

**United States Department of Labor  
Employees' Compensation Appeals Board**

C.S., Appellant	)	
	)	
and	)	<b>Docket No. 19-0172</b>
	)	<b>Issued: April 24, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Phoenix, AZ, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 29, 2018 appellant, through counsel, filed a timely appeal from an August 22, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

---

<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish permanent impairment of the upper extremities, entitling him to a schedule award.

## FACTUAL HISTORY

On June 23, 2015 appellant, then a 51-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on June 9, 2015 he injured his neck when his work vehicle was rear ended while in the performance of duty. He received treatment for neck pain at the emergency department on June 9, 2015. OWCP accepted the claim for a sprain of the neck.

On June 24, 2015 a chiropractor evaluated appellant for pain in the cervical and lower back area radiating into his lower extremities. In a report dated August 10, 2015, a physical therapist obtained a history of appellant experiencing pain in his neck and upper back and lower back radiating into the thighs and occasionally toes.

On February 4, 2016 Dr. William Riley, an attending physician Board-certified in family medicine, reported that appellant had no restrictions.

On August 10, 2016 appellant filed a claim for a schedule award (Form CA-7).

By development letter dated September 9, 2016, OWCP requested that Dr. Riley evaluate the extent of appellant's permanent impairment, if any, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*.<sup>3</sup> It informed him that a schedule award was not payable for the back, but could be paid for an upper or lower extremity impairment originating in the spine. OWCP afforded 30 days for a response. No response was received.

By decision dated January 5, 2017, OWCP denied appellant's schedule award claim. It found that he had failed to submit medical evidence establishing that he had reached maximum medical improvement and had permanent impairment of a scheduled member or function of the body.

On January 11, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. During the telephonic hearing, held on July 11, 2017, counsel advised that she was waiting to receive a report from Dr. Riley. No additional evidence was submitted.

By decision dated August 30, 2017, OWCP's hearing representative affirmed the January 5, 2017 decision. She found that appellant had not submitted any medical evidence demonstrating that he had a permanent impairment warranting a schedule award.

In a report dated October 3, 2017, Dr. Riley discussed appellant's complaints of reduced grip strength and difficulty lifting parcels. He indicated that appellant's symptoms had begun a

---

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

few weeks after his most recent motor vehicle accident (MVA) that had occurred at work in May 2015. Dr. Riley noted that appellant experienced neck pain and stiffness after an initial MVA, but that his neck pain increased after his employment-related MVA. He found full range of motion without swelling and slightly diminished grip strength bilaterally. Dr. Riley diagnosed bilateral hand paresthesia and weakness.

On July 12, 2018 Dr. Riley related that appellant experienced numbness in his hands following a MVA that occurred around May 2015. He noted that appellant had symptoms of reduced hand strength bilaterally. On examination, Dr. Riley found bilateral grip strength of 4/5 and normal bilateral upper extremity strength. He diagnosed left and right hand paresthesia, bilateral hand weakness, and abnormal reflex. Dr. Riley indicated that both the paresthesia and hand weakness began immediately following appellant's MVA.

On August 2, 2018 appellant, through counsel, requested reconsideration based on Dr. Riley's July 12, 2018 evaluation.

In a report dated August 17, 2018, Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), reviewed appellant's history of a previous nonemployment-related fusion at C4-5. He found that the medical evidence demonstrated that he had a loss of strength in his hands and reduced fine motor skills. Dr. Fellars noted that appellant had not complained of numbness or reduced dexterity in his hands until "significantly later" than the June 9, 2015 employment injury. He related, "Given this, it is medically probable that he has had progression of his underlying condition and it [is] not associated with the work event."

