United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 19-0125**
	)	**Issued: August 16, 2019**
DEPARTMENT OF THE ARMY, CORPUS CHRISTIE ARMY DEPOT, Corpus Christi, TX, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 22, 2018 appellant filed a timely appeal from an August 28, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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.[3]

[1] The August 28, 2018 OWCP decision supersedes an August 27, 2018 duplicative decision.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish more than four percent permanent impairment of his right upper extremity, for which he has previously received a schedule award.

FACTUAL HISTORY

On November 10, 2015 appellant, then a 58-year-old machinist, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral arm and hand conditions as a result of 33 years of performing repetitious tasks involving his arms and hands while in the performance of duty. He first became aware of his condition and that it was caused or aggravated by his federal employment on October 13, 2015. OWCP accepted the claim for bilateral wrist sprains, and bilateral carpal tunnel syndrome. Appellant underwent an authorized May 9, 2016 right carpal tunnel release and a May 20, 2016 left carpal tunnel release.

On February 10, 2017 appellant filed a claim for a schedule award (Form CA-7).

In support of his claim appellant submitted a September 26, 2016 report by Dr. Charles W. Kennedy, Jr., a Board-certified orthopedic surgeon, who evaluated appellant and diagnosed bilateral carpal tunnel syndrome. He opined that appellant reached maximum medical improvement (MMI) on August 23, 2016 when he was released by his hand surgeon. Under Table 15-21, Peripheral Nerve Impairment, of the sixth edition of the American Medical Association *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[4] Dr. Kennedy opined that appellant had five percent right upper extremity permanent impairment. He noted that appellant had some sensory problems, but no motor deficits. A copy of his disability evaluation was enclosed along with an activities of daily living (ADL) questionnaire, a pain disability questionnaire, and a *Quick*DASH form. Physical examination findings of the right and left hand revealed seven millimeter two-point discrimination, 5/5 measurements for ulna, intrinsic, and thumb abduction oppositions, and negative Tinel's and Phalen's tests.

OWCP forwarded Dr. Kennedy's impairment report, appellant's medical record and a statement of accepted facts to Dr. David J. Slutsky, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA). In a March 13, 2017 report, the DMA indicated that the medical evidence of record lacked sufficient detail for a permanent impairment determination.

In a development letter dated July 14, 2017, OWCP informed appellant that additional medical evidence was necessary to establish his schedule award claim. It requested that he obtain further information from Dr. Kennedy regarding the medical documentation referenced in the DMA's report. OWCP afforded appellant 30 days to submit the necessary evidence.

In a July 18, 2017 supplemental report, Dr. Kennedy reiterated that appellant reached MMI on August 23, 2016. He indicated at the time of his September 26, 2016 evaluation, appellant had full active range of motion, no atrophy, and two-point discrimination of seven millimeters of both hands. Dr. Kennedy further indicated that appellant had subjective decreased sensitivity of the

[4] A.M.A., *Guides* (6th ed. 2009).

thumb, index finger, and long finger. He opined that, under Table 15-21 of the A.M.A., *Guides*, appellant had five percent impairment for the right hand as there were some sensory problems, but no motor deficits. Dr. Kennedy noted that appellant had completed the *Quick*DASH and the ADL questionnaire.

In an August 29, 2017 report, the DMA reviewed Dr. Kennedy's reports of September 26, 2016 and July 18, 2017. He indicated that the date of MMI was August 23, 2016. The DMA opined that appellant had four percent permanent impairment of the right upper extremity. He provided an impairment rating utilizing Table 15-23, Entrapment/Compression neuropathy of the A.M.A., *Guides*, for the accepted right carpal tunnel syndrome.[5] The DMA assigned: a grade modifier 2 for test findings as there was distal median nerve conduction blockage; a grade modifier 1 for history due to subjective decreased sensation of the thumb, index and middle finger; and a grade modifier 2 for clinical studies. He found that the grade modifiers totaled 5 and averaged 1.66, which rounded up to a final grade modifier of 2 with a default of 5 percent upper extremity impairment. The DMA indicated that, as the *Quick*DASH score of 34 equaled a grade modifier of 1, the default impairment value for the grade was modified one down, which represented four percent impairment rating. He noted that Dr. Kennedy had not adjusted the final impairment rating based on the *Quick*DASH score of 34.

In a March 28, 2018 letter, OWCP requested that appellant have Dr. Kennedy review the DMA's findings and provide a narrative report indicating whether he agreed or disagreed with the DMA's impairment ratings. A copy of the DMA's August 29, 2017 report was provided for Dr. Kennedy's review.

