United States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
and	)	**Docket No. 25-0448**
	)	**Issued: May 5, 2025**
DEPARTMENT OF THE NAVY, MARINE DEPOT MAINTENANCE COMMAND, Barstow, CA, Employer	)	

Appearances:
Brent E. Reed, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 21, 2025 appellant, through his representative, filed a timely appeal from a January 31, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than five percent permanent impairment of the left upper extremity, for which he previously received a schedule award.

FACTUAL HISTORY

On February 1, 2018 appellant, then a 53-year-old ordnance equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on January 30, 2018 he injured his palm and little finger when a projectile nitrogen cylinder struck his left hand. OWCP accepted the claim for laceration with foreign body of left hand and thereafter expanded its acceptance of the claim to include left carpal tunnel syndrome (CTS), fracture of neck of left fifth metacarpal bone, left ulnar nerve lesion, and synovitis and tenosynovitis of the left hand. Appellant underwent irrigation and debridement of skin, open treatment of the left fifth metacarpal neck fracture, and repair of intrinsic muscles of the left hand on February 6, 2018. On September 17, 2020 he underwent carpal tunnel release with decompressive neurolysis of the left median nerve, flexor tenosynovectomy of the left wrist and forearm, ulnar nerve decompression and cyst removal, and distal forearm fascial tendon release. Appellant stopped work on the date of injury and returned to full-time modified-duty work with restrictions on November 2, 2020.

On November 22, 2024 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In support thereof, appellant submitted a May 24, 2024 narrative report by Dr. Rama T. Pathi, a Board-certified orthopedic and hand surgeon, who noted appellant's complaints and recounted his medical and surgical treatment. Dr. Pathi performed a physical examination of the left wrist and hand where he observed a thick palpable nodular mass in the volar side of the left wrist, crepitation, extensive flexor tenosynovitis, positive Tinel's, Phalen's, Wartenberg, Froment, Jeanne and shelf signs, marked atrophy of the thenar muscles and first dorsal intraosseous muscle, and reduced range of motion (ROM) and strength with flexion, extension, radial deviation, and ulnar deviation. He noted that a July 12, 2019 electromyography and nerve conduction velocity (EMG/NCV) study revealed chronic cervical radiculopathy affecting the left C7 nerve root, lateral median nerve dysfunction at the wrist, and distal left ulnar polyneuropathy. Dr. Pathi diagnosed left CTS and fracture of left fifth metacarpal bone and opined that appellant had reached maximum medical improvement (MMI).

Regarding left-sided CTS, Dr. Pathi utilized the diagnosis-based impairing (DBI) rating method, under Table 15-23, Entrapment/Compression Neuropathy Impairment, page 449 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[3] and assigned a grade modifier for physical examination (GMPE) of 3, a grade modifier for function history (GMFH) of 3, and a grade modifier for clinical studies (GMCS) of 1, which resulted in an average grade modifier of 2 and a default value of five percent permanent impairment of the left upper extremity.

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

Regarding the left fifth metacarpal fracture, utilizing Table 15-2, Digit Regional Grid, page 392, Dr. Pathi found that a Class of Diagnosis (CDX) for fifth metacarpal fracture resulted in a Class 2 impairment, with a default value of eight percent digit impairment. He assigned a GMFH of 2, a GMPE of 2, and a GMCS of 1, which resulted in grade E or 10 percent permanent digit impairment or one percent left upper extremity impairment.

On January 10, 2025 OWCP routed Dr. Pathi's report, along with a statement of accepted facts (SOAF) and the case record, to Dr. William Tontz, Jr., a Board-certified orthopedic surgeon serving as OWCP's DMA, for review and evaluation of appellant's permanent impairment pursuant to the sixth edition of A.M.A., *Guides*.[4]

In a January 10, 2025 report, Dr. Tontz indicated that he had reviewed the SOAF and the medical record, including Dr. Pathi's May 24, 2024 report, and opined that appellant had reached MMI on May 24, 2024. He noted that the A.M.A., *Guides* did not allow for an impairment rating under the ROM method for CTS. Dr. Tontz utilized the DBI methodology under Table 15-23, page 449, and agreed that appellant had five percent permanent impairment of the left upper extremity impairment for CTS. Regarding the left fifth metacarpal fracture, he utilized the DBI methodology under Table 15-2, page 393, and agreed that he had 10 percent digit impairment, which translated to one percent left upper extremity impairment. Dr. Tontz explained that based on section 15.3F on page 419 of the sixth edition of the A.M.A., *Guides*, if there are multiple diagnoses at MMI for the same body part, then the most impairing diagnosis was rated. He noted that the most impairing diagnosis was left-sided CTS and therefore concluded that appellant had five percent permanent impairment of his left upper extremity.

