

**United States Department of Labor
Employees' Compensation Appeals Board**

V.M., Appellant)	
)	
and)	Docket No. 18-0591
)	Issued: May 22, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Naperville, IL, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 26, 2018 appellant, through counsel, filed a timely appeal from a January 5, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 met her burden of proof to establish right upper extremity permanent impairment for entitlement to a schedule award.

FACTUAL HISTORY

On October 24, 2007 appellant, then a 49-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome (CTS) as a result of her repetitive employment duties. She first became aware of her condition and first realized it resulted from factors of her federal employment on April 17, 2007. Appellant did not stop work, but performed limited duty until she retired from federal service in 2015. OWCP accepted her claim for right CTS.³ In an April 13, 2016 note, Dr. Sergei Kravets, a Board-certified family practitioner, opined that appellant had reached maximum medical improvement (MMI).

On August 17, 2016 appellant filed a claim for a schedule award (Form CA-7).

In a development letter dated August 22, 2016, OWCP advised appellant of the medical evidence needed to establish her schedule award claim, and requested that she submit a detailed report from her attending physician. It afforded her 30 days to submit the requested information.

In an August 24, 2016 report, Dr. Neil Allen, Board-certified in internal medicine and neurology, noted a diagnosis of right CTS. He reviewed appellant's history and provided examination findings. Dr. Allen related that an April 6, 2012 electromyography and nerve conduction velocity (EMG/NCV) studies showed mild-to-moderately severe right median neuropathy at the wrist. He indicated that appellant had reached MMI.

Dr. Allen opined that appellant had six percent right upper extremity permanent impairment for right CTS utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴ He referenced Table 15-23, page 449, for Entrapment/Compression Neuropathy Impairment and assigned grade modifier for clinical studies (GMCS) of 1 for test findings due to sensory conduction delay. Dr. Allen also reported grade modifiers of 3 for a functional history (GMFH) of constant symptoms and 3 for physical findings (GMPE) due to a *QuickDASH* score of 84. He concluded that according to page 448 of the A.M.A., *Guides*, "Rating Process," appellant had six percent right upper extremity permanent impairment.

In a March 1, 2017 report, Dr. Arthur Harris, a Board-certified orthopedic surgeon and OWCP district medical adviser (DMA), found that appellant had six percent permanent impairment of the right upper extremity due to her accepted right CTS. He referenced Table 15-

³ The record reveals that appellant has a previously accepted claim for right CTS and right shoulder bursitis/tendinitis in OWCP File No. xxxxx0271. Appellant's claims have been combined with the current case, OWCP File No. xxxxxx719, as the master file.

⁴ A.M.A., *Guides* (6th ed. 2009).

23, page 449 and noted a “Grade Modifier of 2D.” The DMA reported a date of MMI of August 24, 2016, the date of Dr. Allen’s evaluation.

On June 26, 2017 OWCP requested a supplemental report from the DMA. In the request, it indicated that appellant was recently awarded a schedule award of 11 percent permanent impairment of each upper extremity under File No. xxxxxx045.⁵ OWCP requested that the DMA address whether appellant had established an additional schedule award.

An updated statement of accepted facts (SOAF) dated June 26, 2017 indicated that under OWCP File No xxxxxx045 OWCP had accepted appellant’s claim for bilateral CTS, bilateral lateral epicondylitis, right medial epicondylitis, and right radial styloid tenosynovitis as a result of her employment duties. It further indicated that OWCP had paid a schedule award of 11 percent permanent impairment to the right upper extremity and 11 percent permanent impairment to the left upper extremity.

In a supplemental June 27, 2017 report, the DMA related that he had previously found that appellant had six percent right upper extremity impairment due to her accepted right CTS under the current claim. He indicated that according to the June 26, 2017 OWCP memorandum, appellant had previously been awarded 11 percent right upper extremity impairment. Dr. Harris concluded that appellant had no additional right upper extremity impairment.

By decision dated July 6, 2017, OWCP denied appellant’s schedule award claim finding that the medical evidence of record did not warrant an increase from the prior schedule award. It noted that she was previously paid a schedule award for 11 percent permanent impairment of each upper extremity under File No. xxxxxx045. OWCP found that the medical evidence of record was insufficient to establish that she was entitled to an additional schedule award as a result of her accepted right CTS for the current claim.

On July 12, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. The hearing was held on November 29, 2017.

By decision dated January 5, 2018, an OWCP hearing representative affirmed the July 6, 2017 decision. He found that the weight of the medical evidence rested with the report of the DMA, Dr. Harris, who found that the medical evidence submitted did not demonstrate that appellant was entitled to more than 11 percent permanent impairment of her right upper extremity, for which she previously received a schedule award on April 19, 2017.⁶

⁵ OWCP File No. xxxxxx045 is not currently before the Board.

⁶ The hearing representative further noted that the April 19, 2017 schedule award included impairment referable to CTS, as reportedly noted by Dr. Michael Katz, a DMA, in a March 9, 2017 report which is not of record in the current claim.

LEGAL PRECEDENT

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.⁷ With respect to a schedule award, it is the claimant's burden of proof to establish a permanent impairment of the scheduled member as a result of his or her employment injury.⁸ A claimant may seek an increased schedule award if the evidence establishes that he or she sustained an increased impairment causally related to an employment injury.⁹ The medical evidence must include a detailed description of the permanent impairment.¹⁰

The schedule award provision of FECA¹¹ 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.¹² For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.¹³

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).¹⁴ In addressing impairment for the upper extremities, the sixth edition of the A.M.A., *Guides* requires identifying the impairment class for the diagnosed condition, which is then adjusted by grade modifiers GMFH, GMPE, and GMCS.¹⁵ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁶ Evaluators are directed to provide

⁷ *John W. Montoya*, 54 ECAB 306 (2003).

⁸ *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁹ *See Rose V. Ford*, 55 ECAB 449 (2004).

¹⁰ *See Vanessa Young*, 55 ECAB 575 (2004).

¹¹ 5 U.S.C. § 8107.

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

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹⁴ 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).

¹⁵ A.M.A., *Guides* 385-419; *see M.P.*, Docket No. 13-2087 (issued April 8, 2014).

¹⁶ *Id.* at 411.

rationale for their impairment rating choices, including the choices of diagnosis from regional grids and calculations of modifier scores.¹⁷

Impairment due to CTS is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.¹⁸ In Table 15-23, grade modifiers 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, *QuickDASH*.¹⁹

ANALYSIS

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

OWCP procedures provide that cases should be administratively combined when correct adjudication of the issues depend on frequent cross-reference between files.²⁰ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.²¹ Appellant's current claim for a schedule award for her right upper extremity is for a diagnosis of CTS while her schedule award in OWCP File No xxxxxx045 was based upon an accepted claim for bilateral CTS, bilateral lateral epicondylitis, right medial epicondylitis, and right radial styloid tenosynovitis. The medical records of the two files have not been combined for cross-referencing as required by OWCP procedures.

The Board therefore finds that for a full and fair adjudication of appellant's pending appeals for her right upper extremity, all of her claim files which relate to upper extremity conditions must be administratively combined by OWCP, including File Nos. xxxxxx045 and xxxxxx719. Following this and other such further development as it deems necessary, OWCP shall issue a *de novo* decision on appellant's claim for a schedule award.

CONCLUSION

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

¹⁷ See *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹⁸ A.M.A., *Guides* 449.

¹⁹ *Id.* at 448-49.

²⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

²¹ *Id.*; *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2018 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: May 22, 2019
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