United States Department of Labor
Employees' Compensation Appeals Board

V.R., Appellant	)	
and	)	**Docket No. 18-0118**
	)	**Issued: April 19, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 October 20, 2017 appellant, through counsel, filed a timely appeal from a July 20, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has more than five percent permanent impairment of the left upper extremity and five percent permanent impairment of the right upper extremity, for which she has previously received schedule awards.

FACTUAL HISTORY

On August 25, 2005 appellant, then a 42-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome (CTS) as a result of her repetitive employment duties of grasping, taping mail together, and placing mail in envelopes. By decision dated November 21, 2005, OWCP accepted the claim for bilateral CTS. It subsequently expanded acceptance of the claim to include acquired bilateral trigger finger.

On May 24, 2006 appellant stopped work and underwent authorized right carpal tunnel surgery. On January 24, 2007 she underwent authorized left carpal tunnel surgery. Appellant received wage-loss compensation for total disability and she returned to work in a full-time limited-duty capacity on April 20, 2007.

On January 24, 2008 appellant filed a claim for a schedule award (Form CA-7).

In an April 10, 2008 report, Dr. Robert Leb, a Board-certified orthopedic surgeon and appellant's attending physician, reported that she had reached maximum medical improvement (MMI). He noted a May 16, 2008 electromyography (EMG) and nerve conduction velocity (NCV) study which revealed bilateral median neuropathies at or distal to the wrist CTS with the right being greater than the left. In accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001), Dr. Leb determined that appellant sustained five percent permanent impairment of the left upper extremity and five percent permanent impairment of the right upper extremity due to her bilateral CTS.

In a July 25, 2008 medical report, Dr. Anthony Skalak, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), reviewed Dr. Leb's April 10, 2008 report and agreed with his impairment rating finding five percent permanent impairment of the left upper extremity and five percent permanent impairment of the right upper extremity due to bilateral CTS. Dr. Skalak noted that he did not find a ratable impairment based on physical examination as appellant did not demonstrate objective findings of sensory, motor, or range of motion deficit. However, as appellant was status post bilateral carpal tunnel release and the May 16, 2008 EMG/NCV study revealed persistent bilateral median neuropathies at or distal to the wrist, the left and the right upper extremity warranted five percent permanent impairment each.

By decision dated December 15, 2008, OWCP granted a schedule award for five percent permanent impairment of the left upper extremity and five percent permanent impairment of the right upper extremity. The date of MMI was reported as April 10, 2008.

On February 23, 2016 appellant filed another Form CA-7 requesting an increased schedule award.

In a March 24, 2015 medical report, Dr. Leb diagnosed left thumb trigger finger and left thumb stenosing tenosynovitis. In an October 19, 2015 medical note, he reported that appellant reached MMI for her left thumb trigger finger.

By development letter dated March 11, 2016, OWCP requested that appellant submit an impairment evaluation from her attending physician in accordance with the A.M.A., *Guides*.[3]

In support of her schedule award claim, appellant submitted a March 5, 2016 impairment rating from Dr. Catherine Watkins Campbell, Board-certified in occupational and family medicine. Dr. Watkins Campbell reported evaluating appellant on January 5, 2016 and noted the accepted conditions of bilateral CTS and bilateral trigger finger. She identified a prior schedule award for five percent permanent impairment of the left upper extremity and five percent permanent impairment of the right upper extremity which were calculated using the fifth edition of the A.M.A., *Guides.* Dr. Watkins Campbell reported that appellant reached MMI for her bilateral CTS on April 10, 2008 and MMI for the left trigger thumb on October 30, 2015. She discussed a May 16, 2008 EMG study which provided qualification for rating nerve entrapment with evidence of prolonged latency sensory and motor on the right. With respect to appellant's right CTS, Dr. Watkins Campbell utilized Table 15-23, Entrapment/Compression Neuropathy Impairment, of the sixth edition of the A.M.A., *Guides*.[4] She determined that test findings resulted in a grade 1 modifier, history resulted in a grade 1 modifier, and physical findings of decreased sensation resulting in a grade 2 modifier. The grade modifiers averaged 1.33 for a grade 1 modifier. Appellant's *Quick*DASH score of 54 was in the moderate range, resulting in a three percent permanent impairment of the right upper extremity. Dr. Watkins Campbell further determined that appellant sustained zero percent permanent impairment of the left upper extremity for CTS. She provided physical examination findings for the left wrist and explained that appellant's EMG study did not show any sensory or motor latency loss on the left, therefore nerve entrapment was not established. Dr. Watkins Campbell also found no permanent impairment of the left trigger thumb based on Table 15-2 for digital stenosing tenosynovitis.[5]

