United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 24-0380**
	)	**Issued: June 3, 2024**
U.S. POSTAL SERVICE, ASHBURN POST OFFICE, Chicago, IL, 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
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On February 26, 2024 appellant filed a timely appeal from a February 2, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employee's Compensation Act[1] (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 three percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On November 23, 2019 appellant, then a 47-year-old sales, services, and distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on that day, she sprained her left wrist when she tripped and fell over a hand jack on the loading dock while in the performance of duty. OWCP accepted the claim for contusion of the left wrist, contusion of the left knee, and contusion of the right knee. It subsequently expanded the acceptance of appellant's claim to include closed fracture of the left radial head, and left wrist tendinitis.

On May 30, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a July 25, 2022 development letter, OWCP requested that appellant submit an impairment evaluation addressing whether she had reached maximum medical improvement (MMI) and providing an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[2] It afforded her 30 days to submit the necessary evidence.

Thereafter, OWCP received an October 24, 2022 report by Dr. Blair Rhode, a Board-certified orthopedic surgeon, who recounted a history of the November 23, 2019 employment injury and noted findings on examination including positive Tinel's sign at the left wrist, mild pain to palpation over the thenar muscle, and mild pain on palpation of the posterior/lateral aspect of the left elbow. Dr. Rhode obtained three trials of range of motion (ROM) for the left wrist, with flexion at 75 degrees, extension at 70 degrees, radial deviation at 25 degrees, and ulnar deviation at 30 degrees. He also obtained three trials of ROM for the left elbow, with flexion at 145 degrees, extension at zero degrees, pronation at 80 degrees, and supination at 80 degrees. Dr. Rhode noted that December 6, 2019 x-rays of the left wrist revealed no fracture, dislocation, or osteochondral injury, and that February 12, 2020 left elbow x-rays revealed moderate to significant callus to the proximal radial head fracture with mild compression. He referred to the sixth edition of the A.M.A., *Guides* and utilized the diagnosis-based impairment (DBI) method to find that under Table 15-3 (Wrist Regional Grid), page 395, the class of diagnosis (CDX) for the left wrist, resulted in a Class 1 impairment. Dr. Rhode assigned a grade modifier for functional history (GMFH) of 1, and found that a grade modifier for physical examination (GMPE) and a grade modifier for clinical studies (GMCS) were not applicable. He then applied the net adjustment formula set forth on page 411, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (0 - 1) + (0-1), which resulted in a Class 1 diagnosis with a +1 modifier. Dr. Rhode again referred to Table 15-4 to assign a CDX of 1 for the left elbow as a Class 1 impairment, and assigned a GMFH of 1. He then applied the net adjustment formula, (1 - 1) + (0 - 1) + (0 - 1) to find a modifier of +1. Dr, Rhode concluded that appellant had one percent permanent impairment of the left upper extremity.[3] He opined that appellant reached MMI on the date of examination.

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

[3] The Board notes that while Dr. Rhode also provided clinical findings and an impairment rating for both knees, OWCP subsequently developed only the issue of permanent left upper extremity impairment.

On June 26, 2023 OWCP referred the medical record and statement of accepted facts (SOAF) to Dr. Nathan Hammel, a Board-certified orthopedist, serving as an OWCP District medical adviser (DMA), for review and determination of appellant's date of MMI and the permanent impairment of her left upper extremity under the sixth edition of the A.M.A., *Guides*. It requested that Dr. Hammel review Dr. Rhode's October 24, 2022 report and provide an opinion discussing whether he agreed with its findings.

In a July 5, 2023 report, Dr. Hammel discussed the findings in Dr. Rhode's October 24, 2022 report and concurred that appellant had reached MMI as of October 24, 2022. He diagnosed contusion of left wrist, calcific tendinitis of the left hand, and displaced fracture of head of left radius, initial encounter for closed fracture. Dr. Hammel referred to the sixth edition of the A.M.A., *Guides* and noted that the ROM rating method provided a zero percent impairment as appellant had full ranges of motion of the left wrist and elbow. He utilized the DBI rating method to find that, under Table 15-4 (Elbow Regional Grid), page 399, the CDX for appellant's fracture with residual symptoms resulted in a Class 1 impairment with a default value of 3. Dr. Hammel assigned a GMFH of 1 for continued pain, and a GMPE of 1 for tenderness and mild motion loss. He found that a GMCS was not applicable. Dr. Hammel utilized the net adjustment formula (1 - 1) + (1 - 1) = 0, which resulted in a grade C or three percent permanent impairment of the left upper extremity. He again used the DBI rating method to find that, under Table 15-3, page 395, the CDX for appellant's left wrist sprain with ongoing symptoms resulted in a Class 1 impairment with a default value of 1. Dr. Hammel assigned a GMFH of 1 for continued pain, a GMPE of 1 for tenderness. He found that GMCS was not applicable. Dr. Hammel utilized the net adjustment formula, which resulted in a net grade modifier of -1, reducing grade C to grade B or 1 percent permanent impairment of the left upper extremity. He noted that Dr. Rhode did not show all his calculations or steps in the impairment rating process and that he, therefore, disagreed with his calculations.

On September 11, 2023 OWCP referred appellant, the medical record, a SOAF, and a series of questions to Dr. Junaid Makda, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding permanent impairment of her left upper extremity due to her accepted November 23, 2019 employment injury in accordance with the A.M.A., *Guides*.