In an April 3, 2018 addendum report, Dr. Kennedy indicated that he reviewed the DMA's August 29, 2017 report and concurred with his assessment.

The DMA reviewed the medical record again on July 18, 2018 and repeated the findings from his August 29, 2017 permanent impairment report.

By decision dated August 27, 2018, and reissued on August 28, 2018, OWCP granted appellant a schedule award for four percent permanent impairment of the right upper extremity.[6]

[5] *Id*. at 449, Table 15-23.

[6] The August 28, 2018 schedule award did not formally deny a schedule award for appellant's left upper extremity. No final decision has been issued regarding his entitlement to a schedule award for permanent impairment of his left upper extremity due to his accepted conditions of left wrist strain and carpal tunnel syndrome.

The award covered a period of 12.48 weeks from August 23 to November 18, 2016. The weight of the medical evidence was accorded to the DMA's report of July 18, 2018.

LEGAL PRECEDENT

The schedule award provisions of FECA[7] and its implementing regulations[8] 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.[9] The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[10]

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text. In Table 15-23, grade modifier 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).[11]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[12]

[7] *Supra* note 2.

[8] 20 C.F.R. § 10.404.

[9] For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (March 2017); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[10] *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[11] *J.M.*, Docket No. 18-1334 (issued March 7, 2019).

[12] *See supra* note 9 at Chapter 2.808.6(d) (March 2017).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish more than four percent permanent impairment of his right upper extremity, for which he has previously received a schedule award.

OWCP accepted appellant's claim for right wrist sprain and carpal tunnel syndrome. Regarding the accepted condition of right wrist sprain, there is no evidence of record that this condition caused a permanent impairment pursuant to the A.M.A., *Guides.* On August 28, 2018 OWCP issued a schedule award for four percent permanent impairment of the right upper extremity for carpal tunnel syndrome.

Dr. Kennedy found five percent permanent impairment of the right upper extremity based on the diagnosed carpal tunnel syndrome condition. He related that he had used Table 15-21 to rate appellant's permanent impairment. However, Table 15-23 pertains to entrapment/ compression neuropathy impairments. Thus, Dr. Kennedy's initial rating report is of diminished probative value as it does not conform to the protocols for rating permanent impairment under the A.M.A., *Guides*.[13]

In July 18, 2018 and August 29, 2017 reports, the DMA used Dr. Kennedy's examination findings and the diagnostic testing of record to calculate an impairment rating for permanent residuals of the right carpal tunnel syndrome. The date of MMI was noted as August 23, 2016, the date appellant had been released from his hand surgeon. Using Table 15-23 of the A.M.A., *Guides,* the DMA identified a grade modifier 2 for test findings due to distal median nerve conduction blockage. History was determined to be a grade modifier 1 due to subjective decreased sensation of the thumb, index and middle finger. Physical findings were determined to be a grade modifier 2. Per the A.M.A., *Guides* rating process, for Table 15-23, the DMA added the values of the grade modifiers: 2 + 1 + 2 = 5. The sum of 5 was then divided by 3 to obtain an average value for these three modifiers which, when rounded up, equaled 2. This placed appellant in grade 2 as the final rating category. The DMA noted that, according to Table 15-23, a grade modifier 2 had a default rating of five percent upper extremity impairment. He modified the default impairment value down one grade as the *Quick*DASH score of 34 equaled a grade modifier of 1, and concluded that appellant had four percent upper right extremity permanent impairment due to carpal tunnel syndrome. The DMA noted that Dr. Kennedy did not adjust the final impairment rating based on the *Quick*DASH score of 34. On April 3, 2018 Dr. Kennedy concurred with the DMA's assessment of appellant's right upper extremity permanent impairment rating.

The Board finds that the DMA properly applied the appropriate tables and grading schemes of the A.M.A., *Guides* in determining that appellant had no more than four percent right upper extremity permanent impairment. Appellant did not submit any additional medical evidence which

[13] *See D.F.*, Docket No. 17-1474 (issued January 26, 2018); *L.G.*, Docket No. 14-1786 (issued December 10, 2014); *James Kennedy, Jr.,* 40 ECAB 620 (1989) (finding that an opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

would establish that he has more than four percent permanent impairment of the upper right extremity, the amount for which he previously received a schedule award.

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 more than four percent permanent impairment of his right upper extremity, for which he has previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 16, 2019
Washington, DC

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

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

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