United States Department of Labor
Employees' Compensation Appeals Board

I.T., Appellant	)	
and	)	**Docket No. 18-1049**
	)	**Issued: December 31, 2018**
U.S. POSTAL SERVICE, POST OFFICE, San Antonio, TX, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 26, 2018 appellant filed a timely appeal from February 15 and April 2, 2018 merit decisions 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following OWCP's decisions at issue, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met her burden of proof to establish permanent impairment of a scheduled member, due to her accepted bilateral carpal tunnel syndrome, warranting a schedule award.

FACTUAL HISTORY

On March 7, 2013 appellant, then a 42-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she suffered from carpal tunnel syndrome and other tenosynovitis of the hand and wrist as a result of sorting, casing, loading, and delivering mail at work. She noted that she first became aware of her condition on February 21, 2013 and realized that it resulted from factors of her federal employment on October 29, 2012. Appellant stopped work on March 7, 2013. OWCP accepted her claim for bilateral carpal tunnel syndrome. It paid wage-loss compensation beginning March 7, 2013.

On August 11, 2014 appellant returned to modified-duty work for four hours per day. She returned to full-time modified-duty work on March 13, 2015.

On August 10, 2017 appellant filed a claim for a schedule award (Form CA-7).[3]

By development letter dated August 24, 2017, OWCP advised appellant of the type of evidence needed to establish her schedule award claim. It requested that she provide an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[4] It afforded appellant 30 days to submit the requested information.

In a September 22, 2017 report, Dr. Paul Chubb, an osteopathic physician who specializes in orthopedic hand surgery, discussed appellant's history of injury and related that she still complained of pain and occasional numbness going down the left elbow into her hand. Upon physical examination of appellant's left arm, he observed tenderness over the lateral condyle and proximal forearm over the radial tunnel. Range of motion was slow. Neurological and sensory examinations were intact. Dr. Chubb diagnosed bilateral elbow ulnar nerve entrapment and bilateral carpal tunnel syndrome. He completed duty status reports (CA-17 forms) dated August 25 and September 22, 2017 which indicated that appellant could work light duty.

Appellant continued to seek treatment from Dr. Chubb. In reports dated October 31, 2017 to January 19, 2018, he related appellant's complaints of continued numbness and tingling on the dorsum of her forearms and hands. Upon physical examination of appellant's bilateral hands, Dr. Chubb observed full range of motion of the digits and elbows. Neurological and sensory examinations were intact. Dr. Chubb diagnosed bilateral elbow ulnar nerve entrapment and bilateral carpal tunnel syndrome. In a November 28, 2017 report, he explained that he believed

[3] Appellant filed additional claims for a schedule award on November 6 and December 1, 2017.

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

appellant's carpal and cubital tunnel symptoms were resolved. Dr. Chubb opined that appellant's forearm pain and tingling may be related to her spinal stenosis.

Dr. Chubb also completed an October 31, 2017 Form CA-17, which indicated that appellant could work light duty. In CA-17 forms dated November 28 and December 22, 2017, he related that appellant could work with no restrictions.

OWCP received hospital records and operative reports dated March 20, 2017, which indicated that appellant underwent a right carpal tunnel release repair and cubital tunnel decompression surgery.

A January 9, 2018 electromyography (EMG) and nerve conduction velocity (NCV) study report showed an essentially normal electrodiagnostic study of the left upper extremity.

By decision dated February 15, 2018, OWCP denied appellant's schedule award claim. It found that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member as a result of her accepted bilateral carpal tunnel syndrome. OWCP noted that appellant did not submit evidence showing a measurable permanent impairment due to her accepted condition.

On March 5, 2018 appellant requested reconsideration. She related that she had a total of eight surgeries on her hands and noted that she was submitting a new EMG study.

In a March 20, 2018 report, Dr. Chubb related that appellant still had symptoms of her fingertips and numbness throughout the left cubital tunnel. He reviewed appellant's history and conducted an examination of appellant's bilateral upper extremities. Dr. Chubb noted full range of motion and intact neurological examination. He diagnosed left arm numbness and tingling, bilateral ulnar nerve entrapment, and bilateral carpal tunnel syndrome. Dr. Chubb reported that appellant had recovered from her bilateral carpal tunnel syndrome, but still had work restrictions with regard to her back condition.

