United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 22-0148**
	)	**Issued: March 24, 2023**
U.S. POSTAL SERVICE, CAROL STREAM PROCESSING & DISTRIBUTION CENTER, Carol Stream, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On November 8, 2021 appellant filed a timely appeal from a November 3, 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.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the November 3, 2021 decision, 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 additional evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than two percent permanent impairment of her left upper extremity and two percent permanent impairment of her right upper extremity, for which she previously received schedule award compensation.

FACTUAL HISTORY

On November 14, 2017 appellant, then a 53-year-old postage due clerk, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome (CTS) and left cubital tunnel syndrome as a result of factors of her federal employment, including repetitive movements of her upper extremity.[3] She noted that she first became aware of her condition on September 14, 2017 and realized its relation to her federal employment on November 14, 2017. Appellant stopped work on November 17, 2017.

By decision dated January 10, 2018, OWCP accepted appellant's claim for bilateral CTS and left cubital tunnel syndrome, which was later expanded to also include a lesion of left ulnar nerve and other synovitis and tenosynovitis of the right hand. OWCP paid her wage-loss compensation on the supplemental rolls commencing March 16, 2018, and on the periodic rolls commencing July 22, 2018.

Dr. Eugene Lopez, Jr., a Board-certified orthopedic surgeon and sports medicine specialist, performed surgery including microscopic decompression of the median nerve, flexor tenosynovectomy, and median internal epineurolysis of appellant's left wrist on March 16, 2018, and of her right wrist on August 28, 2018.

On December 11, 2019 Dr. Lopez completed a functional capacity evaluation (FCE) and found that appellant could perform work at the light physical demand level, with occasional squatting, overhead reaching, and use of the hands for simple grasping, pushing, pulling, and fine manipulation.

On January 14, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award. In support of her claim, she submitted a report of even date by Dr. Lopez, who discussed the surgeries to her wrists, and indicated that his last physical examination of her wrists on November 13, 2019 revealed no swelling, deformity, effusion or tenderness, and that her strength was intact. Dr. Lopez opined that she had reached maximum medical improvement (MMI) as of November 13, 2019, and also noted that the symptoms she reported during the December 11, 2019 FCE included varying degrees of throbbing and pulsing pain in the right palm, wrist, forearm, and pinky finger. He utilized Table 15-23, Entrapment/Compression Neuropathy Impairment, of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[4] and assigned a grade modifier for clinical studies (GMCS) of 1, a

[3] Appellant previously filed a Form CA-2 on January 3, 2013 alleging bilateral carpal tunnel syndrome due to repetitive work duties. OWCP assigned File No. xxxxxx156 and denied the claim by decision dated March 15, 2013. OWCP has not administratively combined these claims.

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

grade modifier for functional history (GMFH) of 2, and a grade modifier for physical examination (GMPE) of 1 for both wrists, which yielded a default upper extremity impairment rating of 2 percent of the left upper extremity and 2 percent of the right upper extremity due to CTS. Dr. Lopez noted appellant's *Quick*DASH scores were 34.09 bilaterally, which he indicated warranted no further modification to the impairment ratings. Dr. Lopez did not find any ratable deficits associated with left ulnar neuropathy/cubital tunnel syndrome.

In a letter dated August 19, 2020, Dr. Lopez noted that he last examined appellant on June 22, 2020, at which time she related complaints of worsening weakness, aching, throbbing, and shooting pains from her wrist to her left elbow. His examination revealed reduced strength, but improving range of motion and no swelling or deformity in the wrists. Examination of the left ulnar nerve at the elbow revealed tenderness to palpation, reduced strength and range of motion, and a positive Tinel's sign. Dr. Lopez reiterated that appellant had reached MMI and was able to work with restrictions consistent with the December 11, 2019 FCE.

On July 14, 2021 OWCP routed Dr. Lopez' January 14, 2020 report, along with a statement of accepted facts (SOAF) and the case record, to Dr. Morley Slutsky, a physician Board-certified in occupational medicine, serving as OWCP's district medical adviser (DMA), for review and evaluation of appellant's permanent impairment pursuant to the A.M.A., *Guides*.[5]

In a July 28, 2021 report, Dr. Slutsky indicated that he had reviewed the SOAF and Dr. Lopez' January 14, 2020 report and that appellant had reached MMI on November 13, 2019. He noted that the A.M.A., *Guides* did not allow for an impairment rating under the range of motion (ROM) method for CTS and concurred with Dr. Lopez' rating that she had two percent permanent impairment for the right upper extremity under Table 15-23 for residual problems with mild CTS (grade modifier 1).

For the left upper extremity, Dr. Slutsky also concurred with Dr. Lopez that appellant had two percent impairment of the left upper extremity under Table 15-23 for residual problems with mild CTS (grade modifier 1). He noted that the A.M.A., *Guides* did not allow an impairment rating under the ROM methodology for CTS. For the left elbow, Dr. Slutsky referenced page 488 of the sixth edition of the A.M.A., *Guides* and related that her electrodiagnostic studies were normal. He noted that the electromyogram and nerve conduction velocity (EMG/NCV) studies did not yield findings in the ulnar nerves sufficient to meet the criteria set forth in the A.M.A., *Guides* at Appendix 15-B on page 449 for rating an impairment due to entrapment/compression neuropathy. Dr. Slutsky further noted that Dr. Lopez did not find any ratable deficits associated with cubital tunnel syndrome.

