

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

L.R., Appellant

and

**U.S. POSTAL SERVICE, MOUNT McCOY
POST OFFICE, Simi Valley, CA, Employer**

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**Docket No. 20-0493
Issued: September 20, 2021**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 2, 2020 appellant filed a timely appeal from a July 23, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

FACTUAL HISTORY

On September 16, 2012 appellant, then a 59-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she had developed bilateral carpal tunnel syndrome (CTS), nerve impingement, and osteoarthritis of the hands due to factors of her federal

¹ 5 U.S.C. § 8101 *et seq.*

employment, including repetitive gripping of the steering wheel, mail and full mail trays, and casing mail. She stopped work on September 15, 2012.

On October 1, 2012 appellant underwent electrodiagnostic testing including electromyogram and nerve conduction velocity (EMG/NCV) studies, which revealed right median nerve motor distal latency of 3.9 milliseconds and left median nerve motor distal latency of 2.6 milliseconds. The diagnosis was bilateral moderate sensorimotor CTS. On November 15, 2012 OWCP accepted appellant's claim for bilateral CTS and bilateral tenosynovitis of the hands and wrists. It paid her wage-loss compensation on the periodic rolls, effective July 27, 2013.

On April 22, 2013 appellant underwent additional EMG/NCV studies. The right median nerve motor distal latency was 3.7 milliseconds while the left was 2.7 milliseconds. The diagnosis was bilateral moderate sensorimotor CTS, stable to mildly improved compared to the October 1, 2012 EMG/NCV study.

On October 21, 2014 appellant accepted a light-duty position working four hours a day and lifting up to 10 pounds.

On February 2, 2015 appellant underwent NCV studies which demonstrated right median nerve motor distal latency of 3.7 milliseconds and left median nerve motor distal latency of 3.4 milliseconds.

On February 29, 2016 appellant retired from the employing establishment. On June 3, 2016 she elected to receive retirement benefits under the Civil Service Retirement Act rather than FECA compensation.

On August 22 and December 19, 2016 appellant filed claims for compensation (Form CA-7) for schedule awards. In a July 1, 2016 report, Dr. Charles Xeller, a Board-certified orthopedic surgeon, described appellant's employment duties and performed a physical examination. He found significant pain in her thumbs, notable arthritis, and full range of motion of all fingers. Dr. Xeller found two-point discrimination was nine millimeters on digits one to three bilaterally, and five millimeters on digits four and five. He further found slight thumb abductor weakness which he attributed to both CTS and basilar joint arthritis. Dr. Xeller reviewed the electrodiagnostic studies and determined that appellant had moderate bilateral sensory and motor CTS. He diagnosed bilateral synovitis/tenosynovitis. Dr. Xeller determined that she had reached maximum medical improvement (MMI) on April 14, 2014.

Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² Dr. Xeller determined that appellant's permanent impairment should be rated based on her CTS diagnosis, as it would result in greater impairment than the arthritis of the basilar joint of her thumb. He applied Table 15-23, page 449 of the A.M.A., *Guides* to his findings of grade modifier 2 for test findings due to motor and conduction delay, grade modifier 2 for history, functional scale grade modifier 2, and grade modifier 2 for physical findings of decreased sensation. Dr. Xeller also noted that appellant had slight weakness in thumb abductor which resulted in a grade modifier 3. He determined that in accordance with page 448

² A.M.A., *Guides* (6th ed. 2009).

of the A.M.A., *Guides* the average of these grade modifiers was 2.25 and that appellant had five percent permanent impairment of each of her upper extremities due to her accepted bilateral CTS.

On April 5, 2017 OWCP referred Dr. Xeller's report and the medical evidence to Dr. David J. Slutsky, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA). In an April 19, 2017 report, Dr. Slutsky found that appellant did not have a ratable impairment as a result of her diagnosed bilateral CTS. He noted that the NCV testing in 2013 and 2015 was within normal limits. The DMA determined that the criteria for conduction delay in CTS was found in Appendix 15-B, page 487 of the A.M.A., *Guides*, which included distal motor latencies longer the 4.5 millisecond from an 8 centimeter study and distal peak sensory latency longer than 4.0 milliseconds for a 14 centimeter distance and distal peak compound nerve latency of longer than 2.4 milliseconds for a transcarpal or midpalmar study of 8 centimeters. He further noted that the diagnosis of a focal neuropathy syndrome must be documented by sensory and motor NCV studies or EMG in order to be ratable as impairment in accordance with page 445 of the A.M.A., *Guides*. The DMA further explained that, if the NCV testing does not meet the diagnostic criteria, there is no ratable impairment for entrapment neuropathy in accordance with pages 432 through 450 of the A.M.A., *Guides*. He found that appellant's NCV testing for either upper extremity did not meet the diagnostic criteria. The DMA applied page 446 of the A.M.A., *Guides* which noted that CTS could be rated in Section 15.2 Diagnosis-Based Impairment, page 395, Table 15-3 using the class of diagnosis (CDX) of nonspecific wrist pain, a class 1 impairment with a default grade of 1. He determined that appellant's grade modifier for functional history (GMFH) was 1 in accordance with Table 15-7, page 406 of the A.M.A., *Guides*, that her grade modifier for physical examination (GMPE) was 0 in accordance with Table 15-8, page 408 of the A.M.A., *Guides*, and that her grade modifier for clinical studies (GMCS) was 0 in accordance with Table 15-9, page 410 of A.M.A., *Guides*. The DMA then applied the net adjustment formula to reach a net adjustment of -2, which moves the grade two spaces to the left resulting in a Class 1 Grade A or 0 percent permanent impairment of each upper extremity.

