United States Department of Labor
Employees' Compensation Appeals Board

S.D., Appellant	)	
and	)	**Docket No. 17-0078**
	)	**Issued: March 20, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Topeka, KS, Employer	)	

Appearances:
Houston Ford, Jr., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 17, 2016 appellant, through his representative, filed a timely appeal from a September 21, 2016 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 more than six percent permanent impairment of the right upper extremity and two percent permanent impairment of the left upper extremity.

FACTUAL HISTORY

On August 28, 2012 appellant, then a 66-year-old line production operator, filed an occupational disease claim (Form CA-2) alleging that he sustained carpal tunnel syndrome due to factors of his federal employment. He did not stop work. OWCP accepted the claim for bilateral carpal tunnel syndrome, a ganglion cyst of the synovium of the right third metacarpophalangeal (MCP) joint, and osteoarthrosis of the right third MCP joint.[3]

Appellant, on July 1, 2014, filed a claim for compensation (Form CA-7) requesting a schedule award.

In a July 2, 2014 impairment evaluation, Dr. Lynn D. Ketchum, an attending Board-certified plastic surgeon, diagnosed carpal tunnel syndrome bilaterally, osteoarthritis, and a ganglion cyst at the MCP joint of the third right finger. She attributed the conditions to appellant's work duties. Referencing the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*), Dr. Ketchum found that appellant had 18 percent permanent impairment of the right upper extremity and 10 percent permanent impairment of the left upper extremity.

By letter dated July 17, 2014, OWCP advised appellant that the medical evidence from Dr. Ketchum was insufficient to support a schedule award as he did not provide objective findings or a detailed description of any impairment. It requested that appellant submit a report from his attending physician providing an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*.

Dr. Ketchum, in a July 22, 2014 report, noted that appellant had a right upper extremity permanent impairment of 18 percent and a left upper extremity permanent impairment of 10 percent under the sixth edition of the A.M.A., *Guides*.

An OWCP medical adviser reviewed the evidence on February 12, 2015 and determined that Dr. Ketchum's opinion was insufficient to support a finding of permanent impairment warranting a schedule award and noted that her determination was not compatible with the sixth edition of the A.M.A., *Guides*.

OWCP, on March 2, 2015, referred appellant to Dr. Joseph W. Huston, a Board-certified orthopedic surgeon, for a second opinion evaluation.

[3] In decisions dated November 28, 2012 and April 29, 2013, OWCP denied appellant's occupational disease claim. By decision dated October 4, 2013, it vacated its April 29, 2013 decision and accepted the claim.

In a report dated March 27, 2015, Dr. Huston discussed appellant's accepted conditions of bilateral carpal tunnel syndrome, a ganglion cyst of the right third MCP joint, and osteoarthrosis of the right third MCP joint. He advised that the ganglion was "a component of the arthritis of that joint and does not need a separate rating." Dr. Huston reviewed appellant's complaints of pain and swelling in the MCP joint and numbness and pain in his hands. He noted that appellant had elected against surgery. Dr. Huston diagnosed carpal tunnel syndrome bilaterally, more pronounced on the right, and arthrosis of the MCP joint with reduced motion and swelling.

Dr. Huston obtained an electromyogram (EMG) and nerve conduction velocity (NCV) study on May 29, 2015. The diagnostic testing revealed moderate-to-severe right median neuropathy and mild left median neuropathy.

