United States Department of Labor
Employees' Compensation Appeals Board

M.F., Appellant	)	
and	)	**Docket No. 13-417**
	)	**Issued: April 25, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Farrell, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 14, 2012 appellant, through his attorney, filed a timely appeal of a December 12, 2012 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 over the schedule award issue.

ISSUE

The issue is whether appellant sustained more than five percent permanent impairment of the left upper extremity, for which he received a schedule award.

FACTUAL HISTORY

On June 16, 2007 appellant, then a 57-year-old letter carrier, injured his left shoulder while in the performance of duty. A July 19, 2007 magnetic resonance imaging (MRI) scan obtained by Dr. Matthew T. Bee, a Board-certified diagnostic radiologist, exhibited bone marrow

[1] 5 U.S.C. § 8101 *et seq.*

contusion along the posterolateral humeral head, bone marrow edema along the inferior glenoid cavity, supraspinatus edema, inferior and superior glenoid labrum deformities and other findings consistent with rotator cuff tear. A November 27, 2007 x-ray obtained by Dr. Cynthia A. Britton, a Board-certified diagnostic radiologist, showed glenohumeral degenerative changes while a November 30, 2007 MRI scan arthrogram obtained by Dr. Carla Lohman, a radiologist, confirmed full thickness tear of the anterior supraspinatus tendon. Appellant underwent left shoulder arthroscopic rotator cuff repair, biceps tenotomy and subacromial decompression on January 23, 2008. OWCP accepted his traumatic injury claim for left shoulder anterior dislocation and later expanded it to include rotator cuff tear and impingement syndrome.

In a June 15, 2012 report, Dr. Michael J. Platto, a Board-certified physiatrist, reviewed the history of injury and medical file. On examination, he observed bilateral trapezius muscle tenderness to palpation and elicited the following maximum range of motion (ROM) measurements: 147 degrees of flexion, 60 degrees of extension, 125 degrees of abduction, 17 degrees of adduction, 65 degrees of internal rotation and 90 degrees of external rotation. Applying Table 15-34 (Shoulder Range of Motion) of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[2] Dr. Platto found that 147 degrees of flexion, 60 degrees of extension, 125 degrees of abduction, 17 degrees of adduction, 65 degrees of internal rotation and 90 degrees of external rotation coincided with impairment ratings of three percent, zero percent, three percent, one percent, two percent and zero percent, respectively. He added these values and determined that appellant sustained a total of nine percent permanent impairment of the left upper extremity.[3]

Appellant filed a claim for a schedule award on July 28, 2012. In an August 6, 2012 memorandum, the claims examiner subsequently directed OWCP's medical adviser to review Dr. Platto's opinion.

On November 19, 2012 Dr. Arnold T. Berman, an OWCP medical adviser and Board-certified orthopedic surgeon, reviewed the earlier radiological findings, but did not address Dr. Platto's June 15, 2012 report. Citing Table 15-5 (Shoulder Regional Grid Upper Extremity Impairments) of the A.M.A., *Guides*,[4] he assigned an impairment diagnosed condition class (CDX) of 1 with a default grade of C, resulting in an impairment rating of five percent on account of left full-thickness rotator cuff tear.[5] Dr. Berman listed January 23, 2009 as the date of maximum medical improvement.

By decision dated December 12, 2012, OWCP granted a schedule award for five percent permanent impairment of the left upper extremity for the period January 23 to May 12, 2009. The decision did not address Dr. Platto's impairment opinion.

[2] A.M.A., *Guides* 475 (6th ed. 2008).

[3] Dr. Platto also presented separate impairment ratings for appellant's right knee and right shoulder. Neither is presently before the Board.

[4] *Supra* note 2 at 403.

[5] Dr. Berman further calculated that the net adjustment formula yielded a value of 0, which did not affect the default rating.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations 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.[6] 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[7]

The A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health. For upper extremity impairments, the evaluator identifies the impairment class for the 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).[8] Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[9]

The sixth edition of the A.M.A., *Guides* also provides that ROM may be selected as an alternative approach in rating impairment under certain circumstances. A rating that is calculated using ROM may not be combined with a diagnosis-based impairment and stands alone as a rating.[10]

ANALYSIS

The Board finds that the case is not in posture for decision.

Appellant filed a claim for a schedule award on July 28, 2012 and provided Dr. Platto's June 15, 2012 report, which presented a left upper extremity impairment rating of nine percent based on the alternative ROM method of calculation. The claims examiner properly routed the file to OWCP's medical adviser to assess this rating.[11] However, Dr. Berman, the medical adviser, failed to address Dr. Platto's report, the most recent report from a treating physician addressing permanent impairment. In developing a case for a schedule award, he is responsible

[6] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[7] *K.H.*, Docket No. 09-341 (issued December 30, 2011).

[8] *R.Z.*, Docket No. 10-1915 (issued May 19, 2011).

[9] *J.W.*, Docket No. 11-289 (issued September 12, 2011).

[10] *W.T.*, Docket No. 11-1994 (issued May 22, 2012).

[11] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards*, Chapter 2.808.6(f)(1) (February 2013).

for reviewing the complete file, particularly the medical report on which an award is to be based.[12]

On remand, OWCP shall have its medical adviser evaluate Dr. Platto's June 15, 2012 report as well as provide a detailed and rationalized opinion concerning the extent of appellant's impairment in accordance with the A.M.A., *Guides*. After conducting such further development as may be necessary, it shall render an appropriate decision on appellant's entitlement to an additional award.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2012 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this decision of the Board.

Issued: April 25, 2013
Washington, DC

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

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

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

[12] *See id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3 (January 2010). Specifically, Dr. Berman should evaluate an impairment rating report with respect to maximum medical improvement, description of impairment and percentage of impairment. Federal (FECA) Procedure Manual, Part 2 -- Medical, *Schedule Awards*, Chapter 3.700.3(a). *See also William A. Couch*, 41 ECAB 548 (1990) (the Board held that when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued).