United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 21-1110**
	)	**Issued: March 3, 2022**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, Laredo, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 8, 2021 appellant filed a timely appeal from a June 30, 2021 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 met his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

FACTUAL HISTORY

On February 25, 2020 appellant, then a 40-year-old criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2020, he injured his right wrist when

[1] 5 U.S.C. § 8101 *et seq*.

attempting to perform a bridge maneuver during survival training while in the performance of duty. He asserted that he heard and felt something "pop" in his right wrist.

On May 14, 2020 OWCP accepted the claim for sprain of unspecified part of right wrist and hand, and other instability of the right wrist.

In a May 21, 2020 report, Dr. Michael Jones, a Board-certified orthopedic surgeon specializing in surgery of the hand, provided a history of injury and treatment. On examination of the right upper extremity, he noted mild subluxation of the ulna with manipulation with the forearm in full supination. Dr. Jones diagnosed a right wrist sprain. He recommended an MRI scan of the right wrist to assess whether the TFCC remained detached at the insertion of the ulnar fovea.

A June 3, 2020 MRI scan of the right wrist demonstrated a TFCC tear at its ulnar attachment with a small bony flake and fluid around the ulnar styloid, small central perforation of the TFCC with fluid in the distal radioulnar joint, tears of the ulnar collateral and radial collateral ligaments, thickening and mild intrasubstance increased thickening and mild intrasubstance increased signal in the extensor carpi ulnaris tendon compatible with tendinosis, and a small amount of fluid in the carpometacarpal joint of the right thumb.

In a June 17, 2020 report, Dr. Jones noted that appellant experienced intermittent slight soreness on the ulnar side of the right wrist, which appellant attributed to his return to full duty. On examination, he found no abnormalities of the right wrist. Dr. Jones returned appellant to full-duty work with no restrictions.

In a June 17, 2020 Form OWCP-5c, Dr. Jones diagnosed a right wrist sprain with instability. He returned appellant to full-duty work with no restrictions.

On June 17, 2020 Dr. Jones referred appellant for an impairment rating. On June 26, 2020 his office requested OWCP authorization for an impairment rating to be performed by Snowden Orthopedic and Occupational Rehabilitation.

In a July 21, 2020 impairment rating, Thomas I. Washington, a physical therapist with Snowden Orthopedic and Occupational Rehabilitation, reviewed a history of injury and treatment. On examination of the right upper extremity, he observed right wrist flexion at 50 degrees, right wrist extension at 40 degrees, radial deviation at 15 degrees, ulnar deviation at 25 degrees, forearm supination at 75 degrees, and forearm pronation at 70 degrees. Appellant completed a *Quick*DASH questionnaire, scored at 18. Mr. Washington provided an impairment rating referring to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[2] utilizing the diagnosis-based impairment (DBI) method, to find that, under Table 15-3, page 396, the class of diagnosis (CDX) for TFCC injury with residual findings, resulted in a class 1 impairment with a default value of eight. He assigned a grade modifier for functional history (GMFH) of 1 according to Section 15.3a, page 406 of the A.M.A., *Guides*, based on his clinical observations and functional history, a grade modifier for physical examination (GMPE) of 1 according to Table 15-8, page 408, for minimal palpatory findings consistently documents, and a grade modifier for clinical studies of (GMCS) of 1 for June 3, 2020 MRI findings

[2] A.M.A., *Guides* (6th ed. 2009). Table 15-3 is entitled "Wrist Regional Grid: Upper Extremity Impairments."

according to Table 15-9, page 410. Applying the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (1-1) + (1-1) + (1-1) = 0, Mr. Washington calculated a net adjustment of zero. He therefore found an eight percent permanent impairment of the right upper extremity.

On September 9, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated September 16, 2020, OWCP advised appellant of the additional evidence needed to establish his schedule award claim. It noted that the impairment rating received was insufficient to support his claim as it had not been countersigned by a qualified physician. OWCP requested that appellant submit his physician's opinion as to whether appellant had attained maximum medical improvement (MMI), the date MMI had been reached, the clinical findings indicating that the employment condition had reached a fixed and stable state, a detailed description of all pertinent findings, and a final rating of permanent impairment according to the applicable criteria of the A.M.A., *Guides*. It afforded him 30 days to respond.

On October 14, 2020 Dr. Jones examined appellant, noted findings, and provided ROM measurements of the hand and wrist. He opined that appellant had attained MMI. Dr. Jones reviewed the impairment rating performed by Mr. Washington and concurred with the rating. He maintained appellant on full duty with no physical restrictions.

On November 10, 2020 OWCP referred the case record, along with a statement of accepted facts (SOAF) noting Mr. Washington's July 21, 2020 impairment rating, to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a District Medical Adviser (DMA), for a permanent impairment rating of the right upper extremity.

Dr. Harris submitted a May 11, 2021 report in which he found that appellant had attained MMI as of the July 21, 2020 impairment evaluation. He reviewed Mr. Washington's calculations and references to the A.M.A., *Guides*, and concurred with the methodology and calculations as presented. Dr. Harris found that appellant had eight percent permanent impairment of the right upper extremity utilizing the DBI method, based on the diagnosed right wrist TFCC tear. He commented that the range of motion (ROM) rating method would have also resulted in an eight percent permanent impairment of the right upper extremity.

By decision dated June 30, 2021, OWCP denied appellant's schedule award claim, finding that the medical evidence of record did not support permanent impairment of a scheduled member or function of the body.