By decision dated July 23, 2018, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish a measurable permanent impairment of a scheduled member as a result of her accepted employment injury. It found that the DMA's report was entitled to the weight of the medical evidence.

On November 17, 2018 appellant filed a request for reconsideration. In support of her reconsideration request, she submitted October 5, 2018 EMG and NCV studies from Dr. Omar Mora, a physical medicine specialist which demonstrated mild bilateral CTS affecting the motor components.

In a November 17, 2018 report, Dr. Xeller again diagnosed bilateral CTS and bilateral synovitis and tenosynovitis. He indicated that he was providing an impairment rating based on de Quervain's syndrome and bilateral CTS. Dr. Xeller found that appellant had 2 percent impairment bilaterally due to de Quervain's syndrome and 5 percent bilaterally due to CTS for a total of 14 percent permanent impairment of the upper extremities.

By decision dated February 5, 2019, OWCP denied modification of the July 23, 2018 decision.

On April 26, 2019 appellant requested reconsideration of the February 5, 2019 decision. In support of her request, she provided an April 13, 2019 report from Dr. Xeller. Dr. Xeller reviewed appellant's October 2018 EMG/ NCV studies and found no slowing of the conduction, but a decrease in the amplitude of the right median motor nerve, decreased velocity of the left median motor nerve and, therefore, evidence of bilateral CTS. He applied the A.M.A., *Guides* and found that in accordance with Table 15-23, page 449, conduction delay was a grade modifier 1 for test findings. Dr. Xeller also reported that appellant had very significant intermittent symptoms which woke her up at night, prevented her from opening jars, and required her to use her other hand for support. He reported that appellant was constantly dropping things, and that this history is consistent with grade modifier 2 for history in accordance with Table 15-23, page 449. Dr. Xeller found weakness in thumb abductor pollicis brevis, slight alteration in sensation, which resulted in grade modifier 2 for physical findings. He averaged the three grade modifiers and found grade 2 upper extremity impairment in accordance with Table 15-23, page 449, or five percent permanent impairment of each upper extremity.

By decision dated July 23, 2019, OWCP denied modification of its prior decisions.

LEGAL PRECEDENT

The schedule award provisions of FECA³ and its implementing federal regulations⁴ 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. 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.⁷ In Table 15-23, grade modifier levels (ranging from 0 to 4) are described for the categories 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

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.*

⁶ 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).

⁷ A.M.A., *Guides* 449, Table 15-23.

value may be modified up or down by one percent based on functional scale, an assessment of impact on daily living activities.⁸

OWCP's 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 OWCP's medical adviser providing rationale for the percentage of impairment specified.⁹

ANALYSIS

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

OWCP accepted that appellant developed bilateral CTS and bilateral tenosynovitis of the hands and wrists due to factors of her federal employment. In support of her schedule award claims, she initially submitted a July 1, 2016 report from Dr. Xeller finding that she had five percent permanent impairment of each of her upper extremities due to bilateral CTS. However, in April 19, 2017, OWCP's DMA reviewed Dr. Xeller's July 1, 2016 report and disagreed with the application of the A.M.A., *Guides* based on the findings on electrodiagnostic studies.

On October 5, 2018 appellant underwent additional electrodiagnostic studies which demonstrated mild bilateral CTS. In an April 13, 2019 report, Dr. Xeller reviewed appellant's October 2018 EMG/NCV studies and found no slowing of the conduction, but a decrease in the amplitude of the right median motor nerve, decreased velocity of the left median motor nerve and, therefore, appropriate electrodiagnostic evidence of bilateral CTS. He provided an additional impairment rating based on this new diagnostic study and an application of the sixth edition of the A.M.A., *Guides*, finding again that appellant had five percent permanent impairment of each upper extremity.

As Dr. Xeller provided an impairment rating based on his November 17, 2018 examination using the sixth edition of the A.M.A., *Guides*, pursuant to its procedures, OWCP should have routed the case record, including the additional electrodiagnostic studies and the additional report of Dr. Xeller, to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified, if any.¹⁰ As this was not done, the case must be remanded for referral to a DMA.¹¹

⁸ A survey completed by a given claimant, known by the name *QuickDASH*, may be used to determine the functional scale score. *Id.* at 448-49.

⁹ *Supra* note 6 at Chapter 2.808.6(e) and (f)(1) (March 2017).

¹⁰ *L.S.*, Docket No. 19-0092 (issued June 12, 2019); *N.I.*, Docket No. 16-1027 (issued January 11, 2017); *Tommy R. Martin*, 56 ECAB 273 (2005); *supra* note 6 at Chapter 2.808.6(f) (March 2017). (If the claimant's physician provides an impairment report the case should be referred to the DMA for review.)

¹¹ *L.S.*, *id.*; *R.H.*, Docket No. 17-1017 (issued December 4, 2018).

On remand, OWCP shall further develop the medical evidence of record by obtaining an opinion from a DMA regarding the nature and extent of appellant's permanent impairment, if any, for her accepted condition. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision regarding appellant's schedule award claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 23, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 20, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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