By decision dated August 22, 2018, OWCP denied modification of its August 30, 2017 decision. It found that Dr. Fellars' opinion represented the weight of the evidence and established that appellant had no employment-related permanent impairment of the upper extremities.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>4</sup> and its implementing regulations<sup>5</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss or 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*, published in 2009.<sup>6</sup> The Board has approved the use by OWCP of the A.M.A., *Guides* for

---

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.<sup>7</sup>

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).<sup>8</sup> Under the sixth edition, the evaluator identifies the impairment class of diagnosis (CDX) condition, which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE), and clinical studies (GMCS).<sup>9</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.<sup>10</sup>

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. The A.M.A., *Guides* for decades has offered an alternative approach to rating spinal nerve impairments.<sup>11</sup> OWCP has adopted this approach for rating permanent impairment of the upper or lower extremities caused by a spinal injury, as provided in section 3.700 of its procedures, which memorializes proposed tables outlined in a July/August 2009 *The Guides Newsletter*.<sup>12</sup> Specifically, OWCP will address upper extremity impairment originating in the spine through Table 15-14.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish permanent impairment of the upper extremities, entitling him to a schedule award.

OWCP accepted that appellant sustained neck strain due to a June 9, 2015 employment injury. Appellant requested a schedule award.

On October 2, 2017 Dr. Riley found that appellant had experienced a loss of grip strength within a few weeks of his employment-related MVA. He had also experienced increased pain in his neck. Dr. Riley found slightly diminished grip strength bilaterally and diagnosed bilateral hand paresthesia and weakness. He did not, however, explain how the MVA resulted in a loss of grip strength. The Board has held that medical evidence must show that the employment injury

---

<sup>7</sup> *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>8</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009), p.3, section 1.3, International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

<sup>9</sup> *Id.* at 494-531.

<sup>10</sup> *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

<sup>11</sup> *R.B.*, Docket No. 17-1995 (issued August 13, 2018); *Rozella L. Skinner*, 37 ECAB 398 (1986).

<sup>12</sup> *Supra* note 6 at Chapter 3.700, Exhibit 1, (January 2010); *The Guides Newsletter* is included as Exhibit 4.

<sup>13</sup> *Supra* note 3 at 425.

contributed to the permanent impairment for which schedule award compensation is claimed.<sup>14</sup> As Dr. Riley did not offer a medical explanation that appellant's employment injury contributed to any permanent impairment, his report is of limited probative value.<sup>15</sup>

On July 12, 2018 Dr. Riley measured grip strength of 4/5 bilaterally. He related that appellant had experienced numbness in his hands and reduced strength immediately following a MVA that had occurred around May 2015. Dr. Riley diagnosed bilateral hand paresthesia, bilateral hand weakness, and abnormal reflex. Dr. Fellars, a DMA, reviewed his opinion and found that the medical evidence of record failed to support Dr. Riley's finding that appellant had experienced bilateral hand numbness and loss of strength shortly after his MVA. He also noted that appellant had a history of a prior C4-5 fusion unrelated to his employment. Dr. Fellars opined that appellant's symptoms were not causally related to the accepted employment injury.

As noted by the DMA, Dr. Fellars, the medical evidence of record contemporaneous with appellant's June 9, 2015 MVA fails to support that he had complained of bilateral numbness and loss of strength in his hands. The Board, consequently, finds that Dr. Riley's report is based on an inaccurate and incomplete factual history and is thus of diminished probative value.<sup>16</sup> Appellant, consequently, has failed to meet his burden of proof to establish an employment-related permanent impairment.<sup>17</sup>

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.

### CONCLUSION

The Board finds that appellant has not met his burden of proof to establish permanent impairment of the upper extremities, entitling him to a schedule award.

---

<sup>14</sup> *Supra* note 6.

<sup>15</sup> *See M.C.*, Docket No. 17-1089 (issued November 13, 2017).

<sup>16</sup> *H.W.*, Docket No. 18-1472 (issued March 6, 2019).

<sup>17</sup> *See B.R.*, Docket No. 18-0277 (issued August 27, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 22, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 24, 2019  
Washington, DC

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

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

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