LEGAL PRECEDENT

The schedule award provisions of FECA[3] and its implementing federal regulations,[4] set forth the number of weeks of compensation payable to employees sustaining permanent

[3] *Supra* note 1.

[4] 20 C.F.R. § 10.404.

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 loss of a member shall be determined. The method used in making such a determination is a matter which rests in the 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.[5] 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.[6]

It is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of an employment injury.[7] OWCP's 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, 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*.[8]

In addressing upper extremity impairments, the sixth edition requires identification of the impairment CDX, which is then adjusted by GMFH, GMPE, and GMCS.[9] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10]

The A.M.A., *Guides* also provide that ROM impairment methodology is to be used as a stand-alone rating for upper extremity impairments when other grids direct its use or when no other DBI sections are applicable.[11] If ROM is used as a stand-alone approach, the total of motion impairment for all units of function must be calculated. All values for the joint are measured and added.[12] Adjustments for functional history may be made if the evaluator determines that the

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[5] For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also id.* at Chapter 3.700, Exhibit 1 (January 2010).

[6] *See K.J.*, Docket No. 19-1492 (issued February 26, 2020); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[7] *See T.H.*, Docket No. 19-1066 (issued January 29, 2020); *D.F.*, Docket No. 18-1337 (issued February 11, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

[8] *See* 5 U.S.C. § 8101(19); *J.K.*, Docket Nos. 19-1420 and 19-1422 (issued August 12, 2020); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

[9] *Supra* note 2 at 383-492.

[10] *Id.* at 411.

[11] *Id.* at 461.

[12] *Id.* at 473.

resulting impairment does not adequately reflect functional loss and functional reports are determined to be reliable.[13]

OWCP issued FECA Bulletin No. 17-06 to explain the use of the DBI methodology *versus* the ROM methodology for rating of upper extremity impairments.[14] Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides in pertinent part:

> "Upon initial review of a referral for upper extremity impairment evaluation, the DMA should identify: (1) the methodology used by the rating physician (*i.e.*, DBI or ROM); and (2) whether the applicable tables in Chapter 15 of the [A.M.A.,] *Guides* identify a diagnosis that can alternatively be rated by ROM. *If the [A.M.A.,] Guides allow for the use of both the DBI and ROM methods to calculate an impairment rating for the diagnosis in question, the method producing the higher rating should be used*." (Emphasis in the original.)[15]

The Bulletin further advises:

> "If the rating physician provided an assessment using the ROM method and the [A.M.A.,] *Guides* allow for use of ROM for the diagnosis in question, the DMA should independently calculate impairment using both the ROM and DBI methods and identify the higher rating for the CE."[16]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed 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.[17]

ANALYSIS

The Board finds that appellant has established that he sustained eight percent permanent impairment of the right upper extremity, warranting a schedule award.

The record establishes that on June 26, 2020, Dr. Jones, a Board-certified orthopedic surgeon specializing in surgery of the hand, referred appellant for an impairment rating by Snowden Orthopedic and Occupational Rehabilitation which was performed by Mr. Washington, a physical therapist, on July 21, 2020. On October 14, 2020 Dr. Jones examined appellant, noted

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[13] *Id.* at 474.

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

[15] *Id.*

[16] *Id.*; *see also H.H.*, Docket No. 19-1530 (issued June 26, 2020); *A.G.*, Docket No. 18-0329 (issued July 26, 2018).

[17] *Supra* note 5 at Chapter 2.808.6(f); *J.M.*, Docket No. 20-0602 (issued October 8, 2021); *P.W.*, Docket No. 19-1493 (issued August 12, 2020).

findings, and provided ROM measurements of the hand and wrist. He opined that appellant had attained MMI. Dr. Jones reviewed the impairment rating performed by Mr. Washington and concurred with the rating.[18]

Consistent with its procedures, OWCP properly referred the case record to Dr. Harris, serving as DMA, for an opinion regarding appellant's permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*.[19] In his May 11, 2021 report, Dr. Harris agreed that appellant had sustained an eight percent permanent impairment of the right upper extremity based on the diagnosed TFCC tear.

The Board finds that the DMA, Dr. Harris, properly considered the findings contained in the July 21, 2020 impairment evaluation, as reviewed and approved by Dr. Jones, and explained that appellant's current impairment was eight percent total permanent impairment of the right upper extremity based on the diagnosed right wrist TFCC tear. In addition, the DMA properly utilized the DBI method and considered the ROM method to rate appellant's accepted upper extremity condition pursuant to FECA Bulletin No. 17-06.

Therefore, the Board finds that appellant has established eight percent permanent impairment of the right upper extremity, based upon the reports of Dr. Jones and DMA Dr. Harris. Consequently, OWCP's June 30, 2021 decision must be reversed, and the case returned to OWCP for payment of the schedule award for an eight percent permanent impairment of the right upper extremity.

CONCLUSION

The Board finds that appellant has established that he sustained eight percent permanent impairment of the right upper extremity, warranting a schedule award.

[18] The Board has held that a report may be considered as probative medical evidence when either signed or reviewed by a qualified physician. *Merton J. Sills*, 39 ECAB 572, 575 (1988); *see also D.J.*, Docket No. 21-0414 (issued October 14, 2021); *R.H.*, Docket No. 20-1684 (issued August 27, 2021); *M.W.*, Docket No. 19-1667 (issued June 29, 2020).

[19] *P.T.*, Docket No. 21-0138 (issued June 14, 2021); *see S.C.*, Docket No. 20-0769 (issued January 12, 2021).

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 3, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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