On July 22, 2015 Dr. Huston completed impairment evaluation forms. For the right third MCP joint, he used Table 15-2 on page 392 the sixth edition of the A.M.A., *Guides*. Dr. Huston identified the diagnosis as class 1 post-traumatic degenerative joint disease, which yielded a default value of six percent of the digit. He applied a grade modifier of one for functional history, physical examination, and clinical studies, to find no adjustment from the default value of six percent of the digit, or one percent of the upper extremity. Dr. Huston rated appellant's left carpal tunnel syndrome using Table 15-23 on page 449 of the A.M.A., *Guides*. He diagnosed grade one median nerve entrapment based on the May 24, 2015 electrodiagnostic testing, for a default value of two percent. Dr. Huston applied a grade modifier of one for clinical studies, functional history, and physical examination and found no adjustment from the default value. For the right carpal tunnel syndrome, he found grade two median nerve entrapment using Table 15-23. Applying grade modifiers of two for clinical studies, functional history, and physical examination yielded no adjustment from the default value of five percent. Dr. Huston combined the one percent right upper extremity impairment due to MCP joint arthritis and the five percent right upper extremity due to carpal tunnel syndrome to find six percent permanent impairment of the right upper extremity. He further found two percent permanent impairment of the left upper extremity due to carpal tunnel syndrome. Dr. Huston advised that appellant had reached maximum medical improvement.

An OWCP medical adviser reviewed Dr. Huston's report on September 17, 2015 and concurred with his impairment ratings. He noted that Dr. Huston should not have applied a grade modifier for clinical studies in rating the impairment of the MCP joint due to degenerative joint disease as it was used to identify the class, but found that excluding clinical studies yielded the same impairment value of the digit of six percent, or one percent permanent impairment of the upper extremity under Table 15-11 on page 420 of the A.M.A., *Guides*. The medical adviser combined the impairment ratings for the right upper extremity due to carpal tunnel syndrome and degenerative joint disease of the MCP joint using the Combined Values Chart on page 604 of the A.M.A., *Guides* to find six percent right upper extremity impairment. He further agreed with the two percent left upper extremity rating.

In an October 26, 2015 decision, OWCP granted appellant a schedule award for six percent permanent impairment of the right arm and two percent permanent impairment of the left arm. The award ran for 23.52 weeks from March 27 to September 7, 2015.

Appellant, through his representative, requested an oral hearing on November 18, 2015, arguing that OWCP did not properly consider Dr. Ketchum's rating.

At the hearing, held on July 7, 2016, appellant's representative contended that Dr. Huston and OWCP did not consider appellant's age and his arthritis in rating his impairment, and asserted that he should not be penalized because he did not have surgery.

In a decision dated September 21, 2016, an OWCP hearing representative affirmed the October 26, 2015 decision. She found that appellant had not submitted evidence showing a greater impairment than that previously awarded by OWCP.

On appeal appellant's representative maintains that OWCP's medical adviser and Dr. Huston did not sufficiently consider that appellant's bilateral carpal tunnel syndrome was continuing to worsen, and asserted that his award should not be reduced because he did not undergo surgery.

LEGAL PRECEDENT

The schedule award provision of FECA,[4] and its implementing federal regulation,[5] 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

The sixth edition requires identifying the impairment Class of Diagnosis (CDX) condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[8] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

Impairment due to carpal tunnel syndrome is evaluated under the process found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text in section 15.4f of the A.M.A., *Guides*.[9] In Table 15-23, grade modifier levels (ranging from 0 to 4) are described for the categories of test findings, history, and physical examination. The grade

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id*. at § 10.404(a).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[8] A.M.A., *Guides* 494-531.

[9] *Id*. at 433-50.

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.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish more than six percent permanent impairment of the right upper extremity and two percent permanent impairment of the left upper extremity.

OWCP accepted the claim for bilateral carpal tunnel syndrome, a ganglion cyst of the synovium of the right third MCP joint, and osteoarthrosis of the right third MCP joint. On July 1, 2014 appellant filed a claim for a schedule award.

