United States Department of Labor
Employees' Compensation Appeals Board

E.S., Appellant	)	
and	)	**Docket No. 11-864**
	)	**Issued: November 8, 2011**
U.S. POSTAL SERVICE, LARGO POST OFFICE, Largo, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 24, 2011 appellant filed a timely appeal of a February 3, 2011 Office of Workers' Compensation Programs' (OWCP) merit decision denying an additional schedule award. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c)(1) and 501.3, the Board has jurisdiction to consider the merits of this schedule award case.

ISSUE

The issue is whether appellant has more than 32 percent impairment of each of his upper extremities for which he has received schedule awards.

FACTUAL HISTORY

This case has previously been before the Board. On August 12, 1996 appellant, then a 48-year-old city carrier, filed an occupational disease claim alleging that he developed a left

[1] 5 U.S.C. § 8101 *et seq.*

shoulder and arm condition due to the continuous movement of casing and delivering mail. OWCP accepted this claim for aggravation of osteoarthritis of both shoulders on November 25, 1996. On January 29, 1997 appellant underwent a magnetic resonance imaging (MRI) scan of each shoulder. These tests revealed advanced glenohumeral osteoarthritis and probable complete tear of the rotator cuff tendon as well as palpable anterior labral tear or severe degeneration in the left shoulder. In the right shoulder appellant also demonstrated advanced osteoarthritis of the glenohumeral joint with early avascular necrosis of the right humeral head, partial glenoid labral tear, complete tear of the rotator cuff tendon and joint effusion. By decision dated January 21, 2000, OWCP granted appellant schedule awards for 18 percent impairment of the right shoulder and 17 percent impairment of the left shoulder. Appellant's shoulder x-rays on December 4, 2002 demonstrated significant arthritis of the glenohumeral joint with large inferior spurs greater on the right than left resulting in near complete obliteration of the glenohumeral joint space of the right and about two to three millimeters on the left. Appellant's attending physician, Dr. John Harker, an osteopath, completed a report on July 13, 2005 and reported appellant's shoulder range of motion and x-ray findings noting that appellant's right shoulder had progressively degenerated while his left shoulder was unchanged. OWCP's medical adviser reviewed this report on July 11, 2006 and stated that appellant had 26 percent impairment of each upper extremity. In an August 16, 2006 decision, OWCP found that appellant had 26 percent impairment to each upper extremity or an additional 1 percent impairment of his right upper extremity.[2]

By decision dated August 10, 2007, OWCP denied appellant's claim for an additional schedule award. On September 11, 2007 it declined to reopen this claim for additional consideration of the merits. In a February 1, 2008 decision, OWCP reviewed the merits of appellant's claim and denied modification of the August 10, 2007 decision. The Board reviewed these decisions on November 3, 2008.[3] The Board remanded the case for OWCP to undertake additional development of the medical evidence to determine appellant's permanent impairment for schedule award purposes.

Following the Board's decision on December 15, 2008, OWCP granted appellant a schedule award for an additional 1 percent impairment of the right upper extremity, or a total impairment rating of 26 percent of the right upper extremity.

Appellant filed a claim for compensation and requested a schedule award on January 4, 2010. In support of his claim, he submitted a note dated December 8, 2009 from Dr. David Kaler, a Board-certified orthopedic surgeon, stating that appellant had decreased range of motion in both shoulders with pain in the end range. Dr. Kaler diagnosed bilateral shoulder degenerative joint disease. He completed a form on December 8, 2009 listing appellant's range of motion, finding in the left shoulder 10 degrees of internal rotation, 10 degrees of external rotation, 60 degrees of forward elevation and 10 degrees of backward elevation, 20 degrees of abduction and adduction and 5 degrees of alkalosis. Dr. Kaler opined that appellant had 28

[2] The Board notes that appellant had previously received schedule awards totaling 27 percent impairment of his left upper extremity and 25 percent impairment of his right upper extremity. OWCP found that he was not therefore entitled to an additional schedule award for his left upper extremity.

[3] Docket No. 08-280 (issued November 3, 2008).

percent impairment of the left upper extremity. In regard to appellant's right upper extremity, he completed a similar report finding 10 degrees of internal and external rotation, 60 degrees of forward elevation and 10 degrees of backward elevation as well as 20 degrees of abduction and adduction and 5 degrees of ankylosis. Dr. Kaler recommended 30 percent impairment of the right upper extremity.

Dr. James D. Shortt, a Board-certified orthopedic surgeon, examined appellant on March 31, 2010 and noted his history of injury and found marked decreased range of motion in both shoulders. He reported bilateral range of motion of 30 degrees of abduction and 0 degrees of adduction, 20 degrees of forward flexion and 10 degrees of extension with 30 degrees of external rotation and 20 degrees of internal rotation. Dr. Shortt found that based on the sixth edition of the A.M.A., *Guides* appellant had 25 percent impairment of each upper extremity. He also reported appellant's impairment in terms of the whole person.

By decision dated April 21, 2010, OWCP found that appellant had not established an additional permanent impairment of his upper extremities entitling him to a schedule award. On April 27, 2010 appellant requested a review of the written record by an OWCP hearing representative. By decision dated August 5, 2010, an OWCP hearing representative noted that appellant had received upper extremity schedule awards of five percent for bilateral carpal tunnel syndrome under a separate claim[4] and 27 percent of each of his upper extremities due to his bilateral shoulder condition and found that appellant had not submitted sufficient medical evidence to support that he has more than 32 percent impairment of his upper extremities bilaterally for which he has received schedule awards.

