examination. Dr. Nayan listed decreased range of motion and inflammation. He asserted, "I stand by my rating examination."

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

[3] A.M.A., *Guides* 395, Table 15-3. The Board notes that there is no class 1, grade C impairment value of seven on this page of the A.M.A., *Guides*.

On May 28, 2015 OWCP's medical adviser reviewed the record and appellant's medical treatment. He noted that appellant's physician Dr. Clark and the second opinion physician Dr. Blue agreed that appellant had reached maximum medical improvement and that there was no evidence of ratable impairment under the A.M.A., *Guides* based on objective physical findings. The medical adviser agreed with these reports. He reviewed Dr. Nayan's report finding symptoms of pain and weakness in the right wrist and thumb resulting in nine percent impairment of the right arm due to de Quervain's tenosynovitis. The medical adviser found that this impairment rating did not correlate with the diagnosis or impairment level in the A.M.A., *Guides*.[4] He further determined that Dr. Nayan's report was internally inconsistent as he attributed the impairment to a persistent positive Finkelstein's test, but also reported that Finkelstein's test was negative. The medical adviser further found that Dr. Nayan also failed to identify any atrophy to support appellant's claimed weakness. He concluded that he agreed with Drs. Clark and Blue that appellant had no permanent impairment of her right upper extremity as objective findings were normal and there was significant evidence of symptom magnification.

By decision dated June 8, 2015, OWCP denied appellant's claim for a schedule award finding that the weight of the medical evidence failed to establish permanent impairment of the right upper extremity entitling her to a schedule award.

LEGAL PRECEDENT

The schedule award provision of FECA[5] and its implementing regulations[6] set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of use of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[7]

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides* his opinion is of diminished probative value in establishing the degree of permanent impairment and OWCP may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.[8]

[4] A.M.A., *Guides* 395, Table 15-3. De Quervain's disease of the wrist includes a maximum impairment rating of two percent.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6th ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[8] *Linda Beale*, 57 ECAB 429, 434 (2006).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish permanent impairment of her right upper extremity entitling her to a schedule award.

OWCP accepted appellant's claim for radial styloid tenosynovitis of the right thumb and tendinitis of the right forearm and wrist. Appellant's surgeon, Dr. Clark diagnosed de Quervain's tenosynovitis. He performed a surgical release of the first dorsal compartment on January 15, 2014 and described an inflamed, enlarged and slightly erythematous radial sensory nerve. Dr. Clark diagnosed Wartenberg's syndrome or continued and persistent irritation of the radial sensory nerve on July 11, 2014. On September 23, 2014 he found that appellant had no signs of de Quervain's tenosynovitis, but opined that she demonstrated permanent impairment.

Dr. Blue, the second opinion physician, examined appellant on November 18, 2014 and found that appellant's de Quervain's disease had resolved and that appellant had reached maximum medical improvement with regard to this condition. Dr. Clark reviewed this report and agreed that appellant did not have permanent impairment as defined by the A.M.A., *Guides*.

Appellant submitted a report from Dr. Nayan dated March 12, 2015 supporting nine percent impairment of her right arm due to de Quervain's tenosynovitis. He indicated that he was applying the A.M.A., *Guides.* The Board finds that OWCP's medical adviser properly noted that Dr. Nayan's diagnosis and impairment rating are not in keeping with the A.M.A., *Guides*. The provision cited does not provide for more than two percent impairment and cannot support nine percent impairment as found by Dr. Nayan.[9] Furthermore, both Dr. Blue and Dr. Clark opined that appellant's de Quervain's tenosynovitis had resolved. These physicians opined that appellant had no ongoing ratable impairment as a result of this condition. The Board finds that the weight of the medical opinion evidence rests with appellant's attending physician, Dr. Clark, who opined that her condition had no ratable impairment as Dr. Nayan did not provide findings consistent with his impairment rating. The Board finds that appellant has not submitted the necessary medical opinion evidence comporting with the A.M.A., *Guides* to establish permanent impairment entitling her to a schedule award due to her accepted right upper extremity conditions.

On appeal, appellant notes her disagreement with OWCP's decision and asserted that she continued having symptoms of her accepted conditions. As explained, the medical evidence does not establish that she has a ratable impairment pursuant to the A.M.A., *Guides.*

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 met her burden of proof to establish permanent impairment of her right upper extremity entitling her to a schedule award.

[9] A.M.A., *Guides* 395, Table 15-3.

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2016
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