United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 16-0608**
	)	**Issued: June 24, 2016**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Denali Park, AK, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 February 10, 2016 appellant, through counsel, filed a timely appeal from a December 11, 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 has more than five percent permanent impairment of the right upper extremity.

FACTUAL HISTORY

On June 6, 2011 appellant, then a 72-year-old seasonal park ranger, filed a traumatic injury claim (Form CA-1) alleging that on May 11, 2011 she fractured her right wrist when she

[1] 5 U.S.C. § 8101 *et seq.*

slipped on ice while leading a hike. OWCP accepted the claim for a closed fracture of the lower end of the radius with ulna and a closed fracture of the lower end of the right humerus.

On May 17, 2011 appellant underwent an open reduction internal fixation of the hand innovation volar plate. An August 10, 2011 magnetic resonance imaging (MRI) scan of the right wrist showed a radial fracture, widening of the scapholunate interval, and "focal thinning or a full-thickness defect of the central triangular cartilage medial to the distal radioulnar joint."

OWCP referred appellant for second opinion examinations in 2012 and 2013 to determine the nature and extent of her condition and disability. In a report dated May 17, 2012, Dr. Thomas L. Gritzka, a Board-certified orthopedic surgeon and OWCP referral physician, measured range of motion of the right wrist as 60 degrees dorsiflexion, 60 degrees flexion, and 20 degrees ulnar and radial deviation. He noted that appellant's hand seemed "radially deviated about 10 degrees compared to the left." Dr. Gritzka diagnosed a status post open reduction, internal fixation of a fracture of the right distal radius, and chronic derangement of the right distal radial ulnar joint.

On June 5, 2013 Dr. Douglas Bald, a Board-certified orthopedic surgeon and OWCP referral physician, measured range of motion of the right wrist of 50 degrees flexion, 60 degrees extension, 20 degrees radial deviation, 32 degrees ulnar deviation, 64 degrees pronation, and 56 degrees supination. He found instability of the distal radioulnar joint. Dr. Bald diagnosed chronic derangement with a triangular fibrocartilage complex tear of the wrist due to the May 11, 2011 work injury.

Appellant returned to work on April 23, 2014 as an interpretive ranger.

On April 30, 2014 appellant filed a claim for a schedule award (Form CA-7). By letter dated June 10, 2014, OWCP requested that she submit an impairment evaluation from her attending physician providing the extent of any impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In an impairment evaluation dated July 16, 2014, Dr. Michael E. Hebrard, a Board-certified physiatrist, discussed appellant's history of multiple wrist fractures when she slipped and fell on ice.[2] He noted that x-rays obtained on May 11, 2011 showed a displaced fracture of the distal radius and a nondisplaced fracture of the ulna. On examination Dr. Hebrard found swelling of the right wrist at the dorsal and volar aspect, 20 degrees radial deviation of the right wrist, substantial motion of the carpal bones especially at the right ulnar styloid region, laxity of the triangular fibrocartilage complex, and moderate-to-severe thenar and hypothenar atrophy.[3] He measured wrist flexion of 30 degrees and extension of 40 degrees, with 3/5 motor strength on the right. Dr. Hebrard noted that diagnostic testing on August 10, 2011 revealed "considerable fragmentation of the triangular fibrocartilage complex on the ulnar side of the wrist as well as a

[2] Electrodiagnostic testing performed on July 16, 2014 yielded normal findings.

[3] Dr. Hebrard indicated that the atrophy was on the left rather than the right side. However, this appears to be a typographical error.

significant increase in the scapholunate gap consistent with ligamentous injury." He diagnosed a closed fracture of the right radius with ulna, a closed fracture of the lower end of the right humerus, and instability of the right carpal bone. Dr. Hebrard, citing Table 15-3 on page 396 of the A.M.A., *Guides*, identified the diagnosis as class 2 wrist dislocation with carpal instability. He applied a grade 3 modifier for severe instability as seen by x-ray to find a grade D, or 25 percent impairment of the right upper extremity.

On September 4, 2014 an OWCP medical adviser noted that Dr. Hebrard did not provide ratings for each grade modifier. He further indicated that the physician found severe instability; but noted that there were no x-rays showing measurements of the scapholunate gap as required by Table 15-9 on page 410 of the A.M.A., *Guides* to determine instability. The medical adviser also noted that Dr. Hebrard's range of motion findings deviated from those of other examiners. He recommended a second opinion examination.

In an impairment evaluation dated March 12, 2015, Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon and OWCP referral physician, discussed appellant's complaints of pain with wrist activity. He measured range of motion of the right wrist as negative 15 to 60 degrees dorsiflexion, 55 degrees palmar flexion, 35 degrees radial deviation, and 15 degrees ulnar deviation. Dr. Swartz found symmetrical circumference of the upper extremities. He related that appellant had "a radial deviation of the right wrist of 15 degrees. I found this to be a malunion of the distal radius." Dr. Swartz diagnosed a closure fracture of the distal end of the radius. He provided a rating based on a class 1 diagnosis with a default value of three percent. Dr. Swartz applied a grade modifier of 2 for functional history due to difficulties performing activities. He additionally applied a grade modifier of 3 for physical examination as "the range of motion reveals an arc of motion of 45 degrees, which would represent a severe limitation of motion…." Utilizing the net adjustment formula, Dr. Swartz moved the default value two places over which yielded five percent permanent impairment of the right upper extremity. He found no evidence of severe instability of the right wrist.

On March 30, 2015 an OWCP medical adviser reviewed Dr. Swartz' findings and noted that Table 15-3 on page 396 of the A.M.A., *Guides* provided a rating for a wrist fracture with normal motion and either consistent objective findings or functional loss. He found, however, that appellant's only motion loss was reduced ulnar deviation which would equal two percent impairment. The medical adviser utilized the diagnosis of a class 1 wrist fracture using Table 15-3, which yielded a default value of three percent. He applied a grade modifier of 1 for functional history, 2 for physical examination, and 2 for clinical studies, which moved the grade two places to the right to find five percent right upper extremity permanent impairment.

By decision dated April 7, 2015, OWCP granted appellant a schedule award for five percent permanent impairment of the right upper extremity. The period of the award ran for 15.6 weeks from February 19 to June 8, 2015.

On April 21, 2015 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative. At the hearing, held on November 4, 2015, she described her continued difficulty and pain using her right arm to perform tasks.

By decision dated December 11, 2015, the OWCP hearing representative affirmed the April 7, 2015 decision.

On appeal appellant's counsel contends that the Board has evidence that Dr. Swartz is biased.

LEGAL PRECEDENT

The schedule award provision of FECA,[4] 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] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

The sixth edition requires identifying the impairment Class of Diagnosis condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).[8] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

ANALYSIS

OWCP accepted that appellant sustained a closed fracture of the lower end of the radius with ulna and a closed fracture of the lower end of the right humerus due to a May 11, 2011 employment injury. Appellant underwent an open reduction internal fixation of the wrist fracture on May 17, 2011. Dr. Bald, an OWCP referral physician, also diagnosed a triangular fibrocartilage complex tear of the wrist due to her May 11, 2011 work injury.

On April 30, 2014 appellant filed a claim for a schedule award. In an impairment evaluation dated July 16, 2014, Dr. Hebrard measured 20 degrees radial deviation, 30 degrees flexion, and 40 degrees extension of the right wrist. He further found reduced strength and laxity of the triangular fibrocartilage complex. Dr. Hebrard diagnosed a closed fracture of the right radius and lower end of the humerus and instability of the right carpal bone. Referencing Table 15-3 on page 396 of the A.M.A., *Guides*, he identified the diagnosis as a class 2 wrist dislocation with carpal instability. Dr. Hebrard applied a grade modifier of three for severe instability by x-ray to find 25 percent right upper extremity impairment.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id.* at § 10.404(a).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

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

An OWCP medical adviser reviewed Dr. Hebrard's report and noted that he did not provide the x-ray measurements showing instability as required by Table 15-9 on page 410 of the A.M.A., *Guides*. He further indicated that his range of motion measurements differed from those of prior physicians and recommended a second opinion examination.

Dr. Swartz, an OWCP referral physician, provided a March 12, 2015 impairment evaluation. He measured range of motion for the right wrist as negative 15 to 60 degrees dorsiflexion, 55 degrees palmar flexion, 35 degrees radial deviation, and 15 degrees ulnar deviation. Dr. Swartz found that appellant had a 15-degree radial deviation of the right wrist as the result of a "malunion of the distal radius." He opined that she had severe loss of motion as the arc of motion for her right wrist was 45 degrees. Without specifically identifying the diagnosis, Dr. Swartz found a class 1 impairment that had a default value of three percent. He applied grade modifiers and concluded that appellant had five percent permanent impairment of the right upper extremity.

On March 30, 2015 an OWCP medical adviser identified the diagnosis as a wrist fracture using Table 15-3 on page 396 of the A.M.A., *Guides*, which yielded a default value of three percent. He applied grade modifiers and found that appellant had five percent right upper extremity impairment. Table 15-3, however, indicates that the diagnosis of wrist fracture is only used if a claimant has normal motion. Dr. Swartz found that appellant had severely limited range of motion of the right wrist. While the OWCP medical adviser indicated that her range of motion loss was minimal and limited to a reduction in ulnar deviation, he did not explain his conclusion in view of her 15 degrees radial deviation due to a malunion of the distal radius or Dr. Swartz' finding that a 45-degree arc of motion for the right wrist did not constitute a severe motion loss.

The Board, consequently, finds that there is insufficient evidence to determine the extent of appellant's right upper extremity impairment. The case will be remanded for further development of the medical evidence and an opinion on the extent of her ratable impairment consistent with the A.M.A., *Guides*. Following any necessary further development, OWCP shall issue a *de novo* decision regarding appellant's schedule award claim.

Additionally, the Board notes that Dr. Bald, an OWCP referral physician, diagnosed chronic derangement with a triangular fibrocartilage complex tear of the wrist causally related to the May 11, 2011 work injury. OWCP has not advised whether it has expanded acceptance to include this diagnosed condition, which is an identified diagnosis under Table 15-3 on page 396 of the A.M.A., *Guides*. On remand, it should determine if the claim should be expanded to include a triangular fibrocartilage complex right wrist tear.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 11, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: June 24, 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