United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 22-1017**
	)	**Issued: December 30, 2022**
U.S. POSTAL SERVICE, PROCSSING & DISTRIBUTION CENTER, Philadelphia, PA, Employer	)	

Appearances:
Russell Uliase, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 24, 2022 appellant, through counsel, filed a timely appeal from a January 12, 2022 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 her burden of proof to establish greater than one percent permanent impairment of her left upper extremity and two percent permanent impairment of her right upper extremity, for which she previously received schedule award compensation.

FACTUAL HISTORY

On November 12, 2015 appellant, then a 58-year-old bulk mail technician, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment, including repetitive movement and use of her hands and wrists casing and bundling mail. She noted that she first became aware of her condition on June 30, 2015 and realized its relationship to her federal employment on August 18, 2015. By decision dated August 9, 2016, OWCP accepted appellant's claim for other lesions of the bilateral median nerve, bilateral upper extremity strain injury, and bilateral osteoarthritis of the first carpometacarpal (CMC) joints.[3]

On February 3, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

Appellant submitted a December 2, 2019 impairment evaluation report by Dr. Nicholas Diamond, an osteopath specializing in pain medicine, who reviewed her medical records and recounted her current complaints of bilateral hand pain and stiffness. Dr. Diamond noted that an electromyography (EMG) report of the upper extremities dated September 22, 2015 revealed right median nerve impairment at the wrist level and left ulnar nerve impairment at the medial elbow level.[4] Examination of appellant's thumbs revealed no tenderness or swelling and full range of motion (ROM) testing. Dr. Diamond's sensory examination revealed decreased sensation, left greater than right, in the hands. He diagnosed, in part, bilateral wrist strain and sprain, bilateral CMC joint arthrosis, bilateral brachial plexitis, left cubital tunnel syndrome, right carpal tunnel syndrome, and bilateral hand flexor tenosynovitis.

Referencing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[5] Dr. Diamond utilized the diagnosis-based impairment (DBI) rating method for appellant's entrapment neuropathy of the bilateral median nerve at the wrist and found that, under Table 15-23 (Entrapment/Compression Neuropathy Impairment), page 449, she had a grade modifier for functional history (GMFH) of 3, a grade modifier for physical examination (GMPE) of 3, and a grade modifier for clinical studies (GMCS) of 1. He added these grade modifiers, which totaled 7, and then divided this figure by 3, which resulted in 2.3 or a grade modifier of 2. Dr. Diamond calculated that appellant had five percent permanent impairment of the bilateral upper extremity. He also determined that, under

[3] Appellant retired from Federal Government, effective November 1, 2019.

[4] An EMG report dated September 22, 2015 revealed mild right median nerve impairment at the right wrist level, significant left ulnar nerve impairment at the left elbow, and bilateral brachial plexus.

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

Table 15-2 (Digit Regional Grid), page 392, the class of diagnosis (CDX) for bilateral first finger metacarpophalangeal (MCP) joint degenerative joint disease resulted in a class 1 impairment with a default value of six. Dr. Diamond assigned a GMPE of 0. He indicated that grade modifiers of GMCS and GMFH were not applicable. After applying the net adjustment formula, (GMPE - CDX) = (0-1) = -1, Dr. Diamond calculated that appellant had five percent permanent impairment of the bilateral digit, which translated to two percent permanent impairment of the upper extremity. He calculated that she had a total of seven percent permanent impairment each for the left and right upper extremity. Dr. Diamond reported that appellant reached maximum medical improvement (MMI) on December 2, 2019.

On May 2, 2020 Dr. Morley Slutsky, a physician Board-certified in occupational medicine serving as a district medical adviser (DMA), reviewed a statement of accepted facts (SOAF) and the medical record, including Dr. Diamond's December 2, 2019 impairment evaluation report. Regarding appellant's left wrist, he utilized the DBI-rating method and indicated that the most impairing diagnosis was "nonspecific pain." Dr. Slutsky reported that, under Table 15-3 (Wrist Regional Grid), she had one percent left upper extremity permanent impairment. He disagreed with Dr. Diamond's impairment rating, and asserted that electrodiagnostic testing did not allow for use of Table 15-23. Regarding appellant's right wrist, Dr. Slutsky referenced Table 15-23 (Entrapment/Compression Neuropathy Impairment) and assigned a GMFH of 1, a GMPE of 1, and a GMCS of 1, which resulted in an average of 1. He noted that her *Quick*DASH score was mild, which increased her rating to two percent permanent impairment of the right upper extremity. Dr. Slutsky also reported that, based on Dr. Diamond's wrist ROM measurements, appellant had no ratable permanent impairment utilizing the ROM rating method. Regarding her bilateral thumb arthritis, he explained that, because there were no objective clinical findings consistent with CMC arthrosis or any other medical conditions, there was no basis for a ratable impairment for her bilateral CMC joint arthritis. Dr. Slutsky noted a date of MMI of December 2, 2019.