OWCP also received several reports previously of record.

In a December 17, 2014 report, Dr. Hung Q. Vu, an orthopedic surgeon, indicated that appellant sustained a work-related injury of bilateral carpal tunnel syndrome and reviewed her history. Dr. Vu reported physical examination findings of decreased weakness in appellant's right wrist. Neurological examination demonstrated decreased sensation and grip strength of both hands. Dr. Vu related that appellant could work with restrictions and completed a work capacity evaluation form (Form OWCP-5c).

Appellant submitted health records and an operative report dated June 26, 2017, which indicated that appellant underwent left carpal tunnel release repair and left cubital tunnel decompression surgery.

By decision dated April 2, 2018, OWCP denied modification of is February 15, 2018 schedule award decision. It found that appellant had not submitted sufficient medical evidence to establish permanent impairment due to her accepted bilateral carpal tunnel condition.

LEGAL PRECEDENT

The schedule award provisions of FECA[5] 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. FECA, however, does not specify the manner in which the percentage of 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 concurred in such adoption.[6] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.[7]

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).[8] In addressing impairment for the upper extremities, the sixth edition of the A.M.A., *Guides* requires identifying 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).[9] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[10]

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[11] In Table 15-23, grade modifier levels (ranging from zero to four) are described for the categories of test findings, history, and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down based on functional scale, an assessment of impact on daily living activities.[12]

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404 (1999); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.806.6.6a (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

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

[9] A.M.A., *Guides* 385-419; *see M.P.*, Docket No. 13-2087 (issued April 8, 2014).

[10] *Id.* at 411.

[11] *Id.* at 449.

[12] *Id.* at 448-449.

It is the claimant's burden of proof to establish permanent impairment of the scheduled member or function of the body as a result of an employment injury.[13] 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.*[14]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish permanent impairment of a scheduled member, due to her accepted bilateral carpal tunnel syndrome, warranting a schedule award.

In support of her claim, appellant submitted several reports by Dr. Chubb dated September 22, 2017 to March 20, 2018. Dr. Chubb reviewed appellant's history of injury and provided physical examination findings. He diagnosed left arm numbness and tingling, bilateral ulnar nerve entrapment, and bilateral carpal tunnel syndrome. In a November 28, 2017 report, Dr. Chubb opined that appellant's carpal and cubital tunnel symptoms had resolved and indicated that appellant could work full duty. He, however, did not provide a date of maximum medical improvement nor address permanent impairment pursuant to the A.M.A., *Guides.* Dr. Chubb did not reach a conclusion with regard to appellant's permanent impairment due to her accepted bilateral carpal tunnel condition. These reports, therefore, do not establish permanent impairment of a scheduled member or function of the body causally related to her accepted bilateral carpal tunnel syndrome.[15] Likewise, the January 9, 2018 EMG/NCV study report and hospital records and operative reports dated March 20 and June 26, 2017 also do not contain a conclusion or an opinion with regard to appellant's permanent impairment. As none of these physicians provided an estimate of impairment to appellant's upper extremities, their reports are insufficient to establish appellant's schedule award claim.[16]

As noted above, OWCP procedures provide that to support a schedule award, the file must contain medical evidence which shows that the impairment has reached a permanent and fixed state, indicates the date on which this occurred, describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of permanent impairment in accordance with the A.M.A., *Guides*.[17] The Board finds that in this case there is no current medical report of record that provides an impairment rating. Accordingly, there is no medical evidence warranting a schedule award.

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

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (March 2017).

[15] *See M.M.*, Docket No. 18-0292 (issued July 9, 2018).

[16] 20 C.F.R. § 10.404 (1999); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

[17] *Supra* note 14.

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 has not met her burden of proof to establish permanent impairment of a scheduled member, due to her accepted bilateral carpal tunnel syndrome, warranting a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the April 2 and February 15, 2018 merit decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 31, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board