By decision dated January 31, 2025, OWCP granted appellant a schedule award for five percent permanent impairment of the left upper extremity. The award ran for 15.6 weeks from May 24 through September 10, 2024.

LEGAL PRECEDENT

The schedule award provisions of FECA[5] and its implementing regulations[6] 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* have been adopted by OWCP as a standard for evaluation of schedule losses and

[4] *Id*.

[5] *Supra* note 2.

[6] 20 C.F.R. § 10.404.

the Board has concurred in such adoption.[7] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.[8]

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.[9] 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*.[10]

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.[11] After a 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.[12] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[13]

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)."[14]

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."[15]

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

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *id*. at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

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

[10] *Supra* note 8 at Chapter 2.808.5 (March 2017).

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

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

[13] *Id*. at 411.

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

[15] *Id*.

Impairment due to CTS is evaluated under Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[16] 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.[17]

OWCP's procedures provide that, after obtaining all necessary medical evidence,[18] 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 his burden of proof to establish greater than five percent permanent impairment of his left upper extremity, for which he previously received a schedule award.

In support of his claim, appellant submitted the May 24, 2024 narrative report of Dr. Pathi, who noted appellant's complaints, provided detailed examination findings, and opined that he had reached MMI. Using Table 15-23, Entrapment/Compression Neuropathy Impairment, page 449 of the A.M.A., *Guides* for CTS of the left wrist, Dr. Pathi assigned a GMPE of 3, a GMFH of 3, and a GMCS of 1, which resulted in an average grade modifier of 2, or a default value of five percent permanent impairment of the left upper extremity for left-sided CTS. He used Table 15-2, Digit Regional Grid, page 392, and found that a CDX for fifth metacarpal fracture resulted in a Class 2 impairment, with a default value of eight percent digit impairment. Dr. Pathi assigned a GMFH of 2, a GMPE of 2, and a GMCS of 1. He applied the net adjustment formula, which correlated with grade E, or 10 percent permanent digit impairment, which translated to a one percent left upper extremity impairment.

In accordance with its procedures,[20] OWCP properly referred the evidence of record to the DMA, Dr. Tontz, for review and an impairment rating. In his report dated January 10, 2025, Dr. Tontz concurred with Dr. Pathi's permanent impairment calculations using the DBI methodology for left-sided CTS and left fifth metacarpal fracture. He properly noted that the A.M.A., *Guides* did not allow for an impairment rating under the ROM method for CTS. Dr. Tontz explained that based on section 15.3F on page 419 of the sixth edition of the A.M.A., *Guides*, if

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

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

[18] *See supra* note 8 at Chapter 2.808.5b (February 2013) (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 for the CE to visualize the character and degree of disability; and gives a percentage of impairment based on a specific diagnosis, not the body as a whole (except for impairment to the lungs).

[19] *Id*. 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).

[20] *Supra* notes 8, 18, and 19.

there are multiple diagnoses at MMI for the same body part, then the most impairing diagnosis is rated. He concluded that the most impairing diagnosis was left-sided CTS which resulted in five percent permanent impairment of appellant's left upper extremity. Dr. Tontz opined that he had reached MMI on May 24, 2024, the date of Dr. Pathi's evaluation.

As both the treating physician and the DMA concurred that appellant had five percent permanent impairment of the left upper extremity, the Board finds that appellant has not met his burden of proof to establish greater than the five percent permanent impairment of his left upper extremity previously awarded.[21]

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 his burden of proof to establish more than five percent permanent impairment of his left upper extremity, for which he previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[21] *See P.W.*, Docket No. 24-0295 (issued April 25, 2024).