United States Department of Labor
Employees' Compensation Appeals Board

G.H., Appellant	)	
and	)	**Docket No. 23-1116**
	)	**Issued: June 4, 2024**
U.S. POSTAL SERVICE, SOUTH SUBURBAN VEHICLE MAINTENANCE FACILITY, Bedford Park, IL, Employer	)	

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 August 21, 2023 appellant filed a timely appeal from a July 25, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider 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 and six percent permanent impairment of her left upper extremity, for which she previously received schedule award compensation.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.[2] The facts and circumstances as set forth in the Board's prior orders are incorporated herein by reference. The relevant facts are as follows.

On March 16, 2017 appellant, then a 63-year-old general clerk, filed an occupational disease claim (Form CA-2) alleging that she developed finger, hand, wrist, arm, shoulder, and neck conditions due to factors of her federal employment, including repetitive typing, filing, and writing.[3] She did not stop work. On March 29, 2017 OWCP accepted appellant's occupational disease claim for bilateral carpal tunnel syndrome, radial styloid tenosynovitis, and cervical radiculopathy under File No. xxxxxx060. Appellant retired from the employing establishment, effective July 1, 2017.

On April 19, 2018 appellant filed a claim for compensation (Form CA-7) for an increased schedule award.

By decision dated December 15, 2020, OWCP granted appellant a schedule award for an additional three percent permanent impairment of each of her upper extremities. The award ran from 18.72 weeks from August 20 through December 29, 2019.

Appellant filed a timely appeal to the Board. The Board in a November 8, 2021 order[4] set aside the December 15, 2020 decision and remanded the case for OWCP to administratively combine OWCP File Nos. xxxxxx379, xxxxxx417, xxxxxx725, and xxxxxx060 followed by a *de novo* decision. OWCP administratively combined the files on January 31, 2022 and designated OWCP File No. xxxxxx060 as the master file.

By *de novo* decision dated February 1, 2022, OWCP again granted an additional three percent permanent impairment of each upper extremity for a total of six percent permanent impairment of upper extremity and six percent permanent impairment of the left upper extremity. The award ran from 18.72 weeks from August 20 through December 29, 2019.

On June 12, 2023 appellant filed a Form CA-7 claim for an increased schedule award.

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[2] *Order Granting Remand,* Docket No. 21-1277 (issued July 28, 2022); *Order Remanding Case,* Docket No. 21-0416 (issued November 8, 2021).

[3] Appellant has a previously-accepted December 12, 2005 traumatic injury claim (Form CA-1), assigned OWCP File No. xxxxxx379, for a lumbar strain, lumbago, thoracic sprain, and back contusion due to falling from a chair. On February 7, 2008 she filed a subsequent Form CA-1 alleging that on that date she injured her head, neck, and back when she slipped and fell in an icy parking lot while in the performance of duty. OWCP assigned that claim OWCP File No. xxxxx725 and accepted it for neck sprain/strain and lumbar sprain/strain. It granted appellant a schedule award under OWCP File No. xxxxxx725 for three percent permanent impairment of each upper extremity and four percent permanent impairment of each lower extremity. OWCP thereafter accepted a December 16, 2016 traumatic injury claim under OWCP File No. xxxxxx417 for neck and lower back strains.

[4] *Supra* note 2.

In a June 20, 2023 development letter, OWCP informed appellant of the deficiencies of her increased schedule award claim. It requested that she submit an impairment evaluation from her attending physician that addressed whether she had obtained maximum medical improvement (MMI) and to provide a permanent impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[5] It afforded her 30 days to respond.

On July 12, 2023 OWCP received a May 4, 2023 note, wherein Dr. Jacob M. Morgenstern, an orthopedic surgeon, provided a prescription for electromyogram (EMG) studies of the bilateral upper extremities. In a May 9, 2023 note, Dr. Morgenstern recounted appellant's ongoing symptoms of hand and wrist numbness, tingling, neuropathic pain, and weakness. On physical examination, he found decreased muscle strength on the right and grip weakness with notable bilateral muscle atrophy along the thenar aspects. Dr. Morgenstern also reported tingling with the Tinel's sign bilaterally. He diagnosed neck strain, cervical radiculitis, and cervical radiculopathy.