By decision dated July 10, 2020, OWCP granted appellant a schedule award for two percent permanent impairment of the right upper extremity and one percent permanent impairment of the left upper extremity based on Dr. Slutsky's May 2, 2020 report. The award ran for 9.36 weeks from December 2, 2019 through February 5, 2020.

Appellant subsequently submitted a June 25, 2020 addendum report by Dr. Diamond who indicated that he had reviewed Dr. Slutsky's May 2, 2020 report. Dr. Diamond explained that he agreed with Dr. Slutsky that she did not exhibit entrapment neuropathy of the left median nerve wrist. Regarding permanent impairment for appellant's right wrist, he indicated that he disagreed with Dr. Slutsky's assignment of a GMFH of 1 and a GMPE of 1. Dr. Diamond further explained that he erroneously noted an impairment rating for appellant's first MCP joint instead of the bilateral CMC joints.

On July 14, 2020 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated August 14, 2020, OWCP's hearing representative found that a conflict in medical opinion existed between Dr. Diamond, appellant's treating physician, and Dr. Slutsky, the DMA, regarding the extent of permanent impairment of her bilateral upper extremities. It

remanded the case for referral to an impartial medical examiner (IME) to resolve the conflict in medical opinion evidence.

OWCP subsequently referred appellant, along with a SOAF and the medical record, to Dr. Andrew Collier, Jr., a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in medical evidence regarding her permanent impairment for his bilateral wrist and thumb conditions. In an October 14, 2020 report, Dr. Collier noted her history of injury and reviewed the medical record. He indicated that EMG and nerve conduction velocity (NCV) studies on the left were normal and were slightly delayed on the right. On examination of appellant's thumbs, Dr. Collier observed tenderness at the basal joint bilaterally at the CMC joint with no thenar or hypothenar atrophy. Examination of appellant's bilateral wrists revealed mildly positive Tinel's test bilaterally. Sensory examination was negative bilaterally. Dr. Collier provided three ROM measurements and noted normal ROM of both wrists. He reported that presently there were no objective findings of carpal tunnel syndrome on either hand. Dr. Collier noted that appellant had degenerative arthritis of the first CMC joints bilaterally.

Regarding appellant's left upper extremity, Dr. Collier utilized Table 15-3 (Wrist Regional Grid) and determined that, for the diagnosis of nonspecific wrist pain, she had one percent permanent impairment. Regarding her right upper extremity, he utilized Table 15-23 (Entrapment/Compression Neuropathy Impairment) and noted that she was grade 1 with a default value of two. Dr. Collier assigned a GMPE of 0, a GMFH of 1, and GMCS of 1, which resulted in an average of .66 or +1. He explained that this moved the default rating to the right, resulting in three percent permanent impairment. Regarding appellant's right thumb, Dr. Collier reported that ultrasound of her hand demonstrated that she had one percent permanent impairment for right CMC joint arthritis. He calculated that appellant had a total of four percent permanent impairment of the right upper extremity. Dr. Collier noted a date of MMI as of December 2, 2019.

In a December 8, 2020 addendum report, Dr. Collier explained that his impairment rating was based on the physical examination at the time of his examination on October 14, 2020. He agreed with Dr. Slutsky's impairment of one percent of the left upper extremity. Dr. Collier also clarified that his calculation of four percent permanent impairment of the right upper extremity was not in addition to the prior impairment rating.

By decision dated December 15, 2020, OWCP granted appellant an additional two percent permanent impairment of the right upper extremity for a total of four percent permanent impairment of the right upper extremity. The award ran for 6.24 weeks from October 14 through November 26, 2020.

On December 29, 2020 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 5, 2021.

By decision dated May 26, 2021, OWCP's hearing representative vacated the December 15, 2020 OWCP decision and remanded the case for OWCP to obtain a supplemental report from Dr. Collier. On remand, it instructed him to review Dr. Diamond's June 25, 2020 addendum report and to properly apply the ROM-rating methodology to determine the extent of appellant's bilateral upper extremity permanent impairment.

