

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

G.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 10-1761
Issued: May 9, 2011**

Appearances:

*Alan J. Shapiro, 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, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 22, 2010 appellant filed a timely appeal from a May 24, 2010 merit decision of the Office of Workers' Compensation Programs regarding her schedule award claim. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has permanent impairment of the right arm greater than that for which she has previously received schedule awards.

FACTUAL HISTORY

On July 17, 1978 appellant, then a 30-year-old mail clerk, filed a traumatic injury claim for right arm and shoulder conditions sustained that day as a result of handling mail containers. The Office accepted the claim for adhesive capsulitis of the right shoulder and sprains of the

¹ 5 U.S.C. § 8101 *et seq.*

right shoulder, upper arm and rotator cuff and paid all appropriate benefits. On May 12, 1997 appellant underwent a right open subacromial decompression arthroplasty with acromioclavicular (AC) joint resection arthroplasty and full-thickness rotator cuff repair. She subsequently retired.

Appellant received a schedule award for 23 percent permanent impairment of the right arm on April 26, 1984. The record also indicates that she received a schedule award for 24 percent permanent impairment of the right arm on or about October 13, 2000.² By decision dated December 17, 2008, the Office awarded appellant an additional four percent permanent impairment of the right upper extremity.³ In an August 5, 2009 decision, an Office hearing representative affirmed the December 17, 2008 decision.

On December 14, 2009 appellant, through her attorney, requested an increased schedule award. In a November 27, 2009 report, Dr. William N. Grant, a Board-certified internist, noted the history of injury, presented his examination findings and diagnosed adhesive capsulitis of the right shoulder and sprain/strain of the right shoulder. He noted that clinical studies were not available. Dr. Grant indicated that appellant reached maximum medical improvement and opined, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (hereinafter A.M.A., *Guides*), that she had 43 percent right upper extremity impairment. Under Table 15-5, page 405, he stated that she was “CDX 3.”⁴ Under Table 15-7, page 406, Dr. Grant found a grade 4 modifier for functional history adjustment (GMFX) due to a QuickDash score of 85 and pain symptoms at rest and unable to perform self-care. Under Table 15-8, page 408, he found a grade 3 modifier for physical examination (GMPE). Dr. Grant found the net adjustment of (GMFH-CDX) + (GMPE-CDX) or (4-3) + (3-3) equaled 1. Thus, he opined that appellant had 43 percent impairment of the right arm “[c]lass C, grade D upper extremity impairment.”

On January 4, 2010 an Office medical adviser reviewed the record and noted appellant’s previous schedule awards under the fifth edition of the A.M.A., *Guides* based on motion loss and weakness in the rotator cuff musculature. He noted that Dr. Grant recommended 43 percent right arm impairment based on class 3 diagnosis of a complicated, unstable or infected total shoulder replacement (shoulder arthroplasty). The Office medical adviser indicated, however, that appellant did not have a shoulder replacement, but had a rotator cuff repair and AC joint resection in 1997. Consequently, he found that Dr. Grant’s award recommendation was without merit. The Office medical adviser found that appellant reached maximum medical improvement on May 12, 1998 and noted that she had continued pain, weakness and stiffness in the right shoulder. Under Table 15-5, page 403 of the A.M.A., *Guides*, the Office medical adviser found the maximum one could get for a bad result following a rotator cuff tear based on the diagnosis

² The actual schedule award decision is not in the record but Office schedule award payment record reflects that on October 13, 2000, the Office issued a \$39,291.11 check for a schedule award covering the period January 20, 1998 to June 28, 1999. Accompanying documents reflect that this was payment for 24 percent impairment of the right arm. Upon return of the case record, the Office shall supplement the record with a copy of the schedule award decision, if available, or other available documents pertaining to this schedule award.

³ Thus, the record indicates that appellant’s schedule awards for impairment of the right arm total 51 percent.

⁴ Dr. Grant did not specifically identify the diagnosis he used in Table 15-5.

was seven percent. Thus, he opined there was no objective evidence to change the previous award of 28 percent permanent impairment.

By decision dated January 13, 2010, the Office denied appellant's claim for an increased schedule award based on the recommendation from its Office medical adviser.