On August 30, 2010 appellant requested reconsideration and disagreed with the hearing representative's opinion regarding the totality of his upper extremity impairments. He submitted a report dated August 20, 2010 from Dr. Shortt who compared his range of motion figures to the table of the A.M.A., *Guides*[5] and found that 30 degrees of abduction was seven percent impairment while 0 degrees of adduction was two percent impairment.[6] Dr. Shortt noted that forward flexion of 20 degrees results in 11 percent impairment and extension of 10 degrees equals 2 percent impairment.[7] He stated that 30 degrees of external rotation results in one percent impairment and 20 degrees of internal rotation equaled four percent impairment.[8] Dr. Shortt concluded that appellant had 27 percent impairment bilateral shoulder impairment. He then continued to provide impairment ratings to the whole person.

[4] OWCP File No. xxxxxx171.

[5] The Board is notes that, while Dr. Shortt, in his previous report, stated that he was applying the sixth edition of the A.M.A., *Guides*, his citations in this report correlate with the pages and tables of the fifth edition of the A.M.A., *Guides*.

[6] A.M.A., *Guides* 477, Figure 16-43.

[7] *Id*. at 476, Figure 16-40.

[8] *Id*. at 479, Figure 16-46.

By decision dated December 9, 2010, OWCP denied modification of its prior decisions finding that appellant did not have more than 32 percent impairment of his upper extremities bilaterally.

Appellant again requested reconsideration on December 15, 2010 and argued that OWCP should not use the five percent impairment due to carpal tunnel syndrome in determining whether appellant had additional impairments entitling him to a schedule award. By decision dated February 3, 2011, OWCP reviewed the merits of appellant's claim and denied modification of its prior decisions finding that all impairments to appellant's upper extremities must be considered and that he had not established more than 32 percent impairment to his upper extremities.

LEGAL PRECEDENT

The schedule award provision of FECA[9] and its implementing regulations[10] set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the discretion of OWCP. 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[11]

In addressing upper extremity impairments, the sixth edition requires identification of the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12] The A.M.A., *Guides* provide that, if the active range of motion impairment percentage is greater than that percentage impairment derived from the diagnosis-based class, then the impairment is rated by range of motion as a stand-alone rating.[13]

[9] 5 U.S.C. §§ 8101-8193, 8107.

[10] 20 C.F.R. § 10.404.

[11] For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6th ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[12] A.M.A., *Guides* 411.

[13] *Id*. at 461.

FECA and the implementing regulations do not allow for a schedule award due to impairments of the whole person. No schedule award is payable for a member, organ or function of the body that is not specified in FECA or the implementing regulations.[14]

FECA and its implementing regulations provide for the reduction of compensation for subsequent injury to the same scheduled member.[15] Benefits payable under section 8107(c) shall be reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.[16]

ANALYSIS

Appellant's claim was accepted for aggravation of the degenerative joint disease of the shoulders bilaterally. The A.M.A., *Guides* provide that if motion loss is present this impairment may alternatively be assessed using section 15.7, range of motion impairment.[17] The greatest impairment rating for this diagnosis is nine percent. The Board finds that appellant's permanent impairment was properly calculated using range of motion impairment.

Dr. Shortt provided range of motion figures for appellant's shoulders and compared his range of motion figures to the A.M.A., *Guides.* The Board finds that Dr. Shortt apparently utilized the fifth edition of the A.M.A., *Guides* as his citations and impairment ratings do not correlate with the pages, figures and impairment ratings found in the sixth edition of the A.M.A., *Guides*. Dr. Shortt found that 30 degrees of abduction was seven percent impairment. The sixth edition of the A.M.A., *Guides* provides that 20 to 80 degrees of shoulder abduction is six percent impairment.[18] Dr. Shortt correctly found that zero degrees of adduction was two percent impairment.[19] He concluded that forward flexion of 20 degrees results in 11 percent impairment, while the A.M.A., *Guides* provide that 20 degrees of flexion is 9 percent impairment of the upper extremity.[20] Dr. Shortt appropriately found that extension of 10 degrees equals two percent impairment.[21] He stated that 30 degrees of external rotation results in one percent impairment while the A.M.A., *Guides* provide for two percent impairment.[22] Dr. Shortt appropriately found

[14] *Tania R. Keka,* 55 ECAB 354 (2004).

[15] 5 U.S.C. § 8101; 20 C.F.R. § 10.404(c).

[16] 20 C.F.R. § 10.404(c)(1), (2).

[17] A.M.A., *Guides* 405, Table 15-5.

[18] *Id*. at 475, Table 15-34.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

20 degrees of internal rotation equals four percent impairment.[23] He concluded that appellant had 27 percent impairment bilateral shoulder impairment. The record establishes that appellant has previously received schedule awards totaling 27 percent of his upper extremity due to loss of range of motion. There is no medical evidence in the record supporting more than 27 percent impairment of the upper extremities bilaterally due to appellant's shoulder condition. As noted above, appellant is not entitled to a schedule award for impairment to the whole person.

While appellant argued on appeal that his previous award of five percent for the right and left arms should not be considered as he also had an impairment rating for a different injury, section 8107 of FECA provides that schedule awards are payable for permanent impairment of specified body members, functions or organs, not for specific injuries.[24] Section 8108(1) provides that the period of compensation payable under section 8107 is reduced by the period compensation paid or payable under the schedule for an earlier injury if compensation in both cases is for disability of the same member, which in this case is the upper extremities. Appellant therefore has not established that he is entitled to a schedule award for bilateral upper extremity impairment greater than the 32 percent previously awarded.

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 not met his burden of proof in establishing that he is entitled to an additional schedule award for bilateral upper extremity impairment.

[23] *Id.*

[24] 5 U.S.C. § 8107, *P.W.*, Docket No. 09-1289 (issued March 24, 2010).

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board