

**United States Department of Labor
Employees' Compensation Appeals Board**

C.D., Appellant)

and)

U.S. POSTAL SERVICE, RIVER GROVE)
FACILITY, Carol Stream, IL, Employer)

**Docket No. 10-2222
Issued: June 10, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 1, 2010 appellant filed a timely appeal from the August 12, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied modification of her February 11, 2010 schedule award. Pursuant to the Federal Employees' Compensation Act (FECA)¹ 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 has more than five percent impairment of each arm.

FACTUAL HISTORY

On February 5, 2009 appellant, then a 50-year-old automation clerk, filed a claim alleging that her carpal tunnel syndrome was a result of keying on a letter sorting machine.

¹ 5 U.S.C. § 8101 *et seq.*

OWCP accepted her claim for bilateral carpal tunnel syndrome. Appellant underwent a left carpal tunnel release on June 19, 2009 and a right carpal tunnel release on July 23, 2009.

Dr. Jamil Jacobs-El, the orthopedic surgeon who performed surgery, examined appellant on November 4, 2009. Appellant felt much better than she did prior to surgery. She no longer had pain awakening her at night. Appellant's physical examination was normal except for minimal trophic changes at the right hand. Dr. Jacobs-El released her to return to full duty without restrictions. He found that appellant had no upper limb impairment due to loss of function from decreased strength or from sensory deficit, pain or discomfort.

An OWCP medical adviser reviewed appellant's medical record and assigned grade modifiers for functional history, physical examination and clinical studies. Give the absence of significant symptoms, the grade modifier for functional history was zero. Some weakness with grip bilaterally warranted a grade modifier of three for physical examination. The grade modifier for clinical studies was not applicable, as there was no electromyogram (EMG) available for review. As the modifiers averaged 1.5, which rounded to 2, the medical adviser found that appellant had a five percent impairment of each upper limb.

On February 11, 2010 OWCP issued schedule awards for five percent impairment of the right and left upper limbs.

Appellant submitted an EMG from March 19, 2009, which showed significant bilateral carpal tunnel syndrome. An OWCP medical adviser determined that the grade modifier for clinical studies was two, which still gave a grade modifier average of two, resulting in no increased rating.

In a decision dated August 12, 2010, OWCP denied modification of appellant's schedule award. The presurgery EMG did not alter the impairment calculation.

LEGAL PRECEDENT

Section 8107 of FECA² authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.³ As of May 1, 2009, any decision regarding a schedule award must be based on the sixth edition.⁴

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

ANALYSIS

To rate the impairment for focal nerve compromise, OWCP's medical adviser used Table 15-23, page 449 of the sixth edition of the A.M.A., *Guides*.⁵ Grade modifiers are described for test findings, history and physical findings. Appropriate grade modifiers are determined, averaged and then rounded to the nearest integer to determine the average grade. The bottom of the table gives the default impairment value for each average grade.

The attending orthopedic surgeon, Dr. Jacob-El, advised that appellant had no upper limb impairment due to decreased strength, sensory deficit, pain or discomfort. OWCP's medical adviser reviewed appellant's record to rate her impairment under the A.M.A., *Guides*. The absence of significant symptoms supported a grade modifier of zero for functional history under Table 15-23. Some bilateral grip weakness warranted a grade modifier of three for physical findings, which was the highest rating possible. The preoperative EMG was given a grade modifier of two for testing findings, consistent with motor conduction loss.⁶ The average grade modifier was thus 5 divided by 3, or 1.67, which rounded to 2 and which established a default impairment value of five percent for each upper limb.⁷

The Board finds that OWCP correctly denied modification of appellant's schedule award. Even if OWCP's medical adviser had assigned the highest possible grade modifier to the preoperative EMG (grade modifier four, representing an almost dead nerve), the average grade and the default impairment value would have remained unchanged. The Board will therefore affirm OWCP's August 12, 2010 decision denying modification of appellant's schedule award.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that the medical evidence establishes no more than five percent impairment of each upper limb.

⁵ A.M.A., *Guides* 449 (6th ed. 2009) (Table 15-23).

⁶ This is more severe than sensory or motor conduction delay but less severe than axon loss or an almost dead nerve.

⁷ The default value may be modified up or down by one percent based on responses to a *QuickDASH* questionnaire, which Dr. Jacobs-El did not administer.

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board