

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

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V.L., Appellant)	
)	
and)	Docket No. 11-953
)	Issued: November 2, 2011
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Greensboro, NC, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 7, 2011 appellant filed a timely appeal from a February 15, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for an increased schedule award. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has more than a 15 permanent impairment of the right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On September 1, 2001 appellant, then a 47-year-old mail processor, filed a traumatic injury claim alleging that she injured her upper right arm and shoulder on that date in the

¹ 5 U.S.C. § 8101 *et seq.*

performance of duty. OWCP accepted the claim for a right shoulder strain and primary localized osteoarthritis. On March 21, 2002 appellant underwent a right shoulder subacromial decompression with acromioplasty, a subdeltoid bursectomy, a distal clavicle resection, debridement of glenoid labrum synovitis and a thermal capsulorrhaphy of the anterior and posterior glenohumeral joint. On January 28, 2003 she underwent a revised distal clavicle resection of the right shoulder.

By decision dated May 20, 2004, OWCP granted appellant a schedule award for a 15 percent permanent impairment of the right arm.² The period of the award ran for 46.8 weeks from November 5, 2003 to September 27, 2004.

On January 18, 2010 appellant underwent a right shoulder debridement. She filed a claim for a schedule award on June 14, 2010. In a report dated June 7, 2010, Dr. G. Scott Dean, an attending Board-certified orthopedic surgeon, related that appellant had significant arthritic changes but reduced pain after the right shoulder debridement. He discussed the prior finding that she had a 15 percent right shoulder impairment. Dr. Dean opined that appellant was at maximum medical improvement with “some limitation of external rotation and some weakness.” He stated, “Because of the arthritis in her shoulder, I am going to add [five percent] to her rating.” Dr. Dean concluded that appellant had a total upper extremity impairment of 20 percent.

On June 18, 2010 OWCP requested that Dr. Dean provide an impairment rating for appellant’s right shoulder in accordance with the provisions of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2008). In an undated response, Dr. Dean related that she had an additional right shoulder impairment of 5 percent due to weakness and osteoarthritis, for a total right shoulder impairment of 20 percent.

An OWCP medical adviser reviewed the medical evidence and determined that Dr. Dean did not supply sufficient objective findings to assess impairment. He recommended obtaining range of motion measurements.

In a supplemental report dated August 12, 2010, Dr. Dean opined that appellant was doing well following her surgery. He measured range of motion for the right shoulder of 40 degrees internal rotation, 75 degrees external rotation, 150 degrees forward elevation, 45 degrees backward elevation, 105 degrees abduction and 20 degrees adduction. Dr. Dean found some weakness upon testing of the supraspinatus and infraspinatus subscapular and “some coarse grinding in the glenohumeral joint with passive range of motion.” He concluded that appellant had reached maximum medical improvement and that she had a 20 percent impairment of the right shoulder due to arthritis and weakness of the shoulder joint.

² In a decision dated August 3, 2006, OWCP reduced appellant’s compensation to zero based on its finding that her actual earnings effective September 19, 2005 as a sales and service distribution associate fairly and reasonably represented her wage-earning capacity. In a decision dated October 17, 2008, it denied modification of the August 3, 2006 wage-earning capacity determination. By decision dated September 28, 2009, OWCP denied appellant’s request for compensation for intermittent time lost from work from May 2 to June 13, 2009. On January 19, 2010 it modified the established wage-earning capacity and found that she was entitled to compensation from June 14 to December 18, 2009. In a decision dated January 21, 2010, OWCP denied compensation for intermittent time claimed from May 2 to 10, 2009.

On August 23, 2010 an OWCP medical adviser determined that, pursuant to Table 15-34 on page 475 of the A.M.A., *Guides*, 150 degrees forward elevation yielded a 2 percent impairment, 45 degrees backward elevation yielded a 1 percent impairment, 105 degrees abduction yielded a 3 percent impairment, 20 degrees adduction yielded a 1 percent impairment, 40 degrees internal rotation yielded a 3 percent impairment and 75 degrees external rotation yielded no impairment, which he added to find a 10 percent impairment of the right upper extremity. He opined that appellant was not entitled to an additional schedule award as she had previously received a schedule award for a 15 percent permanent right upper extremity impairment.

By decision dated August 27, 2010, OWCP denied appellant's request for an increased schedule award. On September 10, 2010 appellant requested a review of the written record. She asserted that an OWCP medical adviser did not consider that she had weakness and arthritis of the right shoulder.

In a decision dated December 15, 2010, a hearing representative set aside the August 27, 2010 decision after finding that OWCP's medical adviser did not consider the diagnosis-based impairment ratings in the sixth edition of the A.M.A., *Guides*. She instructed the medical adviser on remand to further explain his impairment determination.

On December 22, 2010 OWCP's medical adviser related that appellant's impairment rating was not determined using the diagnosis-based method but instead using the range of motion, a stand-alone method for impairment ratings proper under the A.M.A., *Guides*. In a January 5, 2011 addendum, he asserted that the sixth edition of the A.M.A., *Guides* at page 390 provided that impairments may be determined based on range of motion without consideration of other factors. The medical adviser stated, "Diagnoses in the grid that may be rated using range of motion are followed by an asterisk." He opined that the sixth edition of the A.M.A., *Guides* did not require the use of diagnosis-based impairment methods. The medical adviser stated that generally using range of motion was "more objective and more favorable to the claimant. It is used whenever sufficient objective, reliable findings are available."

By decision dated February 15, 2011, OWCP denied appellant's request for an increased schedule award.

On appeal, appellant asserts that OWCP disregarded Dr. Dean's finding that she had a 20 percent impairment due to right arm weakness.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing federal regulations,⁴ 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. However, FECA does not specify the manner in which the percentage of loss shall be determined. For

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

The sixth edition requires identifying 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).⁷ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

Table 15-5, the Shoulder Regional Grid, provides that, if loss of motion is present, the impairment may alternatively be assessed under section 17-7, range of motion impairment.⁸ A range of motion impairment stands alone and is not combined with a diagnosis-based impairment.⁹

ANALYSIS

OWCP accepted that appellant sustained a strain and localized osteoarthritis of the right shoulder due to a September 1, 2001 employment injury. Appellant underwent shoulder surgeries on March 21, 2002, January