United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant	)	
and	)	**Docket No. 13-1806**
	)	**Issued: February 18, 2014**
DEPARTMENT OF INTERIOR, FISH & WILDLIFE SERVICE, Lakewood, CO, 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
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 29, 2013 appellant filed a timely appeal of a March 25 2013 decision of the Office of Workers' Compensation Programs (OWCP), concerning increased schedule awards. 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.

ISSUE

The issue is whether appellant has established that she has greater than 10 percent right upper extremity impairment and 21 percent left upper extremity impairment, for which she received schedule awards.

FACTUAL HISTORY

On February 8, 2001 appellant, then a 36-year-old accounting technician, filed a traumatic injury claim alleging that on February 7, 2001 she injured both arms, wrists and her

[1] 5 U.S.C. § 8101 *et seq.*

tailbone as the result of falling on a slippery sidewalk at the entrance to the employing establishment's building. OWCP accepted the claim for bilateral radiocarpal wrist sprain, right forearm joint derangement, C5-6, 7 left radiculopathy, left brachial neuritis or radiculitis, hand and wrist tenosynovitis; closed bilateral scaphoid wrist bone fracture and radial styloid tenosynovitis. It authorized lunotriquetral ligament reconstruction and distal wafer ulna excision right wrist surgery, which was performed on May 31, 2001; lunotriquetral ligament reconstruction left wrist; extensor tenosynovectomy first dorsal compartment left wrist surgery, which was performed on January 27, 2005; anterior cervical discectomy and fusion at C5-6 and C6-7 surgery, which was performed on June 3, 3010; and left C6-7 laminotomy and foraminotomy for decompression of the left C6 and C7 nerve root surgery, which was performed on February 23, 2012.

By decision dated February 19, 2002, OWCP granted appellant a schedule award for 10 percent permanent impairment of the right upper extremity. The period of the award was for 31.20 weeks and ran from December 2, 2001 to July 8, 2002.

By decision dated April 25, 2003, OWCP granted appellant a schedule award for 21 percent permanent impairment of the left upper extremity. The period of the award was for 65.20 weeks and ran from January 27, 2003 to April 29, 2004.

In an August 2, 2012 report, Dr. Christopher B. Ryan, an examining physiatrist, reported more numbness in the digits of the left side than the right side, right arm pain extending into the first two digits, and pain along the C6 dermatome. Appellant reported that her upper extremity pain worsened when driving or reaching overhead as well as weakness and fatigue in both upper extremities with the left being worse. A physical examination revealed a slight diminution in strength in the upper extremities, 10 millimeter two-point discrimination on sensory testing and blunted biceps and triceps. Using Table 1 of the proposed spinal nerve extremity impairment, Dr. Ryan concluded that appellant had one percent right upper extremity impairment for mild C6 sensory deficit and one percent right upper extremity impairment for mild sensory deficit at C7. With respect to the left upper extremity, he found a moderate C7 sensory deficit resulting in four percent impairment and a severe C6 sensory deficit resulting in a seven percent impairment. Dr. Ryan determined that appellant had nine percent impairment based on the mild C6 motor deficit, which was unchanged by any modifiers. Thus, he concluded that appellant had 15 percent C6 upper extremity impairment and 2 percent C7 impairment, resulting in a total 17 percent left upper extremity impairment.

In a November 24, 2012 report, OWCP's medical adviser reviewed Dr. Ryan's report and recommended a referral for a second opinion to provide an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

On November 29, 2012 appellant filed a claim for an increased schedule award.

In a February 25, 2013 report, Dr. John D. Douthit, a second opinion Board-certified orthopedic surgeon, based upon a review of objective evidence, medical records, statement of accepted facts and physical examination, noted accepted conditions of bilateral radiocarpal

derangement, C5-6 and C6-7 radiculopathy and tenosynovitis with a closed fracture of the navicula. He examined appellant's neck and found that her range of motion of her neck was restricted 50 percent in all degrees which included 30 degrees extension, 40 degrees flexion and 20 degrees bilateral bending. An examination of her shoulders revealed full range of motion and full muscular strength of her triceps and biceps. Wrist measurements bilaterally were 70 degrees palmar flexion, 70 degrees dorsiflexion, no loss of strength and spotty two-point discrimination in appellant's hands. Dr. Douthit concluded that she had five percent impairment in her left upper extremity and five percent impairment in her right upper extremity based on three percent impairment for C6 radiculopathy and two percent for C7 radiculopathy. He concluded that there was no impairment of the wrists based on her full range of motion.

On March 14, 2013 an OWCP medical adviser reviewed Dr. Douthit's report and opined that appellant was not entitled to an increased schedule award. He noted that Dr. Douthit did not provide any calculations so OWCP was unable to determine how Dr. Douthit arrived at his impairment rating. The medical adviser found two percent right upper extremity impairment and two percent left upper extremity impairment in accordance with Table 15-14, page 425 of the A.M.A., *Guides*. He determined that appellant's severity was one based on inconsistent sensory changes in the C6 nerve root, which resulted in a default grade of C or one percent impairment. Next, the medical adviser found zero percent impairment based on a class 0 as there were no C6 nerve root motor deficits. Using the grade modifiers, he assigned a one for functional history using Table 15-7, page 406 and a one for clinical studies using Table 15-9, page 410. The medical adviser found the physical examination grade modifier at Table 15-8, page 408 was not relevant as the impairment range was determined by neurologic findings. Applying the formula, he reached a net adjustment of positive one grade C or one percent impairment of each C6 upper extremity. Next, the medical adviser calculated the C7 nerve root impairment rating using the same formula used for the C6 calculations. He determined that appellant's severity was one based on inconsistent sensory changes in the C6 nerve root, which resulted in a default grade of C or one percent impairment. Next, the medical adviser found zero percent impairment based on a class 0 as there were no C7 nerve root motor deficits. Using the grade modifiers, he assigned a one for functional history using Table 15-7, page 406 and a one for clinical studies using Table 15-9, page 410. The medical adviser found the physical examination grade modifier at Table 15-8, page 408, was not relevant as the impairment range was determined by neurologic findings.[2] Next, he combined impairment ratings for the C6 and C7 nerve roots to arrive at two percent upper extremity impairment. The medical adviser concluded that appellant had two percent right upper extremity impairment and two percent left upper extremity impairment.