Dr. Ketchum, on July 2, 2014, diagnosed bilateral carpal tunnel syndrome and osteoarthritis and a ganglion cyst of the right third middle finger at the MCP joint. She opined that appellant had 18 percent permanent impairment of the right upper extremity and 10 percent impairment of the left upper extremity under the fourth edition of the A.M.A., *Guides*. OWCP, however, currently uses the sixth edition of the A.M.A., *Guides* to calculate schedule awards.[11] A medical opinion based on an outdated edition of the A.M.A., *Guides* is of diminished probative value in determining the extent of permanent impairment.[12]

On July 22, 2014 Dr. Ketchum opined that under the sixth edition of the A.M.A., *Guides* appellant had 18 percent permanent impairment of the right arm and 10 percent permanent impairment of the left arm. He did not, however, reference any tables and pages of the A.M.A., *Guides* in reaching his impairment evaluation or provide any findings on examination supporting his conclusions. As Dr. Ketchum did not explain the protocols used in making the impairment determination or provide the clinical findings used to evaluate the impairment, his opinion is insufficient to establish permanent impairment.[13]

OWCP referred appellant to Dr. Huston for an impairment evaluation. On March 27, 2015, the physician diagnosed bilateral carpal tunnel syndrome more severe on the right side and MCP joint arthrosis with loss of motion and swelling. Diagnostic studies obtained by Dr. Huston on May 29, 2015 revealed moderate to severe median neuropathy on the right and mild median neuropathy on the left. On July 22, 2015 he applied the sixth edition of the A.M.A., *Guides* to his examination findings and the results of objective testing. Dr. Huston used the diagnosis of class one post-traumatic degenerative joint disease set forth in Table 15-2 on page 392 of the A.M.A., *Guides* in rating appellant's impairment due to arthrosis of the MCP joint of the right third finger. The physician applied grade modifiers of one for functional history, physical

[10] *Id.* at 448-50.

[11] *See supra* note 7.

[12] *See P.O.*, Docket No. 15-1631 (issued June 2, 2016); *Fritz A. Klein*, 53 ECAB 642 (2002).

[13] *See Carl J. Cleary*, 57 ECAB 563 (2006); *Patricia J. Penney-Guzman*, 55 ECAB 757 (2004).

examination, and clinical studies, which did not yield an adjustment from the default value of six percent of the digit, or one percent of the upper extremity.[14]

In evaluating the impairment due to bilateral carpal tunnel syndrome, Dr. Huston used Table 15-23 on page 449 of the A.M.A., *Guides*. On the left side he found that appellant had class one median nerve entrapment based on the diagnostic studies, for a default value of two percent. Dr. Huston applied a grade modifier of one for clinical studies, functional history, and physical examination, which did not alter the default value.[15] For the right side, he used the diagnosis of class two median nerve entrapment, which yielded a default value of five percent. Applying grade modifiers of two for clinical studies, history, and physical examination did not alter the default value.[16] Dr. Huston combined the right upper extremity impairment of one percent for arthrosis of the right third finger and five percent for carpal tunnel syndrome to find six percent permanent impairment of the right upper extremity. He further concluded that appellant had two percent impairment of the left upper extremity due to carpal tunnel syndrome.

An OWCP medical adviser reviewed Dr. Huston's opinion and concurred with his impairment evaluation.[17] There is no evidence conforming to the sixth edition of the A.M.A., *Guides* showing greater impairment than that previously awarded.

On appeal appellant's representative argues that appellant should not be penalized for failing to undergo surgery. However, his choosing not to undergo surgery was not a factor considered in rating the extent of his permanent impairment. Appellant's representative further maintains that OWCP and Dr. Huston did not consider that appellant's bilateral carpal tunnel syndrome would worsen in the future. He may, however, 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 impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish more than six percent permanent impairment of the right upper extremity and two percent permanent impairment of the left upper extremity.

[14] Utilizing the net adjustment formula discussed above, (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), or (1-1) + (1-1) + (1-1) = 0, yielded a zero adjustment.

[15] (1-1) + (1-1) + (1-1) = 0, yielded a zero adjustment.

[16] (2-2) + 2-2) + (2-2) = 0, yielded a zero adjustment.

[17] OWCP's medical adviser noted that Dr. Huston should not have used clinical studies as a grade modifier in evaluating appellant's MCP joint impairment as it was used to identify class; however, this did not alter the extent of the impairment.

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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