In a June 7, 2021 report, Dr. Collier indicated that ROM measurements of appellant's wrists were taken three times and noted measurements of 75 degrees extension on the right and left, 65 degrees volar flexion on the right and left, 20 degrees radial deviation on the right and left, 35 degrees ulnar deviation on the right and left, 90 degrees pronation on the right and left, and 90 degrees supination on the right and left. He also clarified that he had reviewed Dr. Diamond's June 25, 2020 report and reiterated that he disagreed with Dr. Diamond's impairment rating because she did not have any evidence of carpal tunnel syndrome. Dr. Collier reported that his original impairment rating remained unchanged.

By *de novo* decision dated July 19, 2021, OWCP denied an increased schedule award for appellant's bilateral upper extremities based on Dr. Collier's October 14, 2020 and June 7, 2021 reports.

On July 27, 2021 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 8, 2021.

By decision dated January 12, 2022, OWCP's hearing representative affirmed the July 19, 2021 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA[6] and its implementing regulations[7] 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. FECA, however, does not specify the manner in which the percentage of loss of a member 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 and the Board has concurred in such adoption.[8] As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.[9]

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[10] 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

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id.* at § 10.404(a); *see also T.T.*, Docket No. 18-1622 (issued May 14, 2019); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also id.* at Chapter 3.700.2 and Exhibit 1 (January 2010).

[10] *Supra* note 5 at 449.

rating value may be modified up or down based on functional scale, an assessment of impact on daily living activities.[11]

In addressing upper extremity impairments, the sixth edition requires identification of the impairment CDX condition, which is then adjusted by GMFH, GMPE, and GMCS.[12] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[13]

Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides in pertinent part:

> "Upon initial review of a referral for upper extremity impairment evaluation, the DMA should identify (1) the methodology used by the rating physician (*i.e.* DBI or ROM) and (2) whether the applicable tables in Chapter 15 of the [A.M.A.,] *Guides* identify a diagnosis that can alternatively be rated by ROM. If the [A.M.A.,] *Guides allow for the use of both the DBI and ROM methods to calculate an impairment rating for the diagnosis in question, the method producing the higher rating should be used*." (Emphasis in the original.)[14]

The Bulletin further advises:

> "If the rating physician provided an assessment using the ROM method and the [A.M.A.,] *Guides* allows for use of ROM for the diagnosis in question, the DMA should independently calculate impairment using both the ROM and DBI methods and identify the higher rating for the CE [claims examiner]. If the medical evidence of record is [in]sufficient for the DMA to render a rating on ROM where allowed, the DMA should advise as to the medical evidence necessary to complete the rating. However, the DMA should still render an impairment rating using the DBI method, if possible, given the available evidence."[15]

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or IME) who shall make an examination.[16] This is called an impartial medical examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[17] When a case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if

[11] *Id*. at 448-49.

[12] *Id*. at 383-492.

[13] *Id*. at 411.

[14] FECA Bulletin No. 17-06 (issued May 8, 2017).

[15] *Id*.

[16] 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

[17] 20 C.F.R. § 10.321.

sufficiently well-rationalized and based upon a proper factual background, must be given special weight.[18]

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP properly determined that there was a conflict in the medical opinion evidence between Dr. Diamond, appellant's treating physician, and Dr. Slutsky, an OWCP district medical examiner, regarding the extent of permanent impairment of her bilateral upper extremities due to her accepted bilateral wrist and thumb conditions. In order to resolve the conflict, it properly referred her, pursuant to 5 U.S.C. § 8123(a), to Dr. Collier for an impartial medical examination.

The Board finds that Dr. Collier properly provided a rating in accordance with the A.M.A., *Guides* for appellant's right wrist injury. In an October 14, 2020 report, Dr. Collier indicated that EMG/NCV studies were slightly delayed on the right. He utilized Table 15-23 and noted that appellant was grade 1 with a default value of two. Dr. Collier assigned a GMPE of 0, a GMFH of 1, and GMCS of 1, which resulted in an average of .66 or +1. He explained that this moved the default rating to the right, resulting in three percent permanent impairment. The Board finds that Dr. Collier correctly applied the appropriate table and standards of the A.MA., *Guides* in calculating that appellant has three percent permanent impairment of the right upper extremity due to her right wrist injury. As OWCP denied increased schedule award, the Board finds that appellant is entitled to an additional one percent permanent impairment of the right upper extremity based on his opinion.

