United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 17-0293**
	)	**Issued: May 5, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Baton Rouge, LA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 21, 2016 appellant filed a timely appeal from a May 23, 2016 merit decision 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 two percent permanent impairment of the left upper extremity for which he previously received a schedule award.

FACTUAL HISTORY

On May 10, 2000 appellant, then a 41-year-old maintenance mechanic, filed an occupational disease claim (Form CA-2) alleging that he experienced numbness in two fingers of

[1] 5 U.S.C. § 8101 *et seq.*

his left hand extending to his elbow causally related to factors of his federal employment. He did not stop work. OWCP accepted the claim for a left elbow and forearm sprain.

Electrodiagnostic testing performed July 24, 2000 showed a mild conduction delay of the left ulnar nerve through the elbow. Electrodiagnostic testing dated May 25, 2010 showed a "[m]ild amplitude drop in an ulnar sensory nerve" and minimal instability in the radial, ulnar, and median muscles "suggestive of neurogenic thoracic outlet."

On June 24, 2010 appellant underwent a partial debridement of the biceps tendon, subacromial decompression, and distal clavicle excision.

Appellant, on May 9, 2013, filed a claim for a schedule award (Form CA-7). He indicated that physicians in his area did not perform impairment ratings.

By letter dated May 23, 2013, OWCP requested that appellant submit an impairment evaluation from his attending physician addressing the extent of any permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a letter dated June 12, 2013, appellant advised that his physician would not provide an impairment evaluation. He noted that he experienced complications during his 2010 shoulder surgery and did not want further surgery.

OWCP, on June 30, 2015, referred appellant to Dr. James E. Butler, III, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an impairment evaluation dated July 13, 2015, Dr. Butler reviewed the history of the employment injury, the results of diagnostic testing, and the June 2010 left shoulder surgery. He measured normal range of motion of the left shoulder and elbow. Dr. Butler noted that electrodiagnostic testing in July 2000 showed mild cubital tunnel entrapment neuropathy and in May 2010 suggested neurogenic thoracic outlet. He found "severely decreased sensation in the left ring and little fingers" with ulnar nerve testing. Dr. Butler diagnosed status post surgery for left shoulder biceps tendinopathy and impingement syndrome, left cubital tunnel syndrome, and no evidence of thoracic outlet syndrome. Using Table 15-4 on page 398 of the A.M.A., *Guides*, he determined that appellant had no impairment due to his left elbow and forearm sprain as he did not have any abnormal muscle or tendon findings on examination. Dr. Butler opined that he had a ratable impairment of the left shoulder due to biceps tendinopathy and impingement syndrome, if these were accepted conditions. He identified the diagnosis as a class 1 impairment due to appellant's biceps tendinopathy and impingement syndrome, subacromial decompression, and distal clavicle excision, which yielded a default value of 10 percent impairment using Table 15-5 on page 403, the shoulder regional grid. Dr. Butler applied a grade modifier of one for functional history and physical examination and two for clinical studies to find 11 percent permanent impairment of the shoulder.

Dr. Butler further determined that appellant had grade 1 impairment due to left cubital tunnel syndrome using Table 15-23 on page 449. He applied a grade modifier of one for test findings and history and a grade modifier of two for physical findings of decreased sensation, for an average grade modifier of one. Dr. Butler noted that appellant had a Disabilities of the Arm, Shoulder, and Hand (*Quick*DASH) score of 32, which did not alter the finding of two percent

impairment rating due to cubital nerve syndrome. He combined the impairment ratings to find 13 percent permanent impairment of the left upper extremity. Dr. Butler opined that appellant reached maximum medical improvement on May 2, 2013.

An OWCP medical adviser reviewed Dr. Butler's report on September 15, 2015. He noted that the accepted condition was a left elbow sprain. The medical adviser recommended that OWCP expand acceptance of the claim to include a left ulnar nerve lesion. He opined that appellant had two percent permanent impairment of the ulnar nerve due to compression neuropathy using Table 15-23 on page 449.

By decision dated May 23, 2016, OWCP granted appellant a schedule award for two percent permanent impairment of the left upper extremity. The period of the award ran for 6.24 weeks from July 13 to August 25, 2015.

On appeal appellant asserts that he is entitled to the additional 11 percent permanent impairment found by OWCP's referral physician.

LEGAL PRECEDENT

The schedule award provision of FECA,[2] and its implementing federal regulation,[3] 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.[4] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[5]

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment /Compression Neuropathy Impairment) and accompanying relevant text.[6] In Table 15-23, grade modifiers levels (ranging from zero to four) are described for the categories of 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 based on functional scale, an assessment of impact on daily living activities (*Quick*DASH).[7]

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Id*. at § 10.404(a).

[5] 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).

[6] A.M.A., *Guides* 449.

[7] *Id.* at 448-49

ANALYSIS

OWCP accepted that appellant sustained a sprain of the left elbow and forearm causally related to factors of his federal employment. Appellant did not stop work.

Appellant filed a claim for a schedule award on May 9, 2013. He advised OWCP that his physician did not provide impairment evaluations.

In his report dated July 13, 2015, Dr. Butler, OWCP's referral physician, diagnosed left cubital tunnel syndrome and post-surgical biceps tendinopathy and impingement syndrome. He found that appellant had no ratable impairment due to his accepted sprain of the left elbow and forearm under Table 15-4 as he had normal muscle and tendon examination findings. Dr. Butler provided an impairment rating for appellant's shoulder, noting that it might not be accepted as work related. He identified the diagnosis as a class 1 impairment due to biceps tendinopathy and impingement syndrome of the shoulder, for a default value of 10 percent under Table 15-5. Dr. Butler applied grade modifiers and found 11 percent impairment of the shoulder. The Board notes, however, that OWCP has not accepted appellant's claim for a left shoulder condition and there is no evidence that the condition preexisted the work injury.[8] Additionally, the shoulder is not the level of the arm for which appellant received his schedule award.[9]

Dr. Butler utilized Table 15-23 to rate appellant's impairment due to left cubital tunnel syndrome. He applied a grade modifier of one for testing findings and history and a grade modifier of two for physical findings, which he averaged to find a grade modifier of one. Dr. Butler determined that the grade modifier of one was supported by the *Quick*DASH score of 32 and yielded two percent permanent impairment of the left upper extremity due to entrapment neuropathy.

An OWCP medical adviser reviewed the evidence on September 15, 2015 and found that OWCP should expand acceptance of the claim to include left ulnar nerve lesions. He concurred with Dr. Butler's finding of two percent permanent left upper extremity impairment due to entrapment neuropathy. There is no evidence showing a greater percent of impairment as a result of the accepted employment injury.

On appeal appellant contends that he is entitled to a schedule award for his shoulder impairment. As discussed, however, OWCP did not accept a shoulder condition as work related and there is no evidence of a preexisting shoulder impairment.

Appellant may 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.

[8] Preexisting impairments of the same scheduled member of the body are included in calculating schedule award; *see Carl J. Cleary*, 57 ECAB 563 (2006).

[9] *See M.B.*, Docket No. 15-0230 (issued October 6, 2016).

CONCLUSION

The Board finds that appellant has no more than two percent permanent impairment of the left upper extremity for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board