United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
and	)	**Docket No. 23-0043**
	)	**Issued: October 5, 2023**
U.S. POSTAL SERVICE, POST OFFCE, Boston, MA, Employer	)	

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, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 12, 2022 appellant filed a timely appeal from a May 5, 2022 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]

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than three percent permanent impairment of his right upper extremity and three percent permanent

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the May 5, 2022 decision on appeal, 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*.

impairment of his left upper extremity, for which he previously received schedule award compensation.

FACTUAL HISTORY

On June 21, 2018 appellant, then a 66-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hand osteoarthritis due to factors of his federal employment, including overuse and repetitive activity for many years. He noted that he first became aware of his condition on February 1, 2013 and realized its relation to factors of his federal employment on November 17, 2017. OWCP accepted the claim for permanent aggravation of bilateral carpometacarpal (CMC) osteoarthritis. It paid appellant wage-loss compensation.

On April 14, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award. He noted that he was retired and requested that OWCP process his claim for a schedule award.

In a December 11, 2019 report, Dr. Frank A. Graf, a Board-certified orthopedic surgeon, noted appellant's history of injury and medical treatment. He related that appellant was a candidate for ligament reconstruction tendon interposition arthroplasty of the metacarpo-phalangeal joints of the and interphalangeal joint arthrodesis.

Dr. Graf noted that November 17, 2017 x-rays with three views of the both hands revealed severe joint space narrowing, subchondral sclerosis, subchondral cysts, and osteophytes at the second and third metatarsophalangeal joints bilaterally. He opined that severe joint space narrowing and osteophytes were documented.

Dr. Graf noted that appellant had pain in the base of the thumbs that increased with pinching. He examined appellant and noted a positive circumduction axial compression test for the basilar joints of both thumbs; an enlargement of the carpometacarpal (CMC) joint on both hands, and pain on direct palpation of these joints; thickening of the A1 pulley at the volar aspect of the metacarpophalangeal joints of both thumbs without triggering in flexion extension of the interphalangeal joint; full extension of all digits, and ability to bring fingertips of both hands fully into the palm without triggering.

Dr. Graf diagnosed advanced bilateral carpal metacarpal degenerative osteoarthritis of the thumbs with subluxation of the CMC joint on the left and right. He noted hyperextension of the metacarpophalangeal (MCP) joint; nearly symmetrical changes at the right with subluxation of the metacarpal carpal joint and advanced degenerative changes at the CMC joint; subluxation of this joint and hyperextension of the MCP joint; and bilateral stenosing flexor tenosynovitis with A1 pulley thickening, without triggering.

Referencing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[3] Dr. Graf utilized Table 15-2, the Digit Regional Grid: Digital Impairments, at page 393. He opined that appellant had permanent impairment of both thumb CMC joints, MCP joints, and interphalangeal joints, with loss of normal

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

motion and thumb function, and that these conditions constituted a Class 3 impairment with a default rating of 35 percent on the right and 35 percent on the left, referencing the thumb CMC joints. Dr. Graf also opined that appellant had bilateral flexor tendon A1 pulley tenosynovitis at digits 1-5 with 5 percent impairment at each digit. He applied the Combined Values Chart and opined that appellant had 51 percent right upper extremity and 51 percent left upper extremity permanent impairment, noting that symmetrical bilateral impairments were present.

On May 11, 2020 OWCP routed the medical record and a statement of accepted facts (SOAF) to Dr. James W. Butler, a Board-certified neurosurgeon serving as an OWCP district medical adviser (DMA), for records review, rating of appellant's bilateral upper extremity permanent impairment, and determination of the date of maximum medical improvement (MMI).

In a May 19, 2020 report, Dr. Butler noted that appellant's claim was accepted for permanent aggravation of bilateral CMC osteoarthritis. He related that Dr. Graf's examination indicated that appellant had enlarged CMC joints that were tender to palpation bilaterally. Dr. Butler referenced the A.M.A., *Guides*, Table 15-2, Digit Regional Grid, at page 392 and found a Class 1 impairment, for residual pain and/or functional loss with normal range of motion (ROM), which resulted in a default rating of six percent permanent impairment.