The Board further finds, however, that Dr. Collier's reports are not well rationalized regarding the extent of appellant's permanent impairment due to her accepted left wrist and bilateral thumb injuries as he does not properly apply the standards of the A.M.A., *Guides*.

In October 14, 2020 and June 7, 2021 reports, Dr. Collier reviewed appellant's medical history and provided examination findings. Regarding her left wrist, he utilized the DBI-rating method to determine that, under Table 15-3, she had one percent permanent impairment for the diagnosis of nonspecific wrist pain. Dr. Collier fails, however, to adequately explain how he arrived at his finding of one percent permanent impairment.[19] While Dr. Collier noted ROM measurements for her left wrist, he does not provide calculations or an impairment rating using the ROM methodology under Table 15-32 even though the diagnosis of wrist pain allows for the alternate method of rating impairment under the ROM method.[20] Accordingly, his opinion does not conform to the A.M.A., *Guides* and is of diminished probative value regarding the degree of permanent impairment due to appellant's left wrist injury.

[18] *K.D.*, Docket No. 19-0281 (issued June 30, 2020); *J.W.*, Docket No. 19-1271 (issued February 14, 2020); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[19] *See D.O.*, Docket No. 19-1729 (issued November 3, 2020); *F.B.*, Docket No. 18-0903 (issued December 7, 2018).

[20] *See H.C.*, Docket No. 21-0761 (issued May 5, 2022); *V.G.*, Docket No. 20-0455 (issued June 17, 2021).

Regarding appellant's bilateral thumb injury, Dr. Collier referenced Table 15-3 and calculated that she had one percent permanent impairment for her right CMC joint arthritis. The Board finds that he does not properly apply the methodology for rating digit impairment for her accepted bilateral thumb CMC injury. With regard to digit impairment, the A.M.A., *Guides* provides a regional grid at Table 15-2.[21] Dr. Collier, however, does not reference this table in rating appellant's permanent impairment for her accepted bilateral thumb injury.[22] Furthermore, Table 15-2 of the A.M.A., *Guides* allows an alternate rating for degenerative joint disease under the ROM impairment methodology, but he fails to provide valid thumb ROM measurements or utilize the ROM-method for rating her permanent impairment due to her accepted bilateral thumb condition. As Dr. Collier does not provide an impairment rating in accordance with the A.M.A., *Guides*, his opinion is insufficient to carry the special weight of the medical evidence regarding the nature and extent of appellant's permanent impairment due to her accepted bilateral thumb injury.[23]

When OWCP obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in medical evidence and the specialist's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in the original report.[24] However, when the impartial specialist is unable to clarify or elaborate on the original report or if a supplemental report is also vague, speculative or lacking in rationale, OWCP must submit the case record and a detailed SOAF to a second impartial specialist for the purpose of obtaining a rationalized medical opinion on the issue.[25] In this case, the Board finds that Dr. Collier, serving as the IME, fails to provide an opinion that conforms to the A.M.A., *Guides*, and, is therefore insufficient to carry the special weight of the medical evidence regarding the nature and extent of appellant's permanent impairment.[26] On remand, OWCP shall refer appellant back to Dr. Collier for another supplemental report for clarification, or to a new IME in the appropriate field of medicine. After this and other such further development as deemed necessary, it shall *issue* a *de novo* decision.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish three percent permanent impairment of her right upper extremity due to her accepted right wrist injury. The

[21] *Supra* note 5 at 391-94.

[22] *C.T.*, Docket No. 20-0043 (issued April 30, 2021).

[23] *See K.W.*, Docket No. 22-0320 (issued July 28, 2022); *see also id*.

[24] *Raymond A. Fondots*, 53 ECAB 637, 641 (2002); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr.*, 39 ECAB 736 (1988).

[25] *Nancy Keenan*, 56 ECAB 687 (2005); *Roger W. Griffith*, 51 ECAB 491 (2000); *Talmadge Miller*, 47 ECAB 673 (1996).

[26] *H.C., supra* note 20; *see also L.Y.*, Docket No. 20-0398 (issued February 9, 2021); *Paul R. Evans, Jr.*, 44 ECAB 646, 651 (1993).

Board also finds that this case is not in posture for decision regarding the extent of permanent impairment causally related to her accepted left wrist and bilateral thumb injuries.

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 30, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board