United States Department of Labor
Employees' Compensation Appeals Board

M.V., Appellant	)	
and	)	**Docket No. 16-1588**
	)	**Issued: March 23, 2017**
U.S. POSTAL SERVICE, PROCESSING & DELIVERY CENTER, New York, NY, 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 1, 2016 appellant filed a timely appeal from a March 11, 2016 merit decision of the Office of Workers' Compensation (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 14 percent permanent impairment of her right upper extremity, for which she previously received a schedule award.

On appeal appellant contends that her schedule award should be based on her loss of range of motion.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 12, 2009 appellant, then a 64-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 15, 2009, she sustained an injury to her wrist and right hand as a result of her federal employment duties. In an attached statement she indicated that she jammed her right hand while trying to open a gate that was locked. OWCP assigned File No. xxxxxx471 and accepted appellant's claim for sprain of the right hand and wrist, right carpal tunnel syndrome, and acquired right trigger finger.

The record reflects that appellant had prior claims under FECA. OWCP had previously accepted an April 10, 1985 claim for sprain of the left shoulder, lumbosacral sprain, and sprain of the neck. An August 10, 2001 claim had been accepted for a right trigger thumb. OWCP accepted a September 5, 2003 claim for tear of the left knee medial meniscus, lumbosacral sprain, and osteoarthritis of the left leg. A March 17, 2004 claim had been accepted for anxiety and an October 4, 2007 claim had been accepted for acute reaction to stress.[2]

On March 25, 2015 appellant filed a claim for a schedule award (Form CA-7) in the present claim.

In an April 23, 2015 report, Dr. Michael Palmeri, appellant's Board-certified orthopedic surgeon, opined that appellant had continued pain in her right hand secondary to basal joint degenerative disease, severe median neuropathy, chronic right wrist and hand sprain, and flexor tenosynovitis of the first, second, third, fourth, and fifth digits. He noted that she had reached maximum medical improvement (MMI). Applying the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009), Dr. Palmeri determined that appellant had 100 percent permanent impairment of the upper extremity. He arrived at this conclusion by finding that a range of motion (ROM) impairment rating best represented her impairment.[3] Dr. Palmeri found that appellant had 87 percent impairment for her thumb which equaled an upper extremity impairment of 18 percent.[4] A second digit impairment of 100 percent equaled an upper extremity impairment of 18 percent. A third digit impairment of 100 percent equaled an upper extremity impairment of 18 percent. A fourth digit impairment of 100 percent equaled an upper extremity impairment of 18 percent, and a fifth digit impairment of 100 percent equaled an upper extremity impairment of 18 percent.[5] Dr. Palmeri noted that appellant's wrist impairment equaled 35 percent permanent impairment of her right upper extremity (21 percent for flexion and extension and 14 percent for radial and ulnar deviation).[6]

By memorandum dated January 29, 2016, OWCP asked its district medical adviser to review the medical evidence of record and provide a permanent impairment rating. In a

[2] OWCP File Nos. xxxxxx969, xxxxxx889, xxxxxx016, xxxxxx499, and xxxxxx550.

[3] A.M.A., *Guides* 459, section 15.7.

[4] *Id.* at 468, Table 15-30; *Id.* at 423, Table 15-12.

[5] *Id.* at 470, Table 15-31; *Id.* at 423, Table 15-12.

[6] *Id.* at 473, Table 15-32.

February 22, 2016 report, the medical adviser reviewed appellant's medical records. He rejected Dr. Palmeri's rating of 100 percent permanent impairment of the right upper extremity. The medical adviser alleged that Dr. Palmeri had not correctly utilized the A.M.A., *Guides* and inappropriately included multiple joints of the hand that were not accepted conditions. He also noted that Dr. Palmeri included ROM calculations for the wrist and hand and these measurements were not appropriate since diagnosis-based impairment (DBI) was the recommended methodology for calculating an impairment rating pursuant to section 15.2 of the A.M.A., *Guides.* The medical adviser noted that ROM was used primarily as a physical examination adjustment factor and only to determine actual impairment values in the rare case when it is not possible to otherwise define impairments. He opined that it was not appropriate to use ROM and the 100 percent permanent impairment rating recommendation was not proper. The medical adviser noted that appellant had multiple degenerative changes that should not be included in the impairment rating.

Following review of the medical evidence provided to him, OWCP's medical adviser concluded that appellant had 14 percent permanent impairment of the right upper extremity. He noted that appellant had right carpal tunnel, with test findings showing axonal loss, a history of constant symptoms and physical findings of decreased sensation, thenal atrophy, and weakness. Utilizing the methodology in Table 15-23 of the A.M.A., *Guides*, for the diagnosis of carpal tunnel syndrome, the medical adviser determined that appellant had clinical findings indicating a grade modifier of 3, functional history grade modifier of 3, and physical findings grade modifier of 3. He noted that the functional scale was not performed. The medical adviser added 3 + 3 + 3 and divided the sum of 9 by 3, which equaled a grade modifier of 3, for eight percent permanent impairment of the right upper extremity.[7] He then applied the digital regional impairment grid at Table 15-2 of the A.M.A., *Guides*, and noted digit stenosing tenosynovitis finger digit class 1 symptomatic default value C equaled six percent permanent impairment of the digit. The medical adviser determined that the clinical picture indicated that stenosing tenosynovitis involved all digits of the right hand. He found a default value for grade 3 equaled six percent permanent impairment. Utilizing the Adjustment Grid and grade modifiers, the medical adviser found a grade modifier of 1 for functional history adjustment, a grade modifier of 1 for physical examination adjustment, and a grade modifier for clinical studies of 1. Utilizing the net adjustment formula, he determined that the net adjustment was 0, and therefore the default value of six percent represented the impairment for digit stenosing tenosynovitis for each of the digits on the right hand.[8] The medical adviser then utilized the tables for calculating upper extremity impairment set forth in Table 15-11, and noted that six percent thumb impairment equaled two percent upper extremity impairment, and that appellant had one percent upper extremity impairment for each remaining finger based on the finding of six percent impairment of each finger. He found that, based upon the stenosing tenosynovitis of the 5 digits of the right hand and the 6 percent impairment of the right hand previously determined on the basis of carpal tunnel syndrome, appellant had 14 percent permanent impairment of the right upper extremity

[7] *Id.* at 449, Table 15-23.

[8] *Id.* at 392, Table 15-2.

using the Combined Values Chart.[9] The medical adviser noted that the date of MMI was October 15, 2015.

In reports dated March 8 and April 12, 2016, Dr. Palmeri reiterated that appellant had 100 percent permanent impairment of the right upper extremity.

By decision dated March 11, 2016, OWCP issued a schedule award for 14 percent permanent impairment of appellant's right upper extremity.

LEGAL PRECEDENT

Section 8149 of FECA delegates to the Secretary of Labor the authority to prescribe rules and regulations for the administration and enforcement of FECA. The Secretary of Labor has vested the authority to implement the FECA program with the Director of OWCP.[10] 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. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[12]

The sixth edition of the A.M.A., *Guides* was first printed in 2008. Within months of the initial printing, the A.M.A. issued a 52-page document entitled "Clarifications and Corrections, Sixth Edition, *Guides to the Evaluation of Permanent Impairment.*" The document included various changes to the original text, intended to serve as an erratum/supplement to the first printing of the A.M.A., *Guides*. In April 2009, these changes were formally incorporated into the second printing of the sixth edition.

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[13] The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[14]

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[9] *Id.* at 604, Appendix A.

[10] *See* 20 C.F.R. §§ 1.1-1.4.

[11] For a 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. *See also Ronald R. Kraynak*, 53 ECAB 130 (2001).

[13] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

[14] *Isidoro Rivera*, 12 ECAB 348 (1961).

ANALYSIS

The issue on appeal is whether appellant has more than 14 percent permanent impairment of her right upper extremity, for which she previously received a schedule award.

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

The Board has found that OWCP has inconsistently applied Chapter 15 of the sixth edition of the A.M.A., *Guides* when granting schedule awards for upper extremity claims. No consistent interpretation has been followed regarding the proper use of the DBI or ROM methodology when assessing the extent of permanent impairment for schedule award purposes.[15] The purpose of the use of uniform standards is to ensure consistent results and to ensure equal justice under the law to all claimants.[16] In *T.H.*, the Board concluded that OWCP physicians are at odds over the proper methodology for rating upper extremity impairment, having observed attending physicians, evaluating physicians, second opinion physicians, impartial medical examiners, and district medical advisers use both DBI and ROM methodologies interchangeably without any consistent basis. Furthermore, the Board has observed that physicians interchangeably cite to language in the first printing or the second printing when justifying use of either ROM or DBI methodology. Because OWCP's own physicians are inconsistent in the application of the A.M.A., *Guides*, the Board finds that OWCP can no longer ensure consistent results and equal justice under the law for all claimants.[17]

In light of the conflicting interpretation by OWCP of the sixth edition with respect to upper extremity impairment ratings, it is incumbent upon OWCP, through its implementing regulations and/or internal procedures, to establish a consistent method for rating upper extremity impairment. In order to ensure consistent results and equal justice under the law for cases involving upper extremity impairment, the Board will set aside the March 11, 2016 decision. Following OWCP's development of a consistent method for calculating permanent impairment for upper extremities to be applied uniformly, and such other development as may be deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim for an upper extremity schedule award.

CONCLUSION

The Board finds that this case not in posture for decision.

[15] *T.H.*, Docket No. 14-0943 (issued November 25, 2016).

[16] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[17] *Supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 11, 2016 is set aside, and the case is remanded for further action consistent with this decision.

Issued: March 23, 2017
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