By decision dated November 3, 2021, OWCP granted appellant a schedule award for two percent permanent impairment of the left upper extremity and two percent permanent impairment of the right upper extremity. The date of MMI was found to be November 13, 2019. The award covered a period of 12.48 weeks and ran for the period from October 10, 2021 to January 5, 2022. OWCP noted that the weight of the medical evidence rested with Dr. Slutsky as the DMA, who applied the A.M.A., *Guides* to Dr. Lopez' findings.

[5] *Id*.

LEGAL PRECEDENT

The schedule award provisions of FECA[6] and its implementing regulations[7] 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, good administrative practice necessitates 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.[8] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.[9]

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.[10] 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*.[11]

In addressing impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated.[12] After a class of diagnosis (CDX) is determined (including identification of a default grade value), the impairment class is then adjusted by grade modifiers based on GMFH, GMPE, and GMCS.[13] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[14]

---

[6] *Supra* note 1.

[7] 20 C.F.R. § 10.404.

[8] *Id*.; *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

[9] 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).

[10] *E.D.*, Docket No. 19-1562 (issued March 3, 2020); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

[11] *Supra* note 9 at Chapter 2.808.5 (March 2017).

[12] *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *T.T.*, Docket No. 18-1622 (issued May 14, 2019).

[13] A.M.A., *Guides* 383-492; *see M.P.*, Docket No. 13-2087 (issued April 8, 2014).

[14] *Id*. at 411.

Regarding the application of ROM or diagnosis-based impairment (DBI) methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides:

> "As the [A.M.A.,] *Guides* caution that if it is clear to the evaluator evaluating loss of ROM that a restricted ROM has an organic basis, three independent measurements should be obtained and the greatest ROM should be used for the determination of impairment, the CE [claims examiner] should provide this information (*via* the updated instructions noted above) to the rating physician(s)."[15]

The FECA Bulletin further advises:

> "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."[16]

Impairment due to CTS is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[17] 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 (*Quick*DASH).[18]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's 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.[19]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than two percent permanent impairment of her left upper extremity and a two percent permanent impairment of her right upper extremity, for which she previously received schedule award compensation.

In his January 14, 2020 report, Dr. Lopez opined that appellant had reached MMI as of his last evaluation on November 13, 2019. Based upon his examination findings and the results of a December 11, 2019 FCE, he opined that she had two percent permanent impairment to her left and

[15] FECA Bulletin No. 17-06 (issued May 8, 2017); *V.L.*, Docket No. 18-0760 (issued November 13, 2018).

[16] *Id.*

[17] A.M.A., *Guides* 449.

[18] *Id.* at 448-49.

[19] *See supra* note 8 at Chapter 2.808.6f) (February 2013). *See also J.T.*, Docket No. 17-1465 (issued September 25, 2019); *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

right upper extremities based on her bilateral CTS diagnosis. Utilizing the DBI methodology, Dr. Lopez explained that, according to Table 15-23 of the A.M.A., *Guides* appellant had a GMCS of 1, a GMFH of 2, and a GMPE of 1, which yielded a default upper extremity impairment rating of two percent in each upper extremity due to CTS. He noted that her *Quick*DASH score did not result in any modification to the impairment rating, and also that he did not find any ratable deficits associated with left cubital tunnel syndrome.

Dr. Slutsky, OWCP's DMA, reviewed and concurred with Dr. Lopez' two percent impairment rating for each of the upper extremities based on the diagnosis of CTS. He noted that the A.M.A., *Guides* do not allow an impairment rating under the ROM method for CTS. Dr. Slutsky further noted that the EMG/NCV studies did not yield findings in the ulnar nerves sufficient to meet the criteria for rating an impairment due to entrapment/compression neuropathy, and opined that there was no evidence of a ratable deficit associated with left cubital tunnel syndrome.

The Board finds that the DMA, Dr. Slutsky, properly applied the A.M.A., *Guides* to the findings of Dr. Lopez, and explained that appellant's current impairment was two percent left upper extremity permanent impairment based on left CTS, and two percent right upper extremity impairment based on right CTS. Dr. Slutsky accurately summarized the relevant medical evidence, and reached conclusions about her condition which comported with the findings therein.[20] In addition, the DMA properly utilized the DBI method to rate appellant's accepted upper extremity conditions. As the DMA's report is detailed, well rationalized, and based on a proper factual background, his opinion represents the weight of the medical evidence.[21] Thus, the Board finds that appellant has not met her burden of proof to establish greater right or left upper extremity permanent impairment than that which was previously awarded.

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 permanent impairment.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish more than two percent permanent impairment of her left upper extremity, and two percent permanent impairment of her right upper extremity, for which she previously received schedule award compensation.

[20] *See M.D.*, Docket No. 20-0007 (issued May 13, 2020); *M.S.*, Docket No. 19-1011 (issued October 29, 2019); *W.H.*, Docket No. 19-0102 (issued June 21, 2019); *J.M.*, Docket No. 18-1387 (issued February 1, 2019).

[21] *See B.B.*, Docket No. 2-1187 (issued November 18, 2021); *see also M.D., id.*, *D.S.*, Docket No. 18-1816 (issued June 20, 2019).

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board