On January 21, 2010 appellant's attorney requested a telephonic hearing which was held April 6, 2010. At the hearing, counsel contended that there was error of fact and law with regards to Dr. Grant's report. He argued that Dr. Grant clearly indicated that the diagnosis was adhesive capsulitis and sprain/strain of the right shoulder. Counsel stated that Dr. Grant did not base his impairment rating on a total replacement of the shoulder and thus there was no merit to the Office medical adviser's finding that he had based his impairment finding on a total replacement of the shoulder. The hearing representative noted that Dr. Grant was not clear regarding the diagnosis class that he used and held the record open for 30 days so Dr. Grant could provide clarification. No new evidence was received.

By decision dated May 24, 2010, the Office hearing representative affirmed the denial of appellant's claim for an increased schedule award.

LEGAL PRECEDENT

The schedule award provision of the Act and its implementing regulations⁵ 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. The Act, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of the Office.⁶ 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 As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸

The sixth edition requires identifying the impairment class for the CDX, which is then adjusted by GMFH, GMPE and GMCS.⁹ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹⁰

⁵ 20 C.F.R. § 10.404.

⁶ *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

⁷ *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁹ A.M.A., *Guides* 494-531.

¹⁰ *Id.* at 521.

ANALYSIS

The Office accepted that on July 17, 1978 appellant sustained adhesive capsulitis of the right shoulder and sprains of the right shoulder, upper arm and rotator cuff. In 1997 appellant underwent a right subacromial decompression arthroplasty and full-thickness rotator cuff repair. The record indicates that the Office granted her schedule awards for a total of 51 percent permanent impairment of the right upper extremity.

On December 14, 2009 appellant requested an increase award. She submitted a November 27, 2009 impairment determination from Dr. Grant, who opined that appellant had 43 percent right arm impairment under the sixth edition of the A.M.A., *Guides*. Before the A.M.A., *Guides* can be utilized, a description of the claimant's impairment must be obtained from a physician. The description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹¹ Further, evaluations under the sixth edition are primarily diagnosis based and require identifying the impairment class for the diagnosed condition and then adjusting by grade modifiers based on functional history, physical examination and clinical studies.¹² Dr. Grant's report fails to adequately identify the diagnosed condition for which the impairment rating was based. He diagnosed conditions of adhesive capsulitis and sprain/strain of the right shoulder. A sprain or strain is a class 1 diagnoses under the shoulder regional grid of Table 15-5 of the A.M.A., *Guides*,¹³ and Dr. Grant did not clearly explain an impairment class in the A.M.A., *Guides* consistent with adhesive capsulitis. While Dr. Grant indicated that his impairment rating was based on a class 3 impairment class, he did not clearly identify a class 3 diagnosed condition for which he rated appellant despite the hearing representative's allowing appellant an opportunity to obtain clarification from Dr. Grant. Thus, his evaluation is of little probative value and is insufficient to support an increased impairment of the right upper extremity. The record was held open for Dr. Grant to clarify his opinions; however, nothing was forthcoming.

An Office medical adviser reviewed Dr. Grant's report and noted the maximum percentage for a rotator cuff full-thickness tear, a class 1 diagnosis, was seven percent. He noted no other basis on which appellant could be rated for higher impairment than that which was previously found. The Board finds that there is no medical evidence to support any greater impairment than that for which appellant has previously received schedule awards. It is appellant's burden to submit medical evidence supporting the degree of permanent impairment.¹⁴ Appellant failed to submit such an impairment evaluation and thus failed to meet her burden of proof.

Appellant argues on appeal that the Office's decision is contrary to fact and law. However, for the reasons noted above, she failed to meet her burden of proof to establish that she was entitled to a greater award than that already received.

¹¹ *D.N.*, 59 ECAB 576 (2008); *Vanessa Young*, 55 ECAB 575 (2004).

¹² *Supra* note 9.

¹³ *See id.* at 401.

¹⁴ *See D.H.*, 58 ECAB 358 (2007); *Annette M. Dent*, 44 ECAB 403 (1993).

CONCLUSION

The Board finds that appellant has not established any greater impairment of her right arm than that for which she previously received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the May 24, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 9, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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