United States Department of Labor
Employees' Compensation Appeals Board

G.M., Appellant	)	
and	)	**Docket No. 16-0395**
	)	**Issued: May 24, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 29, 2015 appellant filed a timely appeal from a July 7, 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 OWCP properly determined that appellant had no more than seven percent permanent impairment of the left upper extremity and two percent permanent impairment of the right upper extremity, for which she previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.[2] The facts and circumstances set forth in the prior decision are incorporated herein by reference. The facts relevant to this appeal are set forth below.

On December 9, 2004 appellant, then a 54-year-old general clerk, filed an occupational disease claim (Form CA-2) for bilateral carpal tunnel syndrome due to repetitive job duties. OWCP assigned file number xxxxxx127 and accepted the claim for bilateral aggravation of carpal tunnel syndrome. It paid compensation and authorized left-sided carpal tunnel surgery in March 2006 and right-sided carpal tunnel surgery in July 2006 performed by Dr. James Plettner, a Board-certified hand surgeon. Appellant returned to regular full-time, full-duty work on December 28, 2007. She later claimed a bilateral trigger finger condition for which she underwent a right trigger thumb release on July 3, 2007 and left middle finger trigger release on November 20, 2007. These surgeries were also performed by Dr. Plettner. Under file number xxxxxx589, OWCP accepted bilateral trigger finger conditions and combined the two claims under file number xxxxxx127.

On January 30, 2008 Dr. Plettner noted appellant's complaints of soreness and discomfort over the wrists with increased activities. On examination, he could not find any objective findings of pathology in either hand. Dr. Plettner advised appellant that there was nothing further he could do regarding her carpal tunnel and trigger finger releases. He recommended over-the-counter anti-inflammatory medication.

On September 2, 2008 appellant filed a claim for a schedule award (Form CA-7). Dr. Plettner did not respond to OWCP's request to provide an impairment rating utilizing the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*) then in effect. Therefore, OWCP obtained a second opinion from Dr. E. Gregory Fisher, a Board-certified orthopedic surgeon.

Dr. Fisher submitted a January 8, 2009 report summarizing appellant's work injuries and treatment. He reviewed the statement of accepted facts and medical evidence. On examination, Dr. Fisher found full ranges of motion of the elbows, forearms, wrists, and fingers, with no locking or triggering of any digits. Range of motion of each wrist revealed flexion of 65 degrees, extension of 60 degrees, radial deviation of 25 degrees and ulnar deviation of 30 degrees bilaterally. Dr. Fisher indicated that there was some mild soreness over each wrist on the dorsal side and volar aspect on flexion and extension with some referred pain going up the arm. There was no swelling or atrophy in either arm. Tinel's and Phalen's signs were bilaterally negative. Referring to the fifth edition of the A.M.A., *Guides*, he found that appellant had no digit impairment as she had full range of motion of all fingers and thumbs without any triggering effect. Appellant also had full wrist range of motion bilaterally in all planes. Dr. Fisher found no impairment for carpal tunnel syndrome as appellant had no muscle atrophy, muscle loss or weakness. Appellant also had no ratable deficit for sensory and motor loss in the median nerve

[2] Docket No. 09-2142 (issued June 3, 2010).

distribution. Dr. Fisher concluded that appellant had no impairment for the accepted conditions of bilateral carpal tunnel syndrome and bilateral trigger finger.

In a January 28, 2009 report, Dr. Stanley Askin, an OWCP medical adviser reviewed appellant's medical record. He opined that appellant reached maximum medical improvement on December 28, 2007, the date she returned to full duty. Based on Dr. Fisher's findings on examination and the A.M.A., *Guides*, the OWCP medical adviser agreed that appellant had no impairment of either upper extremity due to her accepted conditions.

In an April 30, 2009 decision, OWCP denied appellant's claim for a schedule award finding the medical evidence of record did not establish that she sustained any permanent impairment due to her accepted conditions. Appellant then appealed to the Board.

In a September 16, 2009 report, Dr. Peter J. Stern, an attending Board-certified orthopedic and hand surgeon, diagnosed basal thumb arthritis of the right wrist. He noted that appellant had worked at the employing establishment for 31 years.

Appellant retired from the employing establishment on October 31, 2009.

By decision and order issued June 3, 2010,[3] the Board affirmed OWCP's April 30, 2009 decision, finding that Dr. Fisher's opinion, as reviewed by the OWCP medical adviser, established that appellant had no permanent impairment of either upper extremity attributable to the accepted bilateral carpal tunnel and trigger finger conditions. The facts and law of the case as set forth in the Board's prior decision and order are incorporated herein by reference.

