United States Department of Labor
Employees' Compensation Appeals Board

P.R., Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer**	)	**Docket No. 12-1284** **Issued: December 17, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On May 29, 2012 appellant filed a timely appeal of a January 17, 2012 schedule award decision of the Office of Workers' Compensation Programs[1] (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

ISSUE

The issue is whether appellant has more than 11 percent impairment to the right upper extremity and 11 percent impairment to the right lower extremity, for which she received schedule awards.

[1] Appellant indicated that she was appealing a January 20, 2012 decision. The Board notes, however, that the case record does not contain an adverse decision issued by OWCP on that date.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on April 17, 2006 appellant, then a 50-year-old letter carrier, sustained multiple lacerations to the right and left legs, a puncture wound to the right leg, foot and wrist, a right thigh large ecchymosis (contusion/bruise), post-traumatic neuromas of the sensory branch of the ulnar nerve on the lateral dorsum of the right foot and causalgia of the bilateral legs and right wrist as a result of being bitten by a dog while she delivered mail at work.[3]

On October 26, 2009 appellant filed a claim for a schedule award.

By letter dated November 4, 2009, OWCP requested Dr. Durga Yalamanchili, an attending internist, to determine the extent of appellant's employment-related permanent impairment based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Dr. Yalamanchili was afforded 30 days to submit the requested evidence. He did not respond.

By letter dated August 23, 2011, OWCP referred appellant, together with the case record and a statement of accepted facts, to Dr. Michael E. Holda, a Board-certified orthopedic surgeon, for a second opinion. In a September 7, 2011 medical report, Dr. Holda noted appellant's complaints of pain in the right leg, wrist and upper extremity. Appellant rated her right leg pain as a 6 and her right wrist pain as a 5 on a scale of 1 to 10. Dr. Holda obtained a history of the April 17, 2006 employment injuries and her medical treatment, family, social and employment background. He reviewed the medical record and statement of accepted facts. Dr. Holda reported essentially normal findings on physical examination with exceptions. Appellant ambulated slowly favoring her right leg. She had swelling and restricted motion with pain and tenderness to superficial palpation of the right foot. The right foot was cooler than the left foot and it had discoloration. Appellant had restricted motion of the right elbow and wrist with pain. She also had tenderness to superficial palpation and swelling of the right wrist. The right hand was cooler than the left hand and it apparently had discoloration. Dr. Holda diagnosed reflex sympathetic dystrophy of the right upper and lower extremities.

Dr. Holda advised that appellant had reached maximum medical improvement. He found that, under Table 15-24 of the sixth edition of the A.M.A., *Guides*, she had complex regional pain syndrome (CRPS) of the right upper extremity. Referring to Table 15-25, objective diagnostic criteria for CRPS, appellant met multiple objective diagnostic criteria such as skin discoloration, coolness of the skin in the right wrist area, mild edema, atrophy and stiffness which resulted in five points. Dr. Holda assessed an adjustment of three for Functional History (GMFH) and an adjustment of two each for physical and Clinical Study (GMCS) examinations. Applying his findings to Table 15-26, he concluded that appellant was in class 1 with a default grade of D for CRPS which resulted in 11 percent impairment of the right upper extremity. Regarding the right lower extremity, Dr. Holda determined that appellant met the standard of Table 16-3 under diagnostic criteria for CRPS based on her hyperalgesia and coolness of the

[3] Prior to the instant claim, appellant was involved in a motor vehicle accident and filed a claim under OWCP File No. xxxxxx163. OWCP accepted her claim for right ankle sprain. On November 2, 2010 appellant retired on disability from the employing establishment.

skin, edema and trophic changes. Under Table 16-14, he determined that these clinical signs resulted in five points. Applying his finding to Table 16-15, CRPS of the lower extremities, Dr. Holda determined that appellant was in class 1 with a default grade of D. He assessed an adjustment of 3 for functional history and an adjustment of 2 each for physical examination and clinical studies examinations, resulting in an 11 percent impairment of the right lower extremity.

On October 24, 2011 OWCP's medical adviser, reviewed the medical record as well as Dr. Holda's report. Regarding the right lower extremity, he determined that appellant had a class 1 CRPS diagnosis with a default impairment of seven percent under the CRPS Grid (Table 16-15) on page 541 of the sixth edition of the A.M.A., *Guides*. The class 1 diagnosis was selected because appellant met four of the diagnostic criteria listed in Table 16-13. The medical adviser assessed a grade 1 modifier for functional history for an antalgic limp. He stated that Dr. Holda's assessment of a grade 3 modifier for functional history was not substantiated based on his finding that appellant ambulated slowly favoring her right leg, but did use a gait aid. The medical adviser assessed a grade 2 modifier for physical examination for moderate palpatory findings and a grade 2 modifier for clinical study which confirmed moderate pathology. He averaged the above modifiers which resulted in a value of 2 to adjust the impairment class. The medical adviser then applied the grade modifiers to the net adjustment formula for a net adjustment of two, which resulted in a class 2 impairment with a default grade of D which represented 11 percent impairment of the right lower extremity.

