United States Department of Labor
Employees' Compensation Appeals Board

O.V., Appellant	)	
and	)	**Docket No. 17-0619**
	)	**Issued: February 26, 2018**
U.S. POSTAL SERVICE, GENERAL MAIL FACILITY Denver, CO, 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 25, 2017 appellant filed a timely appeal from a November 7, 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 nine percent permanent impairment of the right upper extremity, for which he previously received a schedule award.

FACTUAL HISTORY

On September 21, 2011 appellant, then a 59-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he had developed carpal and cubital tunnel syndromes as a result of his federal employment. He indicated on the claim form that his job patching mail

[1] 5 U.S.C. § 8101 *et seq.*

involved constant grasping and manipulating torn mail. In a report dated August 25, 2011, Dr. Carleton Clinkscales, a Board-certified orthopedic surgeon, diagnosed right carpal tunnel and right cubital tunnel syndromes. He indicated right upper extremity surgery was scheduled.

OWCP accepted the claim on December 30, 2011 for right carpal tunnel syndrome and right ulnar nerve lesion.[2] On July 9, 2012 appellant underwent right carpal tunnel release, and right ulnar nerve decompression, performed by Dr. Clinkscales. He underwent a right wrist extensor tenosynovectomy and right distal radius bone graft on November 19, 2012. Appellant received wage-loss compensation and returned to work at five hours per day on February 4, 2013.

On April 11, 2013 appellant filed a schedule award claim (Form CA-7). In a report dated March 27, 2013, Dr. Bennett Machanic, a Board-certified neurologist, provided results on examination. He opined that appellant had 18 percent permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[3] due to loss of wrist range of motion.

OWCP referred the case to an OWCP medical adviser for review. In a report dated April 25, 2013, the medical adviser opined that appellant had one percent right upper extremity permanent impairment for carpal tunnel syndrome, and one percent for cubital tunnel syndrome. As to any additional permanent impairment, the medical adviser asserted that Dr. Machanic had not provided adequate range of motion results and additional information was required.

In a report dated May 8, 2013, Dr. Machanic provided results on examination. For right wrist range of motion, he opined that appellant had 12 percent right upper extremity permanent impairment. Dr. Machanic also found an additional two percent for carpal tunnel and cubital tunnel syndromes.

An OWCP medical adviser reviewed the medical evidence and in a June 5, 2013 report opined that appellant had four percent right upper extremity permanent impairment. He again found one percent permanent impairment for carpal tunnel syndrome, and one percent for cubital tunnel syndrome. For a right wrist ganglion/bone cyst, the medical adviser opined the diagnosis-based impairment (DBI) was the preferred method. He found two percent right upper extremity permanent impairment based on the diagnosis of right wrist synovitis.

By decision dated June 10, 2013, OWCP issued a schedule award for four percent right upper extremity permanent impairment. The period of the award ran for 12.48 weeks from May 8, 2013.

On December 1, 2015 appellant submitted a September 16, 2015 report from Dr. Christopher Ryan, a Board-certified physiatrist. Dr. Ryan opined that appellant had 28 percent right upper extremity permanent impairment. He found that appellant had 14 percent right upper extremity permanent impairment based on loss of wrist range of motion. Dr. Ryan

[2] On August 16, 2012 OWCP indicated that it had accepted a right ganglion cyst.

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

also found eight percent permanent impairment for the median nerve, and eight percent for the ulnar nerve, under Table 15-23 of the A.M.A., *Guides*. The permanent impairments were combined for 28 percent right upper extremity permanent impairment.

The case was referred to another OWCP medical adviser for review. In a report dated December 18, 2015, an OWCP medical adviser opined that the report from Dr. Ryan was "problematic for several reasons." He wrote that Dr. Clinkscales had indicated an excellent result following surgeries, and the subsequent decline in function was hard to explain. The medical adviser also indicated the ulnar nerve entrapment impairment should be reduced as a second entrapped nerve under Table 15-23.

OWCP referred appellant for a second opinion examination by Dr. Wallace Larson, a Board-certified orthopedic surgeon. Dr. Larson was asked to provide a permanent impairment rating under the A.M.A., *Guides*.