By decision dated July 25, 2023, OWCP denied appellant's claim for an increased schedule award, finding that the medical evidence of record was insufficient to establish greater than the six percent permanent impairment of each upper extremity previously awarded.

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. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[8] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (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]

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

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id. See also Ronald R. Kraynak*, 53 ECAB 130 (2001).

[9] See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *id*. at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

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

In addressing upper extremity impairments, the sixth edition requires identification of the class of diagnosis (CDX), which is then adjusted by grade modifiers or grade modifier for functional history (GMFH), grade modifier for physical examination (GMPE), and grade modifier for clinical studies (GMCS).[11] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[13]

The A.M.A., *Guides* also provide that the range of motion (ROM) impairment method is to be used as a stand-alone rating for upper extremity impairments when other grids direct its use or when no other diagnosis-based sections are applicable.[14] If ROM is used as a stand-alone approach, the total of motion impairment for all units of function must be calculated. All values for the joint are measured and added.[15] Adjustments for functional history may be made if the evaluator determines that the resulting impairment does not adequately reflect functional loss and functional reports are determined to be reliable.[16]

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

> "As the [A.M.A.,] *Guides* caution that, if it is clear to the evaluator evaluating loss of ROM that a restricted ROM has an organic basis, three independent measurements should be obtained and the greatest ROM should be used for the determination of impairment, the CE [claims examiner] should provide this information (*via* the updated instructions noted above) to the rating physician(s).
>
> "Upon initial review of a referral for upper extremity impairment evaluation, the district medical adviser (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*."[17] (Emphasis in the original.)

[11] A.M.A., *Guides* 383-492.

[12] *Id.* at 411.

[13] *Id.* at 23-28.

[14] *Id.* at 461.

[15] *Id.* at 473.

[16] *Id.* at 474.

[17] FECA Bulletin No. 17-06 (issued May 8, 2017); *V.L.*, Docket No. 18-0760 (issued November 13, 2018).

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[18] 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 overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down by one percent based on functional scale, an assessment of impact on daily living activities.[19]

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.[20]

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 and six percent permanent impairment of her left upper extremity, for which she previously received schedule award compensation.

OWCP accepted the claim for bilateral carpal tunnel syndrome, radial styloid tenosynovitis, and cervical radiculopathy. On June 12, 2023 appellant filed a Form CA-7 claim for an increased schedule award. On June 20, 2023 OWCP requested that appellant submit a permanent impairment evaluation from her physician addressing the date of MMI and extent of any employment-related permanent impairment using the A.M.A., *Guides*. Appellant, however, did not submit such medical evidence.

The most recent medical evidence of record is May 4, 2023 from Dr. Morgenstern. Dr. Morgenstern did not, however, address whether appellant had reached MMI, nor did he find that she had permanent impairment under the sixth edition of the A.M.A., *Guides* due to her accepted employment injury.

As noted above, appellant must submit an evaluation from a physician that supports a finding that she has reached MMI, and which includes a description of impairment in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[21]

[18] A.M.A., *Guides* 449, Table 15-23. *See also L.G.*, Docket No. 18-0065 (issued June 11, 2018).

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

[20] *See supra* note 10 at Chapter 2.808.6(f) (March 2017). *See also P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

[21] *N.A.*, Docket No. 23-0532 (issued January 24, 2024); *C.T.*, Docket No. 22-0128 (issued February 15, 2023); *see J.P.*, Docket No. 21-0801 (issued December 22, 2021); *D.J.*, Docket No. 20-0017 (issued August 31, 2021); *B.V.*, Docket No. 17-0656 (issued March 13, 2018); *C.B.*, Docket No. 16-0060 (issued February 2, 2016); *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

As the medical evidence of record is insufficient to establish increased permanent impairment of a scheduled member or function of the body, the Board finds that appellant has not met her burden of proof.

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 and six percent permanent impairment of her left upper extremity, for which she previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 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