United States Department of Labor
Employees' Compensation Appeals Board

T.L., Appellant	)	
and	)	**Docket No. 17-0546**
	)	**Issued: September 5, 2017**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS BENEFITS ADMINISTRATION, Chicago, IL, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 3, 2017 appellant filed a timely appeal from a November 18, 2016 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 four percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case was previously before the Board.[2] The facts of the case as presented in the prior decision are incorporated herein by reference. The relevant facts are set forth below.

On September 11, 2000 appellant, then a 36-year-old claims examiner, filed an occupational disease claim (Form CA-2) alleging that her chronic left shoulder, elbow, wrist, and hand pain were the result of repetitive typing in her federal employment. She did not stop work. OWCP accepted appellant's claim for left ulnar strain, left shoulder strain, and left forearm strain. It also subsequently accepted left ulnar compression, left flexor tendinitis, and left shoulder bursitis.

Appellant filed a claim for a schedule award (Form CA-7). On May 11, 2005 she was granted a schedule award for three percent permanent impairment of her left upper extremity.

On July 5, 2005 appellant filed an appeal to the Board from OWCP's May 11, 2005 decision. By decision dated September 30, 2005, the Board found that she had four percent permanent impairment of her left upper extremity, affirming OWCP's May 11, 2005 decision with modification to the extent of impairment.[3]

On November 18, 2005 appellant was granted a schedule award for an additional one percent permanent impairment of the left upper extremity.

On February 6, 2007 OWCP informed appellant that it had updated her claim to accept the following diagnoses: sprain of elbow and forearm, unspecified site, left; sprain of shoulder and upper arm, unspecified site, left; adhesive capsulitis of shoulder, left; carpal tunnel syndrome, left; and myalgia and myositis, not otherwise specified, left.[4]

On February 15, 2007 appellant filed a claim for an increased schedule award (Form CA-7) based on the newly accepted conditions of left-sided carpal tunnel syndrome, myalgia, and myositis.

On October 29, 2008 OWCP referred appellant for a second opinion evaluation to determine the extent of her permanent impairment.

In a report dated November 20, 2008, Dr. Klaud Miller, Board-certified in orthopedic surgery serving as a second opinion physician, concluded that appellant had no objective

[2] Docket No. 09-1980 (issued May 24, 2010); Docket No. 08-0192 (issued April 11, 2008); Docket No. 05-1467 (issued September 30, 2005).

[3] Docket No. 05-1467 *id*.

[4] On the same date OWCP denied her claim for disability on dates from January 24, 2003 through June 13, 2005. On October 25, 2007 appellant filed a timely appeal from the decision of February 6, 2007 denying her compensation for dates of disability. By decision dated April 11, 2008, the Board found that she had not met her burden of proof to establish disability causally related to her accepted injuries on the specific dates claimed. Docket No. 08-0192 *supra* note 2.

physiologic abnormalities, and therefore, she had zero percent permanent impairment of her left upper extremity.

To resolve the conflict that arose between appellant's physician and Dr. Miller as to whether there was a continuing work-related condition, OWCP referred appellant, together with the case record and a statement of accepted facts (SOAF), to Dr. Paul D. Belich, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

On May 7, 2009 Dr. Belich related appellant's history of injury and current complaints. He reviewed her medical records and described his findings on physical examination. Dr. Belich diagnosed soft tissue periscapular pain, soft tissue left shoulder pain, and normal examinations of the left elbow, left wrist, and left hand. He explained that no significant objective findings or diagnostic tests substantiated appellant's complaints of pain in the left shoulder and shoulder girdle. Dr. Belich felt that she was actively resisting attempts to obtain a better range of motion in the left shoulder and was putting a great deal of effort in not allowing her arm to be raised more than 120 degrees. Internal and external rotations on the left were symmetrical to the right, an inconsistency indicative of abnormal pain-type behavior attempting to influence the examination. Dr. Belich concluded that appellant's subjective complaints did not correspond with any objective findings or any definitive orthopedic diagnosis.

Having found appellant's range of motion evaluation invalid, Dr. Belich noted that other physicians never actually found impaired range of shoulder motion beyond a few degrees and there was nothing to explain why her current examination would be so much different. He concluded that he could not find more than about two to three percent permanent impairment of the left upper extremity based on range of motion, but as there was nothing to indicate that she had an impaired ability to carry out her work, he believed that her true impairment rating should be zero percent. Dr. Belich reviewed six previous impairment evaluations. Three evaluations, from orthopedic surgeons, found no impairment and two others found left hand stiffness and a sensory deficit that were not currently substantiated on examination.

In a decision dated June 18, 2009, OWCP denied appellant's claim for an increased schedule award.

On July 30, 2009 appellant filed a timely appeal from OWCP's June 18, 2009 merit decision. By decision dated May 24, 2010, the Board found that she had not submitted sufficient evidence to establish that she had more than four percent permanent impairment of her left upper extremity.[5]

On June 1, 2015 appellant requested an additional schedule award (Form CA-7). She subsequently submitted an April 18, 2016 medical report from Dr. Eugene Lopez, a Board-certified orthopedic surgeon, in which he opined that she had four percent permanent impairment of the left upper extremity according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009). On examination, Dr. Lopez noted positive Neer and Hawkins signs, as well as tenderness with internal and external rotation of the shoulder. He did not observe any loss of range of motion of

[5] Docket No. 09-1980 (issued May 24, 2010).

the shoulder or wrist. Dr. Lopez cited Tables 15-5 and 15-23 of the A.M.A., *Guides* for calculating his percentage of impairment. He concluded that appellant had four percent permanent impairment of the left shoulder, based upon the diagnosis of impingement syndrome of the left shoulder. Dr. Lopez also noted that he could not render an impairment rating for carpal tunnel syndrome because test findings were negative and her sensory/motor function were intact on examination.