In a report dated October 6, 2023, Dr. Makda noted his review of the case record, including the SOAF, and recounted appellant's complaints of chronic left elbow and wrist pain. On examination of the left upper extremity, he observed full ranges of motion of the wrist and elbow, no tenderness to palpation, intact sensation to light touch, and positive Phalen's and Tinel's sign at the wrist. Dr. Makda diagnosed healed closed fracture of the left radial head, resolved left wrist tendinitis, and resolved left wrist contusion. He opined that appellant had attained MMI as of that day. Regarding the permanent impairment rating for appellant's left elbow condition, Dr. Makda utilized the DBI rating method to find that under Table 15-4, page 399, a CDX for fracture resulting in a Class 1 impairment, with a default value of three. He assigned a GMFH of 1, GMPE of 1 and GMCS of 1. Dr. Madka applied the net adjustment formula, which resulted in a net adjustment of zero or three percent permanent impairment of the left upper extremity. He found no additional upper extremity impairment for the left wrist as the accepted left wrist injuries had resolved.

On December 20, 2023 OWCP referred the medical record and SOAF to Dr. William Tontz, Jr., a Board-certified orthopedic surgeon serving as an OWCP District medical adviser (DMA), for review and determination of appellant's date of MMI and the permanent impairment of her left upper extremity under the sixth edition of the A.M.A., *Guides*. It requested that Dr. Tontz review Dr. Makda's October 6, 2023 report and provide an opinion discussing whether he agreed with its findings.

In a January 5, 2024 report, Dr. Tontz concurred with Dr. Makda's impairment rating and his method of calculation. He opined that appellant had three percent permanent impairment of the left upper extremity due to the November 23, 2019 employment injuries.

By decision dated February 2, 2024, OWCP granted appellant a schedule award for three percent permanent impairment of the left upper extremity. The period of the award ran for 9.36 weeks from October 7 through December 11, 2023.

LEGAL PRECEDENT

The schedule award provisions of FECA[4] and its implementing federal regulations[5] 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, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants.[6] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.[7] 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.[8]

In addressing upper extremity impairments, the sixth edition requires that the evaluator identify the impairment CDX, which is then adjusted by a GMFH, GMPE, and GMCS.[9] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10]

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id.* at § 10.404(a).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2, Exhibit 1 (January 2010).

[8] *D.P.*, Docket No. 20-1330 (issued February 19, 2021); *D.S.*, Docket No. 18-1140 (issued January 29, 2019); *Isidoro Rivera*, 12 ECAB 348 (1961).

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

[10] *Id.* at 411.

The A.M.A., *Guides* also provide that ROM impairment methodology is to be used as a stand-alone rating for upper extremity impairments when other grids direct its use or when no other DBI sections are applicable.[11] 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.[12] 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.[13]

OWCP issued FECA Bulletin No. 17-06 to explain the use of the DBI methodology versus the ROM methodology for rating of upper extremity impairments.[14] 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.)[15]

The Bulletin further advises:

> "If the rating physician provided an assessment using the ROM method and the [A.M.A.,] *Guides* allow 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 [claims examiner]."[16]

If the medical evidence of record is not 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.[17]

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[11] *Id.* at 461.

[12] *Id.* at 473.

[13] *Id.* at 474.

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

[15] A.M.A., *Guides* 477.

[16] FECA Bulletin No. 17-06 (issued May 8, 2017); *K.K.*, Docket No. 23-0745 (issued February 1, 2024); *A.H.*, Docket No. 23-0335 (issued July 28, 2023); *V.L.*, Docket No. 18-0760 (issued November 13, 2018); *A.G.*, Docket No. 18-0329 (issued July 26, 2018).

[17] *Id.*

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the percentage of permanent impairment using the A.M.A., *Guides*.[18]

ANALYSIS

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

In a July 5, 2023 report, Dr. Hammel referred to the sixth edition of the A.M.A., *Guides* and opined that appellant had reached MMI as of Dr. Rhode's October 24, 2022 examination. However, he found that Dr. Rhode had not properly applied the A.M.A., *Guides*. OWCP then obtained an impairment evaluation from Dr. Makda, who in an October 6, 2023 report found 3 percent permanent impairment of the left upper extremity utilizing the DBI rating method. He utilized Table 15-4 to find a CDX based on appellant's fracture, which resulted in a Class 1 impairment and assigned a GMFH of 1, GMPE of 1 and GMCS of 1, resulting in a net grade modifier of zero or 3 percent permanent impairment of the left upper extremity. Dr. Makda explained that there was no additional upper extremity impairment for the left wrist as the accepted left wrist injuries had resolved. OWCP then referred the medical record and SOAF to Dr. Tontz, who submitted a January 5, 2024 report, wherein he concurred with Dr. Makda's October 6, 2023 impairment rating and method of calculation.

The Board finds that OWCP properly relied on the opinions of Drs. Makda and Tontz to find that appellant had no greater than three percent permanent impairment of her left upper extremity (left arm). Dr. Makda reached conclusions regarding appellant's permanent impairment that are in accordance with the standards of the sixth edition of the A.M.A., *Guides*.[19]

As appellant has not established greater than three percent permanent impairment of her left upper extremity, for which she previously received a schedule award, the Board finds that she 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 three percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

[18] *Supra* note 7 at Chapter 2.808.6f (March 2017); *D.S.*, Docket No. 20-0670 (issued November 2, 2021); *B.B.*, Docket No. 18-0782 (issued January 11, 2019).

[19] *See K.K.*, *supra* note 16.

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 3, 2024
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