Dr. Butler, the DMA, noted a grade modifier for functional history (GMFH) of 2, based on a history of pain with routine activities; a grade modifier for physical examination (GMPE) of 2, for moderate palpatory findings; and a grade modifier for clinical studies (GMCS) of 0, as there were none. He applied the net adjustment formula, and found a Class 1, Grade D, digital impairment of 7 percent. Dr. Butler noted that, according to A.M.A., *Guides*, Table 15-12, Impairment Values Calculated from Digit Impairment, at page 421, the digit impairment is converted to three percent impairment of the hand and three percent upper extremity impairment. He noted that, while appellant's condition could be rated using the ROM methodology, a ROM rating was not appropriate as appellant had full ROM of his thumbs at the CMC joint. Dr. Butler also addressed the discrepancies between his rating and the December 11, 2019 report from Dr. Graf. He explained that Dr. Graf based his rating on a diagnosis of stenosing flexor tenosynovitis, with the A1 pulley thickening without triggering; however, according to the A.M.A., *Guides*, digit stenosing tenosynovitis requires symptomatic trigger finger. Dr. Butler further explained that Dr. Graf found an impairment rating of 35 percent for the diagnosis of thumb CMC dislocation or sprain and requires a finding of greater than 20 percent instability, which was not found in the medical reports of record. He advised that based on the evidence of record, Dr. Graf's ratings were "significantly overrated." Dr. Butler noted that MMI was reached on December 11, 2019, the date of Dr. Graf's examination.

By letter dated June 23, 2020, OWCP forwarded the DMA's report to Dr. Graf and requested a supplemental opinion regarding the discrepancies noted by Dr. Butler.

In a July 14, 2020 supplemental report, Dr. Graf responded to the DMA's comments. He explained that substantial symptoms were present in both hands as a consequence of his stated diagnoses. Dr. Graf concluded that his ratings were based on his examination of appellant's symptoms and physical findings, while the opinion of the DMA was not supported by direct interview or examination.

On February 3, 2021 OWCP routed the July 14, 2020 supplemental report from Dr. Graf to the DMA, Dr. Butler, for review.

In a March 10, 2021 report, Dr. Butler provided an addendum and clarification of his prior report. He again noted that appellant had normal ROM, therefore his permanent impairment was not rated under the ROM methodology. The DMA explained that his rating was based on the clear diagnosis of thumb CMC arthritis, and that the A.M.A., *Guides* did not provide for rating of permanent impairment for CMC arthritis, other than post-traumatic degenerative joint disease, which was the diagnosis that he used. He explained that when rating a diagnosis-based impairment (DBI), the most impairing diagnosis is used, according to the A.M.A., *Guides* at page 389. The DMA explained that in choosing the diagnosis, one could consider digit stenosing tenosynovitis; however, appellant did not have a symptomatic trigger finger, which is required for this diagnosis, according to the A.M.A., *Guides*, Table 15-2, at page 392. He also explained that a diagnosis of sprain/strain based on the swelling of the A1 pulley would provide the same result as the selection of post-traumatic degenerative joint disease. The DMA further explained that Dr. Graf, in rating appellant's joint dislocation, assigned a Class 3 impairment, which requires greater than 20 percent instability at the thumb, which was not found in the medical records. He reiterated that his rating of seven percent digit impairment for each thumb CMC arthritic joint is converted to a three percent hand impairment which results in a three percent upper extremity impairment. The DMA noted that if further concerns were presented, a referee opinion from a hand specialist well-versed in the A.M.A. *Guides* might be appropriate.

By decision dated July 26, 2021, OWCP granted appellant a schedule award for three percent permanent impairment of his right upper extremity and three percent permanent impairment of his left upper extremity. The award ran for 18.72 weeks, from December 11, 2019 to April 20, 2020. OWCP explained that the DMA's impairment rating was accorded the weight of the medical evidence because the treating physician incorrectly applied the A.M.A., *Guides* to his examination findings.

