United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 14-2034**
	)	**Issued: February 3, 2015**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Chattanooga, TN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 22, 2014 appellant filed a timely appeal from March 26 and September 8, 2014 merit decisions 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 over the merits of this case.

ISSUE

The issue is whether appellant has more than a three percent left arm permanent impairment and zero percent right arm permanent impairment.

FACTUAL HISTORY

On April 11, 2012 appellant, then a 60-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome (CTS) as a result

[1] 5 U.S.C. § 8101 *et seq.*

of her federal employment. OWCP accepted the claim on January 25, 2013 for bilateral CTS and ulnar nerve lesion. Appellant underwent a right carpal tunnel release surgery on February 13, 2013 and a left carpal tunnel release on May 6, 2013.

The attending orthopedic surgeon, Dr. William Dyer, submitted a September 24, 2013 report stating that appellant had reached maximum medical improvement. In a report dated January 21, 2014, he provided results on examination for the right and left arms. Dr. Dyer indicated that there was a positive Tinel's sign on the right and some dysesthesias in the median nerve distribution. As to the left arm, he reported decreased grip strength with no focal neurological deficit. In a brief report dated February 11, 2014, Dr. Dyer stated that appellant had a five percent permanent impairment to the right arm under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) for CTS.

OWCP requested that an OWCP medical adviser review Dr. Dyer's impairment rating in the February 11, 2014 report and provide an opinion as to permanent impairment. In a response dated March 20, 2014, the medical adviser stated that appellant had a three percent left arm impairment under the A.M.A., *Guides* Table 15-23. The medical adviser noted that appellant had a left carpal tunnel release on May 6, 2014. He opined that appellant had a grade modifier one under Table 15-23 with a *Quick*DASH[2] score of 55, for a three percent left arm impairment. The medical adviser indicated that appellant had a zero percent right arm impairment without further explanation. The date of maximum medical improvement was September 24, 2013.

By decision dated March 26, 2014, OWCP issued a schedule award for a three percent left arm impairment. The period of the award was 9.36 weeks from September 24, 2013. OWCP indicated no impairment was found for the right arm.

On May 5, 2014 appellant submitted an April 24, 2014 report from Dr. Dyer stating that appellant had left hand pain with intermittent dysesthesias. Dr. Dyer provided results on examination and opined that appellant had a five percent left arm permanent impairment under the A.M.A., *Guides*. In a report dated August 19, 2014, he provided results on examination for the right and left arms. Dr. Dyer stated that appellant should get electromyogram nerve conduction studies for both arms.

In a report dated September 4, 2014, OWCP medical adviser stated that Dr. Dyer's August 19, 2014 report "suspends" the date of maximum medical improvement. She stated that the evidence failed to reveal an electrodiagnostic study confirming the diagnosis of CTS. According to the medical adviser, the impairment rating process should be suspended pending further test results.

By decision dated September 8, 2014, OWCP found appellant was not entitled to an additional impairment. It stated that it was unclear whether she continued to be at maximum medical improvement.

[2] The *Quick*DASH is a shortened version of the Disabilities of the Arm, Shoulder, and Hand functional assessment. A.M.A., *Guides* 482.

LEGAL PRECEDENT

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[3] Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[4] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.[5]

ANALYSIS

In its March 26, 2014 decision, OWCP determined that appellant had a three percent left arm permanent impairment, and no ratable impairment to the right arm. The schedule award decision was based primarily on the March 20, 2014 report from an OWCP medical adviser. The Board finds the evidence was not sufficient to support the findings in the March 26, 2014 decision.

With respect to the March 20, 2014 OWCP medical adviser's report, it is not clear what medical evidence was reviewed. OWCP's letter to the medical adviser notes only the February 11, 2014 report from Dr. Dyer. This report was a brief report stating that appellant had a five percent impairment to the right arm. In the March 20, 2014 response, the medical adviser refers to the May 6, 2013 left carpal tunnel release surgery, without noting the February 13, 2013 right arm surgery. She indicates that appellant had no right arm impairment, without discussing the issue or providing any medical rationale for the opinion. As the history of the case indicated, there was a January 21, 2014 report from Dr. Dyer with findings as to the right arm.

In determining that appellant had a three percent left arm impairment, the medical adviser identifies Table 15-23.[6] A proper application of this table requires a determination of a grade modifier for test findings, history, and physical findings. The average of the grade modifiers is determined, and then the value is modified based on a functional scale grade.[7] The medical adviser simply states that the grade modifier is one, without further explanation.[8] The functional scale score is reported as 55, again without explanation. If the medical adviser was basing these

[3] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

[4] *A. George Lampo*, 45 ECAB 441 (1994).

[5] FECA Bulletin No. 09-03 (issued March 15, 2009).

[6] A.M.A. *Guides* 449, Table 15-23.

[7] *Id.*

[8] Grade modifier 1 is for test findings of conduction delay (sensory and/or motor), history of mild intermittent symptoms, and normal physical findings. *Id.*

findings on the January 21, 2014 report from Dr. Dyer, he does not provide any such indication or otherwise provide explanation for his findings.

The Board accordingly finds that the case is not in posture for decision. The March 26, 2014 schedule award was not based on an adequate medical background. After the March 26, 2014 decision, appellant submitted additional reports from Dr. Dyer. An August 19, 2014 report referred to the need for additional diagnostic testing. In addition, the record indicates that medical evidence was submitted after the September 8, 2014 decision.[9]

On return of the case record, OWCP should review all the evidence with respect to a permanent impairment to the upper extremities. It should follow its procedures as outlined in its procedure manual for obtaining the necessary medical evidence in schedule award cases.[10] After securing a rationalized medical opinion as to permanent impairment in the upper extremities, OWCP should issue a new decision.

CONCLUSION

The Board finds the case is not in posture for decision and is remanded to OWCP for additional development.

[9] The Board reviews only evidence before OWCP at the time of the final decisions on appeal. 20 C.F.R. § 501.2(c)(1).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (February 2013).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 8 and March 26, 2014 are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: February 3, 2015
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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