In a report dated July 12, 2016, Dr. Larson provided a history and results on examination. He opined that range of motion impairment would not be calculated, as this was from degenerative arthritis that was not employment related. Dr. Larson found that appellant had seven percent right upper extremity permanent impairment under Table 15-23. He indicated there was five percent permanent impairment for cubital tunnel syndrome, and four percent for carpal tunnel syndrome. The four percent permanent impairment was reduced by one half, resulting in seven percent right upper extremity permanent impairment.

The evidence was again referred to an OWCP medical adviser for review. In a report dated October 18, 2016, the medical adviser opined that appellant had seven percent right upper extremity permanent impairment under Table 15-23. According to him, the cubital nerve entrapment was five percent right upper extremity permanent impairment, and the median nerve entrapment impairment was two percent. The medical adviser combined the seven percent with two percent for other wrist conditions from the prior schedule award, for nine percent permanent impairment. He opined that appellant was entitled to an additional five percent, after deducting the prior schedule award of four percent.

By decision dated November 7, 2016, OWCP issued a schedule award for an additional five percent permanent impairment to the right upper extremity. The award ran for 15.60 weeks from July 12, 2016.

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.[4] 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.[5] FECA, however, does not specify

[4] *See* 20 C.F.R. §§ 1.1-1.4.

[5] For a complete loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

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.[6]

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).[7] 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.[8]

ANALYSIS

The issue on appeal is whether appellant has more than nine percent right upper extremity permanent impairment, for which he previously received a schedule award. The accepted conditions include carpal tunnel syndrome, as well as right ulnar nerve lesion and right ganglion cyst. In the original schedule award decision dated June 10, 2013, OWCP's medical adviser opined that the DBI method was appropriate for the right ulnar nerve and ganglion cyst conditions, rather than the ROM approach. Appellant submitted a September 16, 2015 report from Dr. Ryan, who opined that appellant had 28 percent permanent impairment to the right upper extremity. The A.M.A., *Guides* notes that, when impairment results strictly from a peripheral nerve lesion, no other rating method is applied to this section (15.4 Peripheral Nerve Impairments) to avoid duplication or unwarranted increases in the impairment estimation.[9] Dr. Ryan referred to the DBI method based on Table 15-3, but found that the ROM approach for loss of wrist range of motion was proper.

With respect to the remainder of the upper extremity, the Board finds the case is not in posture for decision.

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[6] 20 C.F.R. § 10.404. *See also Ronald R. Kraynak,* 53 ECAB 130 (2001).

[7] *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).

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

[9] A.M.A., *Guides* 423 (note that peripheral nerve impairment may be combined with DBI at the upper extremity as long as the DBI does not encompass the nerve impairment. *Id*. at 419

To properly evaluate the medical evidence with respect to conditions other than carpal tunnel syndrome, OWCP must resolve the issues regarding the ROM and DBI methods of evaluating permanent impairment.[10] The Board has found that OWCP 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 had been followed regarding the proper use of the DBI or the ROM methodology when assessing the extent of permanent impairment for schedule award purposes.[11] The purpose of the use of uniform standards is to ensure consistent results and to ensure equal justice under the law to all claimants.[12] In *T.H.*, the Board concluded that OWCP physicians were 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 observed that physicians interchangeably cited to language in the first printing or the second printing when justifying use of either the ROM or DBI methodology. Because OWCP's own physicians were inconsistent in the application of the A.M.A., *Guides*, the Board found that OWCP could no longer ensure consistent results and equal justice under the law for all claimants.[13]

In order to ensure a consistent result and equal justice under the law for cases involving upper extremity impairment, the Board will set aside the November 7, 2016 decision with respect to the upper extremity not including the condition of carpal tunnel syndrome. Utilizing a consistent method for calculating permanent impairment[14] 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 the case is not in posture for decision.

[10] Dr. Larson referred to loss of wrist motion but opined that wrist arthritis was not employment related, without further explanation.

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

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

[13] *Supra* note 9.

[14] *See* FECA Bulletin No. 17-06 (May 8, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 7, 2016 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: February 26, 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