On December 2, 2021 appellant submitted a report from Dr. John J. Walsh, a Board-certified orthopedic surgeon, in support of his request for an increased schedule award. In a September 24, 2021 report, Dr. Walsh reviewed appellant's history of injury and medical treatment. He noted that appellant complained of pain in both hands, the basal CMC joint of the thumbs, and distal interphalangeal joints of all fingers, as well as the proximal interphalangeal joint of the fourth finger on the right hand. Dr. Walsh found prominent subluxation of the base of the thumb metacarpal, with grinding and localized pain over the trapezio-metacarpal joint, and Heberden's nodes involving the distal interphalangeal (DIP) joints of all fingers with little motion present in these joints and a varus deformity of 30 degrees of the DIP joints on the right and 15 degrees on the left. He also found tenderness and fusiform swelling of the proximal interphalangeal (PIP) joints of the long and to a lesser extent the ring fingers on both hands-on maximum flexion; lack of 2 cm to the distal palmar, with complaints of increased pain in both hands; sensation in the upper extremities intact to light touch and pin wheel.

Dr. Walsh diagnosed degenerative joint disease at the trapezio-metacarpal joints of both thumbs with subluxation and noted that his findings for the right and left thumb were identical. He also noted that appellant had a history of preexisting osteoarthritis in both hands, as well as a preexisting osteoarthritis in the basal CMC joints of both thumbs.

Dr. Walsh referred to the sixth edition of the A.M.A., *Guides*, Table 15-2, Digit Regional Grid, at page 393, and selected the diagnosis of thumb CMC joint dislocation, with 10 to 20 degrees of instability, which placed appellant in Class 2, with a default value of 25 percent digit impairment. With regard to the adjustment grids for the grade modifiers, he indicated that clinical studies, physical examination findings, and functional history "are N/A." Dr. Walsh opined that the 25 percent digit impairment was equivalent to 9 percent upper extremity impairment, according to Table 15-11, Impairment Values Calculated from Upper Extremity Impairment, at page 420.

On January 27, 2022 appellant requested reconsideration and argued that the disparity between the reports of the DMA and Dr. Walsh needed to be reviewed.

By decision dated May 5, 2022, OWCP denied modification of the July 26, 2021 decision. It explained that Dr. Walsh based his impairment rating on the diagnosis of thumb CMC joint dislocation with 10 to 20 degrees of instability; however, he did not explain how he arrived at his rating of 10 to 20 degrees of instability as this finding was not noted in his physical examination findings.

LEGAL PRECEDENT

The schedule award provisions of FECA 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.[4] 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be 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.[5] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[6] 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 purpose.[7]

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must identify the impairment class of diagnosis (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE), and clinical studies (GMCS).[8] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX)

[4] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[5] 20 C.F.R. § 10.404; *see J.H.*, Docket No. 21-1215 (issued May 5, 2022); *see also Ronald R. Kraynak*, 53 ECAB 130 (2001).

[6] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *id*. at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

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

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

+ (GMCS - CDX).[9] Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids, and calculations of modifier scores.[10]

The Board has held that where the residuals of an injury to a member of the body specified in the schedule award provisions of FECA[11] extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, of a hand into the arm or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member.[12]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.[13]

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[14] When there are opposing reports of virtually equal weight and rationale, the case must be referred to an IME, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.[15] Where a case is referred to an IME for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[16]

ANALYSIS

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

Dr. Butler, in a March 10, 2021 addendum report, noted that appellant had normal ROM, therefore his permanent impairment was not rated under the ROM methodology. He explained that his rating was based on the clear diagnosis of thumb CMC arthritis, and that the A.M.A.,

[9] *Id.* at 411.

[10] *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

[11] 5 U.S.C. § 8107.

