

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

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<b>P.W., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0295</b>
	)	<b>Issued: April 25, 2024</b>
<b>U.S. POSTAL SERVICE, NORTH SHEPHERD</b>	)	
<b>POST OFFICE, Houston, TX, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 30, 2024 appellant filed a timely appeal from a January 26, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met her burden of proof to establish greater than six percent permanent impairment of her right upper extremity, for which she previously received a schedule award.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On October 15, 2018 appellant, then a 55-year-old postal carrier technician, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome (CTS) due to factors of her federal employment, including repetitive movement of her hands. She noted that she first became aware of her condition and realized its relationship to her federal employment on January 1, 2018. Appellant did not stop work. On May 3, 2023 OWCP accepted the claim for bilateral CTS and sprain of lumbar spine ligaments.

On May 11, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By development letter dated May 12, 2023, OWCP informed appellant of the deficiencies of her schedule award claim. It advised her of the type of medical evidence needed, a detailed narrative report from her treating physician based upon a recent examination, including the date of maximum medical improvement (MMI), the diagnosis upon which the impairment rating was based, a detailed description of any preexisting impairment, a final rating of the permanent impairment, and discussion of the rationale for calculation of the impairment, with references to the applicable criteria of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup> OWCP afforded appellant 30 days to submit the necessary evidence.

In a September 30, 2023 report, Dr. Robert Lowry, a physical medicine and rehabilitation specialist, examined appellant and provided findings. He referred to the A.M.A., *Guides* Table 15-23, Entrapment/Compression Neuropathy Impairment at page 449. Dr. Lowry assigned a grade modifier for clinical studies (GMCS) of 1 for conduction delay based on distal motor latency of the right median nerve equal to 4.7 milliseconds (m/s), which was greater than the 4.5 m/s normal limit; a grade modifier for functional history (GMFH) of 3 based on constant symptoms; and a grade modifier for physical examination (GMPE) of 2 based on decreased sensation; and he noted a *QuickDASH* score of 61, severe. He related that the grade modifiers of 1+3+2 yielded an average grade modifier of 2, with a default impairment rating of five percent, and that he increased the impairment rating to six percent based on the *QuickDASH* score of 61. Dr. Lowry determined that appellant had six percent permanent impairment of the right upper extremity.

Dr. Lowry provided an October 18, 2023 follow-up report reiterating his opinion that appellant was at MMI and had six percent impairment of the right upper extremity.

On December 14, 2023 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. Michael M. Katz, a Board-certified

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<sup>2</sup> *Order Remanding Case*, Docket No. 21-1101 (issued March 30, 2023).

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

orthopedic surgeon serving as an OWCP district medical adviser (DMA) and requested that he evaluate appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.

In a December 26, 2023 report, Dr. Katz concurred with Dr. Lowry's rating of six percent right upper extremity permanent impairment. He referred to Table 15-23 at page 449 of the A.M.A., *Guides* for Entrapment/Compression Neuropathy Impairment and noted median nerve entrapment with a GMCS of 1 for test findings based on electro diagnostics with delay; GMPE of 2 for physical findings of decreased sensation; and a GMFH 2 for based on significant intermittent symptoms. Dr. Katz explained that his grade modifier of 2 for GMFH, based on significant intermittent symptoms, differed from Dr. Lowry's GMFH of 3 for history, based on constant symptoms. He noted that per the A.M.A., *Guides*, page 433, "[c]onstant symptoms means that pain or numbness is constantly present and at least conduction block if not axon loss must be present on electrodiagnostic testing to substantiate the symptom severity" but this was not the case based on Dr. Lowry's interpretation of the electro diagnostics. However, the DMA further noted that his grade modifiers of 1+2+2 yielded an average grade modifier of 2, the same as Dr. Lowry's report, and, therefore, the DMA concurred that appellant had 6 percent right upper extremity permanent impairment. Dr. Katz noted that appellant reached MMI on September 30, 2023, the date of Dr. Lowry's report.

By decision dated January 26, 2024, OWCP granted appellant a schedule award for six percent permanent impairment of the right upper extremity.

### **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>

Impairment due to CTS is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.<sup>8</sup> In Table 15-23, grade modifier 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

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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 R.M.*, Docket No. 20-1278 (issued May 4, 2022); *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 2.808.5a (March 2017); *see also* Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>8</sup> A.M.A., *Guides* 449.

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>9</sup>

### ANALYSIS

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

Appellant's treating physician, Dr. Lowry, determined that she had six percent permanent impairment of her right upper extremity based on Table 15-23, Entrapment/Compression Neuropathy Impairment at page 449 of the A.M.A., *Guides*. He found that appellant had an average grade modifier of 2, based on GMCS of 1, GMFH of 3, and GMPE of 2 for physical findings. Dr. Lowry further explained that these findings resulted in a default rating for five percent which was increased to six percent based on appellant's *QuickDASH* score of 61.

In accordance with its procedures,<sup>10</sup> OWCP properly referred the evidence of record to Dr. Katz, serving as the DMA. The DMA, Dr. Katz, concurred with Dr. Lowry's permanent rating of six percent. The DMA agreed with Dr. Lowry's selection of a GMCS of 1 for test findings based on electro diagnostics with delay, and GMPE of 2 for physical findings of decreased sensation. Dr. Katz assigned a GMFH of 2, based on significant intermittent symptoms, which differed from Dr. Lowry's finding of a GMFH of 3 based on constant symptoms. However, the average of the grade modifiers remained 2 and Dr. Katz concurred with Dr. Lowry that appellant had six percent right upper extremity permanent impairment.

As both the treating physician and the DMA concurred that appellant had six percent permanent impairment of the right upper extremity, the Board finds that appellant has not met her burden of proof to establish greater than the six percent permanent impairment of her right upper extremity previously awarded.

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 her burden of proof to establish greater than six percent permanent impairment of her right upper extremity, for which she previously received a schedule award.

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<sup>9</sup> *Id.* at 448-49.

<sup>10</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); see also Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 26, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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