

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

_____)	
R.J., Appellant)	
)	
and)	Docket No. 23-1188
)	Issued: June 11, 2024
U.S. POSTAL SERVICE, LITTLE ROCK POST OFFICE, Little Rock, AR, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 20, 2023 appellant filed a timely appeal from a July 28, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish greater than two percent permanent impairment of her right upper extremity for which she previously received a schedule award; and (2) whether appellant has met her burden of proof to establish greater than

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 28, 2023 decision, OWCP received additional evidence. 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.*

two percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

FACTUAL HISTORY

On January 14, 2021 appellant, then a 49-year-old postal support employee, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome (CTS) due to factors of her federal employment which required repetitive motion. She noted that she first became aware of her condition and realized its relation to factors of her federal employment on January 6, 2021. OWCP accepted the claim for bilateral CTS. It paid appellant wage-loss compensation.

Appellant underwent a left carpal tunnel release on February 17, 2022, and a right carpal tunnel release on April 7, 2022.

On December 29, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a January 23, 2023 development letter, OWCP requested that appellant submit an impairment evaluation from her attending physician addressing whether she had reached maximum medical improvement (MMI) for her accepted bilateral CTS and, if so, the extent of any permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ It afforded her 30 days to submit the necessary evidence.

OWCP thereafter received an October 11, 2022 report from Dr. Theresa O. Wyrick, an orthopedic hand surgeon, who examined appellant's wrists and hands, and reviewed appellant's repeat electromyograms and nerve conduction studies. Dr. Wyrick found that there was no sign of recurrent carpal tunnel and, thus, no need for further surgical intervention. She noted appellant's complaints of significant weakness in her hands, and continued appellant on physical therapy. Dr. Wyrick noted that appellant's recovery could take up to a year. Regarding appellant's permanent impairment, she indicated that appellant had 2 percent permanent impairment of the right upper extremity. For the radial palmar digital of thumb, Dr. Wyrick found 7 percent sensory nerve value multiplied by 10 percent (grade 4) equaled 1 percent permanent impairment of the right upper extremity. For the ulnar palmar digital of thumb, she found 11 percent sensory nerve value multiplied by 10 percent (grade 4) equaled 1 percent right upper extremity impairment.

In a May 9, 2023 supplemental report, Dr. Wyrick found one percent right upper extremity impairment for sensory-only peripheral nerve injury under the sixth edition of American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Under Table 15-18, Impairment for Sensory Only Peripheral Nerve Injury, she indicated that appellant's right carpal tunnel condition was classified as "minimal," as it was consistent with the description

³ A.M.A., *Guides* (6th ed. 2009).

“retained protective sensation but had no pain.” Thus, Dr. Wyrick concluded that appellant only had one percent permanent impairment of the right upper extremity.⁴

On June 27, 2023 OWCP referred the medical record and a statement of accepted facts (SOAF) to a district medical adviser (DMA) for review of Dr. Wyrick’s permanent impairment evaluation of appellant’s right upper extremity.

In a July 3, 2023 report, Dr. Morley Slutsky, Board-certified in occupational medicine and serving as the DMA, reviewed Dr. Wyrick’s October 11, 2022 and May 9, 2023 reports and explained that as the claim was accepted for bilateral CTS Dr. Wyrick used the incorrect table to rate appellant’s permanent impairment. He indicated that CTS should have been rated under Table 15-23, page 449 for entrapment/compression neuropathy, not Table 15-18 for digital impairment. Dr. Slutsky related that Dr. Wyrick, in her October 11, 2022 report, had discussed symptoms associated with CTS and, in her May 9, 2023 report, had performed a more thorough neurologic examination, therefore, a permanent impairment rating could be derived using the information from both examinations. He indicated that appellant reached MMI on May 9, 2023. Utilizing Table 15-23, page 449, Dr. Slutsky opined that she had two percent right upper extremity impairment, and two percent left upper extremity impairment, noting that OWCP requested that he only rate the right upper extremity. For the right upper extremity, he noted that the grade modifier for test findings/clinical studies (GMCS) was 1 for conduction delay⁵, the grade modifier for functional history (GMFH) was 1 as there were still symptoms related to CTS, and the grade modifier for physical examination (GMPE) was 1 for normal light touch testing. Dr. Slutsky explained that the average of the grade modifiers was 1, which resulted in two percent default right upper extremity impairment, according to Table 15-23. He indicated that appellant had mild symptoms and no clinical abnormalities. Dr. Slutsky noted that the *QuickDASH* score was not performed and, thus, no adjustment was made to the two percent default right upper extremity impairment. He indicated that impairment under the range of motion methodology was not permitted when the only ratable condition was CTS. Dr. Slutsky concluded that the two percent right upper extremity impairment was different than that assigned by Dr. Wyrick, but the two percent left upper extremity impairment was the same impairment assigned by her.

By decision dated July 28, 2023, OWCP granted appellant a schedule award for two percent right upper extremity permanent impairment and two percent left upper extremity permanent impairment for a total of 12.48 weeks of compensation, which ran for the period May 9 through August 4, 2023.

LEGAL PRECEDENT -- ISSUE 1 and 2

The schedule award provisions of FECA⁶ and its implementing regulations⁷ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from

⁴ A.M.A., *Guides* 429.

⁵ Dr. Slutsky indicated that the January 6, 2021 electrodiagnostic testing of both median nerves revealed conduction delay which was equal to a GMCS of 1. No other findings were attributed to the left upper extremity.

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

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

In determining impairment 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 a GMFH, GMPE, and/or GMCS.¹⁰ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹¹ Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids, and calculations of modifier scores.¹²

Impairment due to CTS is evaluated under the scheme found in Table 15-23, Entrapment/Compression Neuropathy Impairment, and the accompanying relevant text.¹³ In Table 15-23, grade modifiers levels (ranging from 0 to 4) are described for the category's clinical studies, functional history, and physical examination 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 is modified up or down based on the Functional Scale section of Table 15-23, using a *QuickDASH* score as an assessment of impact on daily living activities.¹⁴

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.¹⁵

⁸ *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).

⁹ 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).

¹⁰ A.M.A., *Guides* 383-492; *see M.F.*, Docket No. 23-0881 (issued December 6, 2023); *M.P.*, Docket No. 13-2087 (issued April 8, 2014).

¹¹ *Id.* at 411.

¹² *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹³ A.M.A., *Guides* 448-49; *see M.F.*, *supra* note 10; *J.L.*, Docket No. 22-1299 (issued May 17, 2023); *S.B.*, Docket No. 22-0148 (issued March 24, 2023).

¹⁴ *Id.* at 448-49.

¹⁵ *Supra* note 9 at Chapter 2.808.6f (March 2017). *See also P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish greater than two percent permanent impairment of her right upper extremity, for which she previously received a schedule award.¹⁶

Dr. Wyrick opined, in her October 11, 2022 report, that appellant had two percent permanent impairment of her right upper extremity based on digital impairments and, in her May 9, 2023 report, opined that appellant had a final one percent right upper extremity impairment for sensory-only peripheral nerve injury under Table 15-18 of the A.M.A., *Guides*. However, as permanent impairment due to CTS should be evaluated under the A.M.A., *Guides* Table 15-23, Entrapment/Compression Neuropathy Impairment, her opinions regarding appellant's right upper extremity impairments are of diminished probative value.¹⁷

OWCP referred the case record and a SOAF to Dr. Slutsky, serving as the DMA. Based on the findings contained in Dr. Wyrick's reports, Dr. Slutsky, in relevant part, opined that appellant had two percent right upper extremity impairment under Table 15-23 of the A.M.A., *Guides*. Dr. Slutsky indicated that appellant reached MMI on May 9, 2023. He applied the findings contained in Dr. Wyrick's reports to Table 15-23 of the A.M.A., *Guides* for entrapment compression neuropathy impairment for the right upper extremity. Dr. Slutsky calculated an average grade modifier of 1, using grade modifiers of 1 for GMCS, GMFH, and GMPE, based on conduction delay, residual symptoms related to CTS, and normal light touch testing. He computed an average grade modifier of 1, and opined that appellant had 2 percent right upper extremity impairment. Dr. Slutsky noted that the grade modifier 1 corresponded to an impairment rating with a default value of 2. He noted that the *QuickDASH* score was not performed as appellant had no clinical findings and, thus, properly finalized the default rating of two percent right upper extremity impairment.¹⁸

The Board finds that the DMA, Dr. Slutsky, properly applied the A.M.A., *Guides* to the findings of Dr. Wyrick, and explained that appellant's current impairment was two percent right upper extremity permanent impairment based on her right CTS findings. Dr. Slutsky accurately summarized the relevant medical evidence and reached conclusions about appellant's condition

¹⁶ The Board notes that, while OWCP's January 23, 2023 development letter and its July 28, 2023 decision regarding appellant's schedule award claim were properly addressed to her, the employing establishment was not informed of any developments in her claim as both the development letter and the decision were addressed to the employing establishment at an address different from the one reported on the CA-2 form, and subsequently returned to OWCP as undeliverable and unable to forward. Although the employing establishment did not receive OWCP's January 23, 2023 development letter and its July 28, 2023 decision and, thus, was not informed of any developments pertaining to appellant's claim, the Board finds that this is harmless error as it does not affect the substantive issue on appeal concerning appellant's schedule award. *C.f.*, *R.M.*, Docket No. 11-1773 (March 9, 2012); *see also supra* note 9 at Chapter 2.300(d) (September 2020) which provides as follows: "Copies of Letters to Employing Agencies. The agency should receive copies of all letters addressing substantive developments in the case, even if the claimant no longer works for the agency.

¹⁷ *See supra* note 15.

¹⁸ *See J.H.*, Docket No. 19-0395 (issued August 10, 2020).

which comported with the findings.¹⁹ As the DMA's report is detailed, well rationalized, and based on a proper factual background, his opinion represents the weight of the medical evidence.²⁰

As there is no current medical evidence of record, in conformance with the A.M.A., *Guides*, establishing a greater permanent impairment than the two percent right upper extremity impairment previously awarded, the Board finds that appellant has not met her burden of proof to establish entitlement to additional schedule award compensation.²¹

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.

ANALYSIS -- ISSUE 2

The case is not in posture for decision with regard to whether appellant has met her burden of proof to establish greater than two percent permanent impairment of her left upper extremity, for which she received a schedule award.

As previously noted, based on the findings contained in Dr. Wyrick's reports, Dr. Slutsky opined that appellant had two percent left upper extremity impairment. The Board notes that, to the extent Dr. Wyrick made bilateral examination findings with regard to appellant's hands, Dr. Slutsky made no specific findings or impairment calculations with regard to her left upper extremity to support an impairment rating.²² Thus, the Board finds that Dr. Slutsky failed to provide a left upper extremity impairment rating using the DBI method in accordance with the A.M.A., *Guides*. Dr. Slutsky also provided no medical rationale explaining his left upper extremity impairment rating. OWCP, therefore, should have sought clarification.²³

It is well established that, proceedings under FECA are not adversarial in nature, and while the employee has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.²⁴ Once OWCP undertook development of the

¹⁹ *S.B.*, Docket No. 22-0148 (issued March 24, 2023); *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *M.S.*, Docket No. 19-1011 (issued October 29, 2019); *W.H.*, Docket No. 19-0102 (issued June 21, 2019); *J.M.*, Docket No. 18-1387 (issued February 1, 2019).

²⁰ *S.B., id.; B.B.*, Docket No. 20-1187 (issued November 18, 2021); *see also M.D., id., D.S.*, Docket No. 18-1816 (issued June 20, 2019).

²¹ *See A.R.*, Docket No. 21-0346 (issued August 17, 2022); *see K.H.*, Docket No. 20-1198 (issued February 8, 2021).

²² *See supra* note 7.

²³ *See J.S.*, Docket No. 21-1390 (issued September 1, 2023).

²⁴ *See M.F.*, Docket No. 23-0881 (issued December 6, 2023); *B.W.*, Docket No. 20-1441 (issued July 30, 2021); *see W.W.*, Docket No. 18-0093 (issued October 9, 2018); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

evidence by referring appellant's case file to an OWCP medical adviser, it had an obligation to do a complete job and obtain a proper evaluation and report that would resolve the issue in this case.²⁵

On remand, OWCP shall refer the case record back to Dr. Slutsky for clarification, and a supplemental opinion which addresses appellant's left upper extremity permanent impairment rating in accordance with the A.M.A., *Guides*. Following this, and other such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish greater than two percent permanent impairment of her right upper extremity, for which she previously received a schedule award. The case is not in posture for decision with regard to whether appellant has met her burden of proof to establish greater the two percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2023 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 11, 2024
Washington, DC

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

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

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

²⁵ See *M.F., id; G.M.*, Docket No. 19-1931 (issued May 28, 2020); *Peter C. Belkind*, 56 ECAB 580 (2005); *Ayanle A. Hashi*, 56 ECAB 234 (2004).