United States Department of Labor
Employees' Compensation Appeals Board

S.A., Appellant	)	
and	)	**Docket No. 11-1713**
	)	**Issued: February 10, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Corpus Christi, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 18, 2011 appellant filed a timely appeal of a January 27, 2011 Office of Workers' Compensation Programs' (OWCP) merit schedule award decision. 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 the case.

ISSUE

The issue is whether appellant has more than five percent impairment to each upper extremity for which he received schedule awards.

FACTUAL HISTORY

On March 6, 2009 appellant, then a 60-year-old letter carrier technician, filed an occupational disease claim alleging that he developed carpal tunnel syndrome due to factors of

[1] 5 U.S.C. § 8101 *et seq.*

his federal employment. By decision dated May 7, 2009, OWCP accepted his claim for bilateral carpal tunnel syndrome.

In a report dated June 10, 2009, Dr. Christopher Miskovsky, a Board-certified orthopedic surgeon, diagnosed bilateral carpal tunnel syndrome based on nerve conduction studies. He noted that nerve conduction studies in 2007 revealed a right median motor latency of 5.85 and sensory latency of 4.45 and on the left nonresponsive left median motor and sensory latency with electromyelogram evidence of changes in the musculature on the left side. Dr. Miskovsky recommended left surgical intervention. He performed a left carpal tunnel release on July 16, 2009. Dr. Miskovsky performed a right carpal tunnel release on September 10, 2009.

Appellant requested a schedule award on January 20, 2010. He submitted a report from Dr. Charles W. Kennedy, Jr., a Board-certified orthopedic surgeon, dated January 12, 2010 finding that appellant had reached maximum medical improvement. Dr. Kennedy noted that appellant's carpal tunnel had been confirmed electrodiagnostically. He applied Table 15-23 Entrapment/Compression Neuropathy Impairment[2] finding that appellant had six percent impairment of each upper extremity due to motor conduction block and significant intermittent symptoms, decreased sensation and severe impairment of the functional scale. Dr. Kennedy listed appellant's right hand two-point discrimination as 10 millimeters on the third through fifth fingers, 9 millimeters on the index finger and 7 millimeters on the thumb. In the left hand, appellant's two-point discrimination was 10 on the thumb and 9 on fingers 2 through 5. Dr. Kennedy found positive Tinel's signs on both wrists and noted that appellant's *Quick*DASH score was 42.

Dr. Ronald Blum, an OWCP medical adviser, reviewed the medical evidence on October 26, 2010. He found that appellant reached maximum medical improvement on January 12, 2010 and applied the A.M.A., *Guides* finding that appellant had five percent impairment of each upper extremity. Dr. Blum found that appellant had grade modifiers of test findings 2, history 2, and physical findings 2, with a default value of five percent due to carpal tunnel syndrome.[3] He stated that *Quick*DASH was 42 resulting in grade modifier 2 yielding five percent impairment of each upper extremity. Dr. Blum stated, "Dr. Kennedy recommends six percent for each upper extremity. He seems to have used the total of grade modifiers instead of using the average grade modifier value to determine the default value for upper extremity impairment that should be used."

By decision dated January 27, 2011, OWCP granted appellant schedule award for five percent impairment of each of his upper extremities.

[2] American Medical Association, *Guides to the Evaluation of Permanent Impairment,* 6th ed. (2009) p.449, Table 15-23.

[3] *Id*.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing regulations[5] set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of 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 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*.[6]

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[7] In Table 15-23, grade modifiers levels (ranging from 0 to 4) are described for the categories 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 by one percent based on functional scale, an assessment of impact on daily living activities.[8]

ANALYSIS

OWCP accepted that appellant sustained work-related bilateral carpal tunnel syndrome and authorized the performance of bilateral carpal tunnel release surgeries. Appellant filed a claim for a schedule award due to his work injuries.

In a report dated January 12, 2010, Dr. Kennedy found that appellant had reached maximum medical improvement. He noted that appellant's carpal tunnel had been confirmed electrodiagnostically and provided physical findings including two-point discrimination greater than six millimeters in each finger as well as positive Tinel's sign on the median nerve at both wrists. Dr. Kennedy applied Table 15-23 Entrapment/Compression Neuropathy Impairment finding that appellant had motor conduction block a grade modifier 2 for test findings.[9] He noted significant intermittent symptoms also grade modifier 2 for history and decreased sensation

[4] 5 U.S.C. §§ 8101-8193, 8107.

[5] 20 C.F.R. § 10.404.

[6] For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6th ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[7] *Supra* note 3.

[8] A survey completed by a given claimant, known by the name *Quick*Dash, may be used to determine the functional scale score. A.M.A., *Guides* 448-49.

[9] *Supra* note 3.

grade modifier 2 for physical findings.[10] The A.M.A., *Guides* require that the average grade modifier for test findings, history and physical findings be found, which in this case is two for the final rating category. The A.M.A., *Guides* provide that the range of impairments for the grade is modified up or down from the default value based on the functional scale grade. Appellant's *Quick*DASH score was 42, within the moderate, 41-60, score on the functional scale resulting in grade modifier 2 or a grade modifier equal to the grade assigned for the condition.[11] Dr. Kennedy stated that appellant had severe impairment on the functional scale; however, the Board notes that this assignment is not borne by the *Quick*DASH score. Utilizing the increased impairment on the functional scale, Dr. Kennedy reached an impairment rating of six.

Dr. Blum, OWCP's medical adviser, chose grade modifiers from the table for the various categories, including test findings, history and physical findings, based on Dr. Kennedy's findings. He then averaged the grade modifiers and chose the default value of five under grade modifier 2. Dr. Blum determined the functional scale and found that appellant's *Quick*DASH score of 42 maintained his rating of the default value of 5 in Table 15-23. Therefore, the Board finds that he properly concluded that appellant had five percent permanent impairment of each upper extremity under the standards of the sixth edition of the A.M.A., *Guides.*

CONCLUSION

The Board finds that appellant has no more than five percent impairment of each of his upper extremities for which he received a schedule award.

[10] *Id.*

[11] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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