

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

R.M., Appellant	)	
	)	
and	)	Docket No. 20-1278
	)	Issued: May 4, 2022
U.S. POSTAL SERVICE, MAIN POST OFFICE,	)	
St. Louis, MO, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq.,* for the appellant<sup>1</sup>  
*Office of Solicitor,* for the Director

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On June 17, 2020 appellant, through counsel, filed a timely appeal from a May 8, 2020 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.

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<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 greater than three percent permanent impairment of his right upper extremity, for which he previously received a schedule award.

## FACTUAL HISTORY

On January 14, 2014 appellant, then a 61-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that he developed carpal tunnel syndrome due to factors of his federal employment, including answering the telephone. He alleged that his elbow would swell and his hands would start to tingle each time he answered the telephone. Appellant noted that he first became aware of his condition and realized its relation to his federal employment on December 10, 2013. On March 30, 2015 OWCP accepted his claim for right carpal tunnel syndrome.

On August 12, 2014 attending physician, Dr. Richard Lehman, a Board-certified neurosurgeon, reviewed appellant's right elbow magnetic resonance imaging (MRI) scan and found common flexor tendon origin, moderate tendinosis, and extensor tendon mild tendinosis with associated undersurface tearing and cartilage heterogeneity involving the trochlea as well as trace elbow effusion. In an additional report dated August 12, 2014, he reviewed electromyogram nerve conduction velocity (EMG/NCV) studies dated August 8, 2014 which demonstrated advanced carpal tunnel syndrome on the right. On September 8, 2014 Dr. Lehman performed a right hand carpal tunnel release.

On December 14, 2015 appellant filed a schedule award claim (Form CA-7). In support of this claim, he submitted a July 19, 2016 report from Dr. Neil Allen, a Board-certified internist. Dr. Allen noted that appellant underwent carpal tunnel release on September 8, 2014 and asserted that with reasonable medical certainty he had reached maximum medical improvement (MMI). He reported mild thenar atrophy on the right. Dr. Allen also reported muscle strength of 4/5 in extension of the wrist. He found that appellant had negative Phalen's test and Tinel's sign. Dr. Allen reported that sharp/dull discrimination was intact across all palmar surfaces and that appellant underwent electrodiagnostic studies on August 8, 2014 which, in accordance with Dr. Lehman's report, revealed advanced carpal tunnel syndrome on the right. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>3</sup> he found that based on Table 15-23, page 449, appellant demonstrated a grade modifier of 1 for test findings, a grade modifier for history of 3 due to constant symptoms, and grade modifier for physical findings of 3 based on atrophy and weakness. Dr. Allen also noted that he had a *QuickDASH* score of 48. He concluded that he had five percent permanent impairment of his right upper extremity due to compression neuropathy.

On December 21, 2016 OWCP referred Dr. Allen's report to Dr. David J. Slutsky, a Board-certified orthopedic surgeon serving as an OWCP district medical advisor (DMA). In his January 3, 2017 report, the DMA found that an impairment rating could not be performed due to

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

a lack of medical information including physical findings, sensory findings, and electrodiagnostic studies.

In a February 15, 2017 development letter, OWCP requested additional medical evidence to support appellant's schedule award claim.

Dr. Allen completed a supplemental report on May 25, 2017 and noted that he previously reported physical findings including strength testing of the abductor pollicis brevis, the presence of thenar atrophy, and sensory testing of the fingers using two-point discrimination and/or monofilament.

On June 21, 2018 OWCP referred Dr. Allen's May 25, 2017 report to the DMA. In a July 2, 2018 report, the DMA found that, as electrodiagnostic studies were not available, appellant had no permanent impairment in accordance with page 445 of the A.M.A., *Guides*.

On August 19, 2019 appellant provided his August 8, 2014 EMG/NCV testing results. These results included findings that the both right medial nerve sensory distal latency and motor distal latency were prolonged consistent with right advanced carpal tunnel syndrome.

In an August 12, 2019 report, Dr. Allen provided an additional impairment rating in accordance with Table 15-23, page 449 of the A.M.A., *Guides*, and found a grade modifier for test findings of 1, a grade modifier for history of 2, and a grade modifier for physical findings of 1, resulting in three percent permanent impairment of the right upper extremity due to carpal tunnel syndrome.

On September 4, 2019 OWCP referred Dr. Allen's August 12, 2019 report to the DMA. In his November 12, 2019 report, the DMA applied the A.M.A., *Guides*, Table 15-23, page 449 and found a grade modifier for test findings of 1, a grade modifier for history of 2, and a grade modifier for physical findings of 1, resulting in three percent permanent impairment of the right upper extremity due to carpal tunnel syndrome. He found that appellant reached MMI on July 9, 2016.

By decision dated December 11, 2019, OWCP granted appellant a schedule award for three percent permanent impairment of his right upper extremity. On December 17, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On March 25, 2020 a hearing was held.

By decision dated May 8, 2020, the hearing representative denied appellant's claim for an additional schedule award, finding that the medical evidence of record was insufficient to establish greater than the three percent permanent impairment of his right upper extremity, for which he had previously received a schedule award.

## 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 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.<sup>6</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.<sup>7</sup>

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must identify the impairment class of diagnosis (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE), and clinical studies (GMCS).<sup>8</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>9</sup> Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids, and calculations of modifier scores.<sup>10</sup>

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.<sup>11</sup> In Table 15-23, grade modifiers levels (ranging from 0 to 4) are described for the categories 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.<sup>12</sup>

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.* at § 10.404 (a); *see also* Jacqueline S. Harris, 54 ECAB 139 (2002).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 a (March 2017); *id.* at Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>8</sup> A.M.A., *Guides* 383-492; *see M.P.*, Docket No. 13-2087 (issued April 8, 2014).

<sup>9</sup> *Id.* at 411.

<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> A.M.A., *Guides* 449.

<sup>12</sup> *Id.* at 448-49.

### ANALYSIS

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

In support of his claim, appellant submitted an August 12, 2019 impairment rating report from Dr. Allen in which he found that he had three percent permanent impairment of his right upper extremity due to carpal tunnel syndrome. OWCP properly routed the report of Dr. Allen to a DMA. In a November 12, 2019 report, Dr. Slutsky, the DMA, reviewed Dr. Allen's August 12, 2019 impairment report and agreed that appellant had three percent permanent impairment of the right upper extremity. He noted a date of MMI of July 9, 2016.

Regarding appellant's right upper extremity, the DMA referenced Table 15-23, page 449 and found that he sustained three percent permanent impairment due to carpal tunnel syndrome. He found a grade modifier for test findings of 1, a grade modifier for history of 2, and a grade modifier for physical findings of 1, resulting in three percent permanent impairment of the right upper extremity due to carpal tunnel syndrome.

OWCP granted appellant's schedule award based on the opinions of his treating physician, Dr. Allen, and the DMA. As appellant bears the burden of proof to establishment entitlement to an additional schedule award, he was required to submit rationalized medical evidence on which an additional award could be based. However, there is no current medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, showing a greater percentage of permanent impairment. Thus, the Board finds that appellant has not met his burden of proof to establish more than three percent permanent impairment of his right upper extremity.

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 permanent impairment.

### CONCLUSION

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 8, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2022  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board