On July 8, 2010 Dr. Stern performed a right middle finger trigger release.

In a February 2, 2011 report, Dr. Stern noted appellant's new complaints of right wrist pain. On examination, he observed mild swelling of both wrists consistent with synovitis, and a positive carpometacarpal grind test on the right. Dr. Stern obtained x-rays showing capitolunate arthritis of the right wrist. He diagnosed right wrist capitolunate arthritis. Dr. Stern noted that appellant's x-rays findings did not necessarily correlate with findings on physical examination. He explained that the etiology of appellant's right wrist pain was unclear.

On February 17, 2011 appellant claimed a recurrence of disability (Form CA-2a) commencing July 1, 2010. In a February 28, 2011 letter, OWCP advised her that her claim remained open for medical care. However, it was unclear why appellant was claiming lost time from work after her retirement. OWCP noted that she could not simultaneously receive Office of Personnel Management (OPM) retirement benefits and FECA benefits. It requested additional information as to the nature of appellant's claim.

On June 1, 2011 appellant's counsel at the time requested reconsideration. He asserted that new medical evidence established a ratable permanent impairment of both upper extremities. Counsel provided a June 2, 2011 report from Dr. Luis F. Pagani, a Board-certified neurologist retained to perform an impairment rating. Dr. Pagani reviewed appellant's employment and

[3] Docket No. 09-2142 (issued June 3, 2010).

treatment history. He related appellant's complaints of weakness and numbness in the first and second fingers of both hands, causing difficulty with activities of daily living. Referring to Table 15-2[4] of the sixth edition of the A.M.A., *Guides*, Dr. Pagani found a class 1 diagnosis-based impairment for muscle/tendon impairment of the right second trigger finger and trigger thumb, due to weakness and paresthesias. He found that "this provide[d] a *Quick*DASH score of 57.5, and per Table 15-12, a modifier of +3 or grade C," equaling six percent impairment."[5] Dr. Pagani assessed six percent impairment of the left second trigger finger for identical findings as on the right. He also found that according to Table 15-12, appellant had three percent impairment of each upper extremity due to bilateral carpal tunnel syndrome with weakness, paresthesias, sensory loss, and restricted motion. Dr. Pagani combined these impairments to equal nine percent impairment of each arm. He advised that Dr. Fisher's opinion did not accurately reflect appellant's "current status and impairment."

By decision dated August 22, 2011, OWCP denied reconsideration as appellant did not submit pertinent new and relevant evidence regarding the claimed period of disability. It noted that if appellant was asserting that she had a ratable permanent impairment, she should file a new schedule award claim.

On December 6, 2011 appellant again claimed a schedule award.

In a December 21, 2011 report, Dr. Stern noted intact sensation in all dermatomes of both hands. He obtained x-rays demonstrating capitolunate arthritis of both thumbs, with postsurgical changes of the left thumb and excision of the trapezium. Dr. Stern diagnosed bilateral wrist pain, right wrist capitolunate arthritis, and left carpometacarpal joint arthritis post carpometacarpal arthroplasty. He prescribed anti-inflammatory medication.

OWCP expanded the claim on January 24, 2012, to include bilateral carpal tunnel syndrome and localized, primary arthritis of both hands.[6]

On June 5, 2012 OWCP obtained a second opinion from Dr. Theodore Toan Le, a Board-certified orthopedic surgeon. Dr. Le reviewed a copy of the medical record and a statement of accepted facts OWCP provided for his review. He related appellant's symptoms of dull, aching right wrist pain interfering with activities of daily living, and intermittent stiffness throughout both hands. On examination, Dr. Le observed "good range of motion at the wrists and all digits," "an enlarged MCP [metacarpal phalangeal] joint that [was] tender to the touch," 5/5 grip strength bilaterally, and normal sensation in both hands. He diagnosed arthritis of both hands, most marked in the thumbs, slightly greater on the right. Dr. Le opined that the accepted bilateral carpal tunnel syndrome and trigger finger conditions had resolved. He found that appellant did not have a ratable impairment for arthritis according to the sixth edition of the

[4] Table 15-2, page 391 of the sixth edition of the A.M.A., *Guides* is entitled "Digit Regional Grid: Digit Impairments."

[5] Table 15-12, page 421 of the sixth edition of the A.M.A., *Guides* is entitled "Impairment Values Calculated from Digit Impairment."

[6] Dr. Brain M. Tonne, a physician consulting to OWCP, opined in a March 6, 2012 report that OWCP should obtain a second opinion as Dr. Stern and Dr. Pagani offered different opinions for appellant's symptoms.