On October 12, 2016 OWCP routed Dr. Watkins Campbell's report, a statement of accepted facts (SOAF), and the case file to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP DMA, for review and determination regarding whether appellant sustained a permanent partial impairment and date of MMI in accordance with the sixth edition of the A.M.A., *Guides.*

In an October 13, 2016 medical report, Dr. Harris reported that he reviewed Dr. Watkins Campbell's evaluation and determined that appellant reached MMI on January 5, 2016. He further agreed with her impairment rating for three percent right upper extremity impairment due to residual problems with mild CTS. Dr. Harris also reported that appellant sustained zero percent impairment of the left upper extremity.

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

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

[5] *Id.* at 391.

On October 21, 2016 OWCP requested that the DMA provide an addendum report. It informed him that appellant had previously been awarded a schedule award for five percent right upper extremity impairment and five percent left upper extremity impairment. OWCP requested clarification regarding whether his impairment rating included the prior percentage awarded or if it should be considered an addition to the prior percentage awarded.

In an October 24, 2016 report, Dr. Harris reported that there had been no increase in appellant's right upper extremity or left upper extremity impairment other than that which was previously awarded.

By decision dated November 2, 2016, OWCP found that appellant failed to establish that she had impairments of the right upper extremity and left upper extremity greater than the five percent previously awarded. The date of MMI was noted as January 5, 2016. OWCP found that the current medical evidence established that appellant was entitled to three percent permanent impairment of the right upper extremity and zero percent permanent impairment of the left upper extremity. As appellant had previously received an award for five percent impairment of the each upper extremity, the medical evidence of record did not support an increase in the impairment already compensated. OWCP further noted that there was no overpayment issue regarding her claim as her previous impairment was calculated based on the fifth edition of the A.M.A., *Guides* while her current impairment rating was based on the sixth edition.

On November 10, 2016 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

A hearing was held on June 1, 2017. Counsel for appellant argued that her schedule award should be calculated using the fifth edition of the A.M.A., *Guides* which would establish a worsening of her condition and a higher impairment rating. He further stated that she was entitled to an additional award for three percent permanent impairment of the right upper extremity.

By decision dated July 20, 2017, an OWCP hearing representative affirmed the November 2, 2016 decision finding that the medical evidence of record failed to establish that appellant was entitled to more than the five percent permanent impairment of each upper extremity previously awarded.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations 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.[6] 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.

[6] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[7]

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[8] 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.[9]

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).[10] Under the sixth edition, the evaluator identifies the impairment Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).[11] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

It is the claimant's burden of proof to establish that he or she has sustained a permanent impairment of the scheduled member or function as a result of any employment injury.[12] OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.[13]

ANALYSIS

The Board finds that appellant has not established that she has more than five percent permanent impairment of either upper extremity, for which she previously received schedule awards.[14]

On December 15, 2008 OWCP granted appellant schedule awards for five percent permanent impairment of each upper extremity for her bilateral CTS. The date of MMI was noted

[7] 20 C.F.R. § 10.404. *See also Ronald R. Kraynak*, 53 ECAB 130 (2001).

[8] *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 (March 2017).

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

[10] 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.

[11] *Id.* at 411.

[12] *Tammy L. Meehan*, 53 ECAB 229 (2001).

[13] *Supra* note 8 at Chapter 2.808.5 (March 2017).

[14] *W.R.*, Docket No. 13-0492 (issued June 26, 2013).

as April 10, 2008 and the schedule awards were calculated in accordance with the fifth edition of the A.M.A., *Guides*.

On February 23, 2016 appellant filed another Form CA-7 requesting an increased schedule award and submitted Dr. Watkins Campbell's March 5, 2016 impairment evaluation in support of her claim. The Board notes that Dr. Watkins Campbell properly utilized the sixth edition of the A.M.A., *Guides* in determining that appellant had no ratable impairment of the left upper extremity based on her left CTS and left thumb trigger finger. Dr. Watkins Campbell then calculated three percent permanent impairment of the right upper extremity due to residual problems with mild CTS and neuropathy impairment. Dr. Harris on October 16, 2013 reported that he agreed with her impairment rating for three percent right upper extremity impairment due to residual problems with mild CTS. He also reported that appellant sustained zero percent permanent impairment of the left upper extremity.