By decision dated March 25, 2013, OWCP denied appellant's request for an increased schedule award.

[2] A.M.A., *Guides* 430, Section 15.4e.

LEGAL PRECEDENT

The schedule award provision of FECA[3] and its implementing 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. 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[5] Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.[6] The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[7]

In addressing upper extremity impairments, the sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS). The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[8] The A.M.A., *Guides* also provide that, if motion loss is present, some impairments may alternatively be assessed[9] using Section 15.7, range of motion impairment.[10]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*.[11]

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[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Id.* *See C.M.*, Docket No. 09-1268 (issued January 22, 2010); *Billy B. Scoles*, 57 ECAB 258 (2005).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims,* Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[7] A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[8] A.M.A., *Guides* 411.

[9] *Id.* at 405.

[10] *Id.* at 461.

[11] *Tommy R. Martin*, 56 ECAB 273 (2005). *See* Federal (FECA) Procedure Manual, *supra* note 6 at Chapter 2.808.6(d) (August 2002).

ANALYSIS

The Board finds that appellant has not established that she sustained more than 10 percent right upper extremity impairment or 21 percent left upper extremity impairment, for which she previously received schedule awards. On November 29, 2012 appellant filed a claim for an additional schedule award.

It is appellant's burden to submit sufficient evidence to establish the extent of permanent impairment.[12] The accepted conditions are bilateral radiocarpal wrist sprain, right forearm joint derangement, C5-6, 7 left radiculopathy, left brachial neuritis or radiculitis, hand and wrist tenosynovitis; closed bilateral scaphoid wrist bone fracture and radial styloid tenosynovitis.

In support of her claim for an additional schedule award appellant submitted an August 2, 2012 impairment rating in which Dr. Ryan assigned a total 2 percent right upper extremity impairment and a total 17 percent left upper extremity impairment. However this report is insufficient to establish that she has more than 10 percent right upper extremity impairment or 21 percent left upper extremity impairment, for which she previously received schedule awards. The Board notes that Dr. Ryan did not clearly explain how he calculated appellant's impairment under the sixth edition of the A.M.A., *Guides*. For example, he did not explain why grade modifiers were not used, what grade was assigned to her impairment or how he used the relevant tables in determining her impairment rating. Thus, Dr. Ryan's report is of diminished probative value regarding appellant's impairment rating under the sixth edition of the A.M.A., *Guides*.[13] The Board further notes that Dr. Ryan did not indicate that she had a greater than 10 percent right upper extremity impairment or 21 percent left upper extremity impairment for which she previously received schedule awards.

OWCP referred appellant to Dr. Douthit for a second opinion evaluation based on an OWCP medical adviser's recommendation. In a February 25, 2013 report, Dr. Douthit concluded that she had five percent impairment of her left upper extremity and five percent impairment of her right upper extremity based on three percent impairment for the accepted C6 radiculopathy and two percent for C7 radiculopathy. The Board notes that Dr. Douthit also did not clearly explain what tables he used in calculating appellant's impairment or how he applied grade modifiers to particular diagnoses under specific tables in the A.M.A., *Guides*. Thus, Dr. Douthit's report is of diminished probative value under the sixth edition of the A.M.A., *Guides.* Further, the Board notes that, as in the case of Dr. Ryan, Dr. Douthit did not state that appellant had a greater than 10 percent right upper extremity impairment or 21 percent left upper extremity impairment for which she previously received schedule awards.

On March 14, 2013 OWCP's medical adviser reviewed Dr. Douthit's report and found two percent right upper extremity impairment and two percent left upper extremity impairment in accordance with Table 15-14, page 425 of the A.M.A., *Guides.* The medical adviser found a default grade of C or one percent impairment for the C6 and C7 spinal nerve root impairments in

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[12] *See J.P.*, Docket No. 08-832 (issued November 13, 2008); *Annette M. Dent*, 44 ECAB 403 (1993).

[13] *See Richard A. Neidert*, 57 ECAB 474 (2006).

both the left and right upper extremities. The medical adviser concluded that appellant had a combined two percent right upper extremity impairment and two percent left upper extremity impairment due to sensory deficits. Since appellant previously received a schedule award for a 21 percent left upper extremity impairment and 10 percent right upper extremity impairment, the medical evidence of record did not support an increase in the impairment already compensated.

There is no probative evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant has more than 21 percent left upper extremity impairment and 10 percent right upper extremity impairment. As explained above, OWCP's medical adviser found that appellant currently had less impairment than that for which she previously received a schedule award. Accordingly, appellant has not established that she is entitled to schedule awards for impairment greater than that previously awarded.[14]

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 appellant failed to establish impairment greater than 10 percent of the right upper extremity and 21 percent of the left upper extremity, for which she received schedule awards.

[14] *See Tommy R. Martin*, 56 ECAB 273 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 25, 2013 is affirmed.

Issued: February 18, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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