A.M.A., *Guides*, as she had "good range of motion of all digits," and normal sensation in the median, ulnar, and radial nerve distributions bilaterally. Dr. Le recommended continued medication and night splints for symptomatic relief.

An OWCP medical adviser reviewed Dr. Le's report on August 16, 2012 and concurred that appellant had no ratable impairment of either upper extremity due to arthritis, as her range of motion was good and she had no sensory deficits.

In a December 10, 2012 report, Dr. Stern noted restricted motion of the right wrist. He obtained radiographs showing severe capitolunate arthritis of the right wrist with loss of cartilage space.

By decision dated March 6, 2013, OWCP denied appellant's schedule award claim as the medical evidence of record did not establish that she had a ratable impairment of either upper extremity.

Appellant disagreed and requested a telephonic hearing, held July 15, 2013. At the hearing, she asserted that accepted arthritis in both hands caused constant pain and stiffness interfering with activities of daily living. Appellant also provided a March 25, 2013 report from Dr. Stern diagnosing left wrist pain of uncertain etiology and stable carpal tunnel syndrome.

By decision dated and finalized September 27, 2013, an OWCP hearing representative affirmed the March 6, 2013 decision, finding that none of appellant's physicians or the second opinion specialist found any ratable upper extremity impairment.

In an October 7, 2013 report, Dr. Stern recommended scaphoid excision and four corner fusion of the right wrist to address advanced capitolunate joint arthritis consistent with a Stage III scapholunate advance collapse (SLAC) wrist. OWCP approved the proposed surgery on June 2, 2014. Dr. Stern performed a scaphoid excision and intercarpal "four-corner" fusion on the right wrist, with posterior interosseous neurectomy, on July 11, 2014.

On October 27, 2014 appellant again claimed a schedule award. In support of her claim, she submitted a December 10, 2014 note from Dr. Samuel H. Payne, Jr., an attending Board-certified orthopedic surgeon, who opined that appellant had 19 percent permanent impairment of the right arm according to unspecified portions of the fifth edition of the A.M.A., *Guides*. OWCP requested that Dr. Payne submit an impairment rating utilizing the sixth edition of the A.M.A., *Guides*. Subsequently, he submitted the requested report under the sixth edition protocols.

On January 22, 2015 appellant underwent an impairment rating by a physical therapist, reviewed and approved by Dr. Payne. The therapist noted appellant's account of chronic bilateral wrist pain and difficulty with activities of daily living. She used a goniometer to obtain ranges of motion for both wrists. Referring to Table 15-3 of the sixth edition of the A.M.A., *Guides*,[7] the therapist found 14 percent permanent impairment of the right upper extremity due to

[7] Table 15-3, page 397 of the sixth edition of the A.M.A., *Guides* is entitled "Wrist Regional Grid: Upper Extremity Impairments."

a class 2 intercarpal fusion, with the following impairments for limited motion according to Table 15-23 of the sixth edition:[8] seven percent for wrist flexion limited to 19 degrees; three percent for wrist extension limited to 24 degrees; two percent for radial deviation at 15 degrees; two percent for ulnar deviation at 21 degrees. The therapist found three percent permanent impairment of the left arm according to Table 15-32, due to wrist flexion limited to 54 degrees.

On April 3, 2015 Dr. H.P. Hogshead, an OWCP medical adviser, reviewed the January 22, 2015 impairment rating approved by Dr. Payne. He opined that appellant attained maximum medical improvement on December 10, 2014, the date of Dr. Payne's first impairment rating. The medical adviser asserted that limited motion was "largely irrelevant to the accepted conditions." He requested that OWCP obtain additional information about the functioning of appellant's left thumb and any median nerve impairment due to carpal tunnel syndrome.

Dr. Payne provided an April 30, 2015 report noting in findings from his April 23, 2015 examination, that appellant had normal two-point discrimination for all digits in both hands except the thumbs. He observed no restriction of left thumb motion, but noted pain with carpometacarpal joint compression.

Dr. Hogshead, the OWCP medical adviser, reviewed Dr. Payne's addendum on May 15, 2015. He opined that Dr. Payne's impairment rating could not be utilized as it was based on the fifth edition of the A.M.A., *Guides,* not the sixth edition. The medical adviser asserted that Dr. Payne's April 30, 2015 report was not relevant. He opined that appellant had two percent permanent impairment of each upper extremity due to residual carpal tunnel syndrome according to Table 15-23, and an additional five percent impairment of the left upper extremity due to left thumb impairment according to Table 15-2.

By decision dated July 7, 2015, OWCP granted appellant a schedule award for seven percent impairment of the left upper extremity and two percent impairment of the right upper extremity. The period of the award ran from December 10, 2014 to June 24, 2015.