In this regard, Dr. Watkins Campbell and the DMA properly used appellant's May 16, 2008 upper extremity EMG/NCV for purposes of rating compression neuropathy under Table 15-23.[15] Dr. Watkins Campbell explained that, since appellant had no left upper extremity sensory or motor latency loss demonstrated by the EMG, appellant had zero percent permanent impairment of the left upper extremity. For the right upper extremity, she described her findings, explaining that appellant had an average grade modifier 1 based on test findings, history, and physical findings, which corresponded to a default upper extremity impairment of two percent under Table 15-23.[16] The final step in the rating process was to factor in functional scale based on appellant's *Quick*DASH score of 54 (moderate), which represented a grade modifier 2 and adjusted her impairment upward to three percent.[17] Dr. Harris, serving as the DMA, agreed with Dr. Watkins Campbell's findings, establishing that appellant was entitled to no more than the five percent permanent impairment previously awarded. Thus, the Board finds that appellant was not entitled to an increased schedule award other than that which was previously awarded.[18]

On appeal, counsel for appellant argues that her claim for an additional schedule award should have been adjudicated under the fifth edition of the A.M.A., *Guides* and not the sixth edition which rendered a lesser impairment. He argued that her initial schedule award was calculated using the fifth edition which would render a greater award and impairment rating. As appellant's award for five percent permanent impairment of the left and right upper extremity predated the May 1, 2009 implementation of the sixth edition of the A.M.A., *Guides*, OWCP was required to calculate her award utilizing the previous edition of the A.M.A., *Guides.*

[15] A.M.A., *Guides* 449, Table 15-23.

[16] *Id.*

[17] If the grade modifier assigned to the functional scale score is equal to the grade assigned for the condition -- in this case grade 1 -- the default value (two percent) within that grade is the appropriate final rating. However, if the functional scale score is 1 grade higher or lower than the grade assigned the condition, the lower or higher value, respectively, is the appropriate impairment rating. A.M.A., *Guides* 449, section 15.4f.

[18] *M.J.*, Docket No. 13-0598 (issued May 8, 2013).

In this case, appellant simply made a claim for an increased schedule award. She had no vested right to a schedule award under the fifth edition of the A.M.A., *Guides* for decisions issued after May 1, 2009. In *Harry D. Butler*,[19] the Board noted that Congress delegated authority to the Director regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the Director adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.[20] On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of OWCP should reflect use of the sixth edition of the A.M.A., *Guides*.[21] FECA Bulletin No. 09-03 notes that a claimant who has received a schedule award calculated under a previous edition and who claims an increased award, will receive a calculation according to the sixth edition for any decision issued on or after May 1, 2009.[22] The applicable date of the sixth edition is as of the schedule award decision reached. It is not determined by either the date of MMI or when the claim for such award was filed.

Ultimately, both Dr. Watkins Campbell and the DMA agreed that appellant had three percent permanent impairment of the right upper extremity and zero percent permanent impairment of the left upper extremity.[23] The Board finds that Dr. Watkins Campbell and Dr. Harris' bilateral upper extremity impairment rating is consistent with the sixth edition of the A.M.A., *Guides*. Appellant has not demonstrated permanent impairment in excess of what she has already been awarded. Accordingly, OWCP's July 20, 2017 schedule award shall be affirmed.

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.

CONCLUSION

The Board finds that appellant failed to establish more than five percent permanent impairment of the left upper extremity and five percent permanent impairment of the right upper extremity for which she previously received schedule awards.

[19] 43 ECAB 859 (1992).

[20] *Id*. at 866.

[21] FECA Bulletin No. 09-03 (issued March 15, 2009). *Supra* note 8 at Chapter 2.808.5(a) (March 2017).

[22] *Supra* note 21; *see also* 20 C.F.R. § 10.404, which provides for when and how compensation for a schedule impairment is paid.

[23] *E.G.*, Docket No. 15-1739 (issued January 28, 2016).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 20, 2017 is affirmed.

Issued: April 19, 2018
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