Regarding the right upper extremity, OWCP's medical adviser determined that appellant had a class 1 CRPS diagnosis with a default impairment of seven percent under the CRPS Grid on page 541. The class 1 diagnosis was selected because she met four of the diagnostic criteria listed in Table 16-13. The medical adviser assessed a grade 3 modifier for functional history for pain at rest, a grade 2 modifier for physical examination for moderate palpatory findings and a grade 2 modifier for clinical study for confirmed moderate pathology. He averaged the above modifiers which resulted in a value of 2 to adjust the impairment class. The medical adviser then applied grade modifiers to the net adjustment formula for a net adjustment of two, which resulted in a class 2 impairment with a default grade of D which represented 11 percent impairment of the right lower extremity. He stated that although the exact date of maximum medical improvement was difficult to determine, it was reasonable that appellant reached maximum medical improvement on April 17, 2007, one year after her injury.

On November 16, 2011 OWCP requested that Dr. Holda provide whether appellant's claim should be expanded to include CRPS of the right upper and lower extremities. If so, Dr. Holda was requested to determine whether the 11 percent impairment ratings for the right upper and lower extremity were still appropriate.

In a November 23, 2011 report, Dr. Holda stated that appellant's case already included the diagnosis of CRPS, another term for causalgia, which was part of the statement of accepted facts. His previous impairment ratings included the CRPS diagnosis and, therefore, remained the same.

In a January 17, 2012 decision, OWCP granted appellant a schedule award for 11 percent impairment to the right upper extremity and 11 percent impairment to the right lower extremity based on the opinions of Dr. Holda and OWCP's medical adviser.

LEGAL PRECEDENT

The schedule award provision 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, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[6] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[7] For decisions issued after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[8] For decisions issued after May 1, 2009, the sixth edition will be used.[9]

In addressing upper and lower extremity impairments, the sixth edition requires identification of the impairment class for the diagnosed condition, which is then adjusted by grade modifiers based on functional history, physical examination and clinical study. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser proving rationale for the percentage of impairment specified.[11]

ANALYSIS

OWCP accepted appellant's claim for multiple lacerations to the right and left legs, a puncture wound to the right leg, foot and wrist, a right thigh large ecchymosis (contusion/bruise), post-traumatic neuromas of the sensory branch of the ulnar nerve on the lateral dorsum of the right foot and causalgia of the bilateral legs. On January 17, 2012 appellant received a schedule award for 11 percent impairment to the right upper extremity and 11 percent impairment to the right lower extremity. The Board finds that she did not meet her burden of proof to establish that she sustained greater impairment.

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[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Ausbon N. Johnson*, 50 ECAB 304 (1999).

[7] *Supra* note 4.

[8] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2010).

[9] *Id.* at Chapter 3.700, Exhibit 1 (January 2010).

[10] A.M.A., *Guides* 411, 521.

[11] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010).

Appellant has failed to submit any evidence by a treating physician finding greater impairment to the right upper or lower extremities related to the accepted conditions. Both Dr. Holda, an OWCP referral physician, and OWCP's medical adviser, rated 11 percent impairment to the right upper extremity and 11 percent impairment to the right lower extremity due to her accepted conditions.

Dr. Holda determined that appellant had a class 1 impairment with a default grade of D. He assessed an adjustment of 3 for functional history and an adjustment of 2 each for physical and clinical study examinations, resulting in 11 percent impairment of the right lower extremity.

The file was then properly routed to OWCP's medical adviser, for an opinion concerning the nature or percentage of permanent impairment in accordance with the A.M.A., *Guides*.[12] On October 24, 2011 he utilized Dr. Holda's findings, referenced the sixth edition of the A.M.A., *Guides* and concurred with his opinion that appellant had 11 percent impairment to the right upper extremity and 11 percent impairment to the right lower extremity. The medical adviser noted that while Dr. Holda used a grade 3 modifier for functional history he used a grade 1 modifier for an antalgic limp. He assessed a grade 2 modifier for physical examination for moderate palpatory findings and a grade 2 modifier for clinical studies. Applying the net adjustment formula resulted in a modifier of 2 resulting in a class 2 impairment with a grade D default value still represented 11 percent impairment of the right lower extremity. The Board finds that the medical evidence of record establishes that appellant has no more than 11 percent impairment to the right upper extremity and 11 percent impairment to the right lower extremity.

On appeal, counsel contended that OWCP's decision is contrary to fact and law. As stated, the weight of the medical evidence does not establish that appellant sustained more than 11 percent impairment each to the right upper and lower extremities, for which she received schedule awards. There is no other medical evidence of record addressing the extent of appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has failed to establish that she has more than 11 percent impairment to the right upper extremity and 11 percent impairment to the right lower extremity, for which she received schedule awards.

[12] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board