LEGAL PRECEDENT

The schedule award provisions of FECA[9] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. It, 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 sound 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. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has

[8] Table 15-23, page 449 of the sixth edition of the A.M.A., *Guides* is entitled "Entrapment/Compression Neuropathy Impairment."

[9] 5 U.S.C. § 8107.

concurred in such adoption.[10] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.[11]

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 and Health (ICF).[12] Under the sixth edition, the evaluator identifies the impairment Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).[13] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

In addressing upper extremity impairments, the sixth edition requires identifying the impairment class for the diagnosed condition, which is then adjusted by grade modifiers based on functional history, physical examination and clinical studies.[14] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[15]

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome, bilateral trigger fingers, and localized arthritis of both hands. She underwent authorized bilateral carpal tunnel releases, a right trigger thumb release, a left middle trigger finger release, and a right middle trigger finger release. On July 11, 2014 Dr. Stern, an attending Board-certified orthopedic surgeon, performed a right scaphoid excision and intercarpal fusion, also authorized by OWCP.

Appellant claimed a schedule award on October 27, 2014. Initially, she submitted a December 10, 2014 note from Dr. Payne, an attending Board-certified orthopedic surgeon, who opined that appellant had 19 percent impairment of the right arm under the fifth edition of the A.M.A., *Guides*, which was no longer in effect. Dr. Payne then provided a detailed January 22, 2015 impairment rating, referencing specific portions of the sixth edition of the A.M.A., *Guides*. He found 14 percent permanent impairment of the right arm according to Table 15-3 due to status post class 2 intercarpal fusion, with limited motion as specified by 15-23. Dr. Payne found three percent permanent impairment of the left arm according to Table 15-32, due to limitation of wrist flexion to 54 degrees.

[10] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

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

[12] A.M.A., *Guides* 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement" (6th ed. 2008).

[13] A.M.A., *Guides*, 494-531 (6th ed. 2008).

[14] *Id.* at 385-419, *see M.P.*, Docket No. 13-2087 (issued April 8, 2014).

[15] *Id.* at 411.

Dr. Hogshead, the OWCP medical adviser, asserted that Dr. Payne's January 22, 2015 impairment rating was irrelevant to the accepted conditions of bilateral carpal tunnel syndrome and arthritis of the left thumb. Dr. Payne provided an April 30, 2015 addendum finding no median nerve involvement and no restriction of left thumb motion. The OWCP medical adviser then found that Dr. Payne's impairment rating should not be utilized as it was based on the fifth edition of the A.M.A., *Guides*. The adviser instead found two percent impairment of each arm due to carpal tunnel syndrome and an additional five percent impairment of the left upper extremity due to left thumb problems. OWCP issued the July 7, 2015 schedule award for seven percent impairment of the left arm and two percent impairment of the right arm based on the OWCP medical adviser's opinion. The Board finds, however, that Dr. Hogshead misinterpreted Dr. Payne's reports.

Dr. Hogshead found that Dr. Payne's impairment rating could not be utilized as it was based on an outdated edition of the A.M.A., *Guides.* Only Dr. Payne's December 10, 2014 report made reference to the fifth edition. His highly detailed January 22, 2015 rating clearly relied only upon the sixth edition of the A.M.A., *Guides.* Therefore the December 10, 2014 report is of no relevance to the present matter as it has been replaced by a corrected report. Thus Dr. Hogshead's criticism of Dr. Payne's opinion as to the extent of permanent impairment based upon an incorrect edition of the A.M.A., *Guides* is irrelevant.

Further, Dr. Hogshead, the OWCP medical adviser, found that the finding of limitation of motion in the January 22, 2015 impairment rating was irrelevant to the accepted conditions. However, OWCP had updated its acceptance to include right wrist and left thumb arthritis, and authorized the July 11, 2014 intercarpal fusion that permanently limited appellant's right wrist motion. This reflects that the medical adviser did not consider all accepted conditions in reviewing the previous impairment ratings or in formulating his own impairment rating.

The case will be remanded to OWCP for additional development, to include preparation of an updated statement of accepted facts, and an appropriate review of the medical record by an OWCP medical adviser. After this and any other development deemed necessary, OWCP shall issue an appropriate decision in the case.

On appeal, appellant contends that OWCP did not give proper weight to Dr. Payne's impairment rating, and did not fully analyze the medical evidence. As set forth above, the case will be remanded to OWCP for additional development on the issue of permanent impairment.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 7, 2015 is set aside, and the case remanded for additional development in accordance with this opinion.

Issued: May 24, 2016
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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