[12] *C.W.*, Docket No. 17-0791 (issued December 14, 2018); *Asline Johnson*, 42 ECAB 619 (1991); *Manuel Gonzales*, 34 ECAB 1022 (1983). *See supra* note 8 at Chapter 2.808.5(e) (March 2017).

[13] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *supra* note 8 at Chapter 2.808.6f (March 2017).

[14] 5U.S.C. § 8123(a). *See R.C.*, Docket No. 18-0463 (issued February 7, 2020); *see also G.B.*, Docket No. 16-0996 (issued September 14, 2016).

[15] *M.R.*, Docket No. 19-0526 (issued July 24, 2019); *C.R.*, Docket No. 18-1285 (issued February 12, 2019); *James P. Roberts*, 31 ECAB 1010 (1980).

[16] *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

Guides did not provide for rating of permanent impairment for CMC arthritis, other than post-traumatic degenerative joint disease, which was the diagnosis that he used. Dr. Butler explained that when providing a DBI rating, the most impairing diagnosis is used, according to the A.M.A., *Guides* at page 389. He explained that, in choosing the diagnosis, one could consider digit stenosing tenosynovitis; however, appellant did not have a symptomatic trigger finger, which is required for this diagnosis, according to the A.M.A., *Guides*, Table 15-2, at page 392. Dr. Butler also explained that a diagnosis of sprain/strain based on the swelling of the A1 pulley would provide the same result as the selection of post-traumatic degenerative joint disease. He further explained that Dr. Graf in rating appellant's joint dislocation assigned appellant to Class 3, which requires greater than 20 percent instability at the thumb, which was not found in the medical records. Dr. Butler noted a rating of seven percent digit impairment for each thumb CMC arthritic joint is converted to three percent hand impairment, which results in three percent upper extremity impairment.

In contrast, Dr. Walsh, in a September 24, 2021 report, noted that appellant complained of pain in both hands, the basal CMC joint of the thumbs, and distal interphalangeal joints of all fingers, as well as the proximal interphalangeal joint of the fourth finger on the right hand. He found prominent subluxation of the base of the thumb metacarpal, with grinding and localized pain over the trapezio-metacarpal joint, and Heberden's nodes involving DIP joints of all fingers with little motion present in these joints and a varus deformity of 30 degrees of the DIP joints on the right and 15 degrees on the left. Dr. Walsh also found tenderness and fusiform swelling of the PIP joints of the long and to a lesser extent the ring fingers on both hands-on maximum flexion; lack of 2 cm to the distal palmar, with complaints of increased pain in both hands; sensation in the upper extremities intact to light touch and pin wheel. He diagnosed degenerative joint disease at the trapezio-metacarpal joints of both thumbs with subluxation and noted that his findings for the right and left thumb were identical. Dr. Walsh referred to the sixth edition of the A.M.A., *Guides*, Table 15-2, Digit Regional Grid, at page 393, and selected the diagnosis of thumb CMC joint dislocation, with 10 to 20 degrees of instability, which placed appellant in Class 2, with a default value of 25 percent digit impairment. With regard to the adjustment grids for the grade modifiers, he indicated that clinical studies, physical examination findings, and functional history "are N/A." Dr. Walsh opined that the 25 percent digit impairment was equivalent to 9 percent upper extremity impairment, according to Table 15-11, Impairment Values Calculated from Upper Extremity Impairment, at page 420.

The Board finds, therefore, that there is a conflict in the medical opinion evidence between the opinions of Dr. Walsh, appellant's attending physician, and Dr. Butler, the DMA regarding the extent of appellant's right and left upper extremity permanent impairment.

Because there remains an unresolved conflict in the medical opinion evidence regarding appellant's bilateral upper extremity permanent impairment, pursuant to 5 U.S.C. § 8123(a), the case will be remanded to OWCP for referral of appellant, together with the case record and a SOAF, to a specialist in the appropriate field of medicine for an impartial medical examination to

resolve the conflict.[17] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's permanent impairment.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2022 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 5, 2023
Washington, DC

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

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

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

[17] *Id*.