On September 20, 2016 OWCP forwarded the case file to a district medical adviser (DMA) for evaluation of appellant's permanent partial impairment of the left upper extremity.

In a report dated September 30, 2016, the DMA found a rating of four percent permanent impairment of the left upper extremity according the sixth edition A.M.A., *Guides*. He noted that he concurred with Dr. Lopez' April 18, 2016 report and impairment rating. The DMA specifically explained regarding appellant's left shoulder that the diagnosis within the diagnosis-based regional grid was impingement syndrome (Table 15.5, page 402 of the A.M.A., *Guides*). Pursuant to Table 15.5, he related that her class was class 1. Regarding grade modifiers he noted that functional history was grade 2 (*Quick*DASH score of 45); physical evaluation was grade 1 (tenderness); clinical studies was grade 1 (diagnosis and mild pathology). He then applied the net adjustment formula and determined that the default impairment at class 1, grade C was three percent permanent impairment, but the adjustment formula would move the impairment rating up 1 grade from C to D, resulting in a rating of four percent permanent impairment of the left upper extremity. The DMA also noted that while Dr. Lopez rated appellant's wrist pain using the entrapment/compressive neuropathy grid, that was not the proper grid because there were no nerve conduction studies to review. He then explained that using the diagnosis-based regional grid for wrist pain at Table 15.3, page 395, the default impairment at class 1, grade C was one percent. The DMA specifically noted that functional history was excluded as it had already been used for the highest rated diagnosis; physical evaluation was grade 1 (mild tenderness); and clinical studies was grade 0 (normal x-ray). The grade modifiers, however, moved the impairment down 1 grade from C to B, which resulted in an impairment value of zero percent. The DMA concluded that he concurred with Dr. Lopez that appellant had four percent permanent impairment of the left upper extremity.

By decision dated November 18, 2016, OWCP found that appellant had not submitted sufficient evidence to support any additional impairment beyond the four percent left upper extremity permanent impairment for which she had received a schedule award.

LEGAL PRECEDENT

The schedule award provision of FECA[6] and its implementing federal regulations[7] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members, functions and organs of the body. 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 for all claimants

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[8] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[9] For decisions issued after May 1, 2009, the sixth edition is used to calculate schedule awards.[10] It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.[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 for the diagnosed condition should be Class of Diagnosis (CDX), 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).[14]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.[15]

ANALYSIS

The Board finds that appellant has not established greater than four percent left upper extremity permanent impairment, for which she previously received combined schedule awards.

In support of her June 1, 2015 request for an additional schedule award appellant submitted a report from Dr. Lopez, dated April 18, 2016. Dr. Lopez however explained that she had four percent permanent impairment of the left upper extremity according to the sixth edition of the A.M.A., *Guides*. OWCP forwarded Dr. Lopez' report along with a SOAF to a DMA. The

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

[9] *Id.*

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

[11] *See Dale B. Larson*, 41 ECAB 481, 490 (1990); *Id*. at Chapter 3.700.3.a.3 (January 2010). This portion of OWCP's procedure provides that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

[12] A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[13] *Id*. at 383-419.

[14] *Id*. at 411.

[15] *See supra* note 10 at Chapter 2.808.6(f) (February 2013).

DMA carefully explained how Dr. Lopez' findings should be rated using the diagnosis-based impairment methodology. He rendered a rating of four percent permanent impairment for appellant's left upper extremity, based upon appellant's accepted shoulder condition, largely concurring with Dr. Lopez' report except for the use of Table 15-2 in place of Table 15-23 in his calculations for wrist impairment. The DMA's impairment rating is in accordance with the A.M.A., *Guides* (6th ed. 2009) and thus, represents the weight of the medical evidence with respect to her entitlement to a schedule award under FECA.[16]

The Board finds that the DMA's rating properly utilized the A.M.A., *Guides* and represents the weight of medical opinion. The DMA explained his impairment rating calculations with citations to the A.M.A., *Guides*, and explained why his rating of four percent permanent impairment concurred with the rating of Dr. Lopez.[17] Since the case was last before the Board, appellant has not submitted any additional medical evidence indicating that she currently has a greater impairment under the A.M.A., *Guides*. There are no contemporaneous medical reports of record containing a permanent impairment rating greater than four percent.[18]

Therefore, the Board finds that appellant has no more than four percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

On appeal, appellant requests that her claim be expanded to include additional conditions. The Board has jurisdiction only over final adverse decisions of OWCP, and OWCP has not issued a final adverse decision over which the Board may exercise jurisdiction on the issue of expansion of her claim to include the requested additional conditions.[19]

CONCLUSION

The Board finds that appellant has no more than four percent permanent impairment of her left upper extremity, for which she previously received schedule awards.

[16] *See C.J.*, Docket No. 13-0342 (issued May 6, 2013).

[17] *See M.M.*, Docket No. 16-0388 (issued April 18, 2016).

[18] *Id.*

[19] *See supra* note 1.

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 2017
Washington, DC

Christopher J. Godfrey, 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