United States Department of Labor
Employees' Compensation Appeals Board

T.B., Appellant	)	
and	)	**Docket No. 22-0046**
	)	**Issued: September 13, 2023**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION HERLONG, Herlong, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On October 13, 2021 appellant filed a timely appeal from a September 21, 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 to consider the merits of this case.

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 for which she has previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 5, 2012 appellant, then a 39-year-old education and vocational trainer, filed a traumatic injury claim (Form CA-1) alleging that on June 20, 2012 she injured the palm of her left hand closing a door while in the performance of duty. She did not stop work. On October 17, 2012 OWCP accepted the claim for left hand contusion.

On September 21, 2012 appellant underwent a left-hand magnetic resonance imaging (MRI) scan which demonstrated a pseudoaneurysm of the ulnar artery and probable arteriovenous (AV) fistula, but no evidence of fracture, ligamentous, or musculotendinous injury. She underwent a left-hand magnetic resonance angiography (MRA) scan on November 12, 2012 which demonstrated an ulnar artery injury with pseudoaneurysm between the deep and superficial palmar arches, focal stenosis at the level of the deep palmar arch, and ectasia distal to the pseudoaneurysm which most prominently involved the common proper digital artery feeding the ulnar long and radial ring finger branches.

On November 6, 2012 Dr. George F. Sieffert, a Board-certified general surgeon, examined appellant and noted her history of slamming a door with a vertical door handle, jamming the palm of her left hand into the bar resulting in pain and numbness. He found associated discoloration of her left palm, like a bruise with swelling. Dr. Sieffert recommended hand surgery for resection and vascular grafting of the affected artery.

On February 11, 2013 OWCP authorized repair of a left blood vessel lesion. Dr. Sieffert performed a left brachial artery catheterization with placement of a sheath on February 15, 2013. In a separate report of even date, he determined by doppler examination, that the radial and ulnar arteries had multiphasic flow-wave patterns with brisk upstrokes and no significant diastolic flow. Dr. Sieffert noted that from the pulsatic mass distally over the metacarpal bone, there was continuous flow with diastolic arterial flow, like an AV fistula that continued to the base of the metacarpophalangeal (MCP) joint. He found that the ulnar venous flow was not detected, but there was continuous radial venous flow in the wrist. Dr. Sieffert determined that there was no motor or sensory deficit.

OWCP subsequently expanded acceptance of the claim to include an injury to the left palmar artery and an aneurysm of artery of the left upper extremity.

In a letter dated May 27, 2019, appellant alleged that she had experienced pain and loss of use of her left hand due to her accepted employment injuries. She requested a schedule award.

In a January 23, 2020 development letter, OWCP requested that appellant submit an impairment calculation addressing whether she had reached maximum medical improvement (MMI) and providing an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[2]

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

On May 1, 2020 appellant filed a claim for compensation (Form CA-7) requesting a schedule award.

In a May 6, 2020 development letter, OWCP again requested that appellant submit an impairment calculation that addressed whether she had reached MMI and to provide an impairment rating using the sixth edition of the A.M.A., *Guides*. It indicated that, to date, no medical evidence had been received in support of her claim for a schedule award. OWCP advised that, if appellant's physician was unable or unwilling to provide the required report, to notify OWCP in writing and if her case met the essential elements for a schedule award claim, she would be scheduled to be seen by a second opinion specialist. It afforded her 30 days to submit additional medical evidence in support of her schedule award claim.

On February 26, 2020 Dr. Gregory Valceschini, a Board-certified family practitioner, advised that he was treating appellant for an occupational injury caused by blunt force trauma to the radial artery. On examination he found a 3 x 1 centimeter area of ecchymosis and swelling over the palmar third metacarpal of the left hand. Dr. Valceschini diagnosed a hand contusion and insult to the left palmar nerve.

In a report dated April 29, 2020, Dr. Valceschini noted appellant's history of injury and diagnosed a contusion of the left hand and insult to the left pulmonary artery. He found that she had reached MMI.

On July 20, 2020 OWCP referred appellant for a second opinion examination with Dr. Charles Xeller, a Board-certified orthopedic surgeon. In his August 21, 2020 report, Dr. Xeller described appellant's employment injury and reviewed her medical records, including the results of her February 15, 2013 angiogram. On physical examination he found a 1 x 2 centimeter area in the palm of appellant's left hand which was vascularly purplish like a malformation and demonstrated a faint pulse to light palpitation. Dr. Xeller further found an occluded radial artery with digital pressure and that the left hand was slightly cooler than the right. He diagnosed status post blunt trauma to the left palm with development of ulnar arterial arch pseudoaneurysm as demonstrated on angiogram. Dr. Xeller applied Table 4-13 of the A.M.A., *Guides* on page 70, relevant to rating impairment due to upper extremity peripheral vascular disease, and found that appellant had a Class 2 impairment, which yielded a default value of 17 percent. He found a mildly abnormal upper extremity arterial or venous Doppler study. Dr. Xeller applied a grade modifier for functional history (GMFH), a grade modifier for physical examination (GMPE), and a grade modifier for clinical studies (GMCS) of two each, resulting in no adjustment from the default value. He concluded that appellant had 17 percent permanent impairment of the left upper extremity.

On September 23, 2020 OWCP referred Dr. Xeller's August 21, 2020 report to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as OWCP's district medical adviser (DMA). In an October 1, 2020 report, the DMA left blank the portion of his report asking for Dr. Xeller's impairment rating. Dr. Harris determined that appellant had Class 1, grade A impairment, or two percent permanent impairment of the upper extremity due to her palmar arterial injury without vascular deficit in accordance with Table 4-13, page 70 of the A.M.A., *Guides.* He advised that appellant had reached MMI on August 21, 2020, the date of Dr. Xeller's examination.

On November 16, 2020 OWCP requested clarification from the DMA, noting that Dr. Xeller had provided a left upper extremity impairment rating of 17 percent permanent impairment based on the diagnosis-based impairment (DBI) rating methodology. Dr. Harris completed a report on January 25, 2021 and opined that appellant's condition did not meet the criteria listed by the A.M.A., *Guides*, Table 4-13, page 70, for a Class 2 impairment as there was no vascular damage either evidenced by healed wounds or abnormal upper extremity arterial or venous Doppler study. Instead, he found that appellant's accepted condition was consistent with a Class 1, grade A impairment, resulting in two percent permanent impairment of the upper extremity. Dr. Harris noted that the applicable diagnosis did not contain an asterisk indicating that it could be alternatively calculated using the range of motion (ROM) method.

On March 5, 2021 OWCP requested a supplemental report from Dr. Xeller, addressing the findings of the DMA, Dr. Harris, in his January 25, 2021 report. In his March 21, 2021 addendum, Dr. Xeller disagreed with the DMA as imaging showed pathology of the ulnar nerve in the palm with formation of a pseudoaneurysm and Allen testing demonstrated slowing of the ulnar artery refill of the hand. He again found a Class 2 impairment, noting that there was claudication in the hand with mild usage and that when appellant's left hand was swollen there were neuritic symptoms with some coolness of the left hand when compared to the right. Dr. Xeller again assigned all grade modifiers 2 and found that appellant had 17 percent permanent impairment of the left upper extremity.

On April 8, 2021 OWCP referred Dr. Xeller's March 21, 2021 addendum report to the DMA for review. In a June 3, 2021 report, Dr. Harris discussed the medical evidence of record and found that appellant's work-related injury resulted in a pseudoaneurysm of the left palmar artery. He determined that diagnostic studies did not demonstrate any evidence of vascular insufficiency, abnormal Doppler studies, abnormal electrodiagnostic studies, or any other vascular abnormalities as a result of the pseudoaneurysm. Dr. Harris noted that appellant experienced pain with use of the left hand, but that there was no documentation of claudication with use or marked edema. He found that her condition did not meet any of the criteria for a Class 2 impairment as there was no evidence "of any vascular damage, evidenced by healed wounds, or abnormal arterial or venous doppler studies." Dr. Harris again found that appellant had a Class 1, grade A, or two percent permanent impairment of the left upper extremity.

On July 17, 2021 Dr. Xeller reviewed the DMA's June 3, 2021 report and continued to disagree with the findings and conclusions. He emphasized that a pseudoaneurysm was found on imaging of the angiogram and that there was a pulsatile mass in the palm of appellant's left hand, with discoloration, and neuritis symptoms with use of the hand. Dr. Xeller noted that the practice of medicine was an art as well as a science and again opined that appellant had 17 percent permanent impairment of the left upper extremity.

On August 23, 2021 OWCP requested that the DMA, Dr. Harris, review Dr. Xeller's July 17, 2021 report. In an August 24, 2021 report, the DMA found that appellant's diagnosed conditions were left palmar arterial injury and left brachial artery catherization with placement of sheath on February 15, 2013. He determined that the diagnosed condition was consistent with a Class 1, grade A, or minimal problem, in accordance with Table 4-13, page 70, A.M.A., *Guides*, which yielded a default value of six percent. The DMA found that appellant's history, physical findings, and objective test results were all consistent with Class 1 of Table 4-13. He applied a

GMFH of zero, a GMCS of two, and a GMPE of zero to find no adjustment, and two percent left upper extremity impairment.

By decision dated September 21, 2021, OWCP granted appellant a schedule award for two percent permanent impairment of her left upper extremity. The period of the award ran for 6.24 weeks from August 31 through October 3, 2020.

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 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 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]

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's *International Classification of Functioning Disability and Health (ICF)*.[7]

Impairment due to injury to the cardiovascular system in the upper extremity is evaluated in accordance with Table 4-13, (Upper Extremity Peripheral Vascular Disease) and the accompanying relevant text in Chapter 4, pages 50-51. Under the sixth edition, the evaluator identifies impairment class (IC) from 0 to 4, by an identified key factor, which in accordance with Table 4-13 is objective test results, to determine the appropriate IC, utilizing the default (C) grade position. He or she then identifies the IC of the remaining secondary factors listed in Table 4-13 as history and physical findings and records the number difference to the key factor IC.[8] The examiner then summates the IC column differences and adds or subtracts the final number from

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[3] *Supra* note 1.

[4] 20 C.F.R. § 10.404.

[5] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[6] *P.R.,* Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[7] A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3.

[8] *Id.* at 50.

the default identified to determine the final impairment grade, which must remain within the initial IC identified by the key factor.[9]

ANALYSIS

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

Dr. Xeller, OWCP's second opinion physician, provided a series of reports dated August 21, 2020 through July 17, 2021 in which he opined that in accordance with Table 4-13 of the A.M.A., *Guides*, appellant had Class 2, grade C, or 17 percent permanent impairment of her left upper extremity, due to pseudoaneurysm which was noted on MRI scan, a pulsatile mass on the palm of her left hand with discoloration, and neuritis symptoms with use of the hand. Dr. Xeller found that appellant underwent a February 15, 2013 doppler venous study as noted in Dr. Sieffert's report of that date, but did not discuss how this objective test, the key factor for identifying class set forth in Table 4-13, correlated to mildly abnormal upper extremity arterial or venous doppler studies. He further failed to explain how appellant's physical findings correlated with a class 2 impairment.

The DMA, Dr. Harris, repeatedly found that appellant had 2 percent impairment, which is the equivalent of a Class 1, grade A impairment of the left upper extremity due to peripheral vascular disease in accordance with Table 4-13 of the A.M.A., *Guides*. In his most recent report dated August 24, 2021, the DMA found that the diagnosed conditions of left palmar arterial injury and left brachial artery catherization with placement of sheath on February 15, 2013 were consistent with a Class 1, or minimal problem, in accordance with Table 4-13 of the A.M.A., *Guides*. He further found that appellant's history, physical findings, and objective test results were all consistent with Class 1 of Table 4-13, which yielded a default impairment rating of six percent. The DMA did not explain why he reduced the default grade of six percent impairment to a two percent impairment.

The Board finds that Dr. Xeller and the DMA, Dr. Harris, improperly utilized Table 4-13. The rating process found in Table 4-13 requires identification of the key factor of objective findings which determines the class of impairment and that the class of impairment is modified by the remaining secondary factors to reach the final grade within that IC. As neither Dr. Xeller nor the DMA applied the appropriate formula or explained why appellant's respective within the impairment class adjustment was appropriate, the Board finds that the case is not in posture for a decision.[10]

OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[11] Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a manner that will resolve the relevant issues in the

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[9] *Id.* at 50-51.

[10] *See P.A.,* Docket No. 19-1057 (issued March 18, 2021); *K.S.,* Docket No. 17-1663 (issued March 28, 2018) (finding that when the physicians of record do not properly apply the A.M.A., *Guides*, the case must be remanded).

[11] *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

case.[12] On remand OWCP shall refer appellant, and the applicable provisions of the A.M.A., *Guides*, to another second opinion physician, for appropriate diagnostic studies and physical evaluation to determine the extent of appellant's permanent impairment for schedule award purposes.[13] Following this and such other development as may be deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim for an additional schedule award for left upper extremity impairment.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2021 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 13, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

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[12] *S.J.*, Docket No. 22-0714 (issued March 31, 2023); *T.C.,* Docket No. 17-1906 (issued January 10, 2018).

[13] *See J.H.,* Docket No. 15-0546 (issued May 20, 2015) (the Board found neither the second opinion nor the DMA properly applied A.M.A., *Guides*, Table 4-12, Lower Extremity Peripheral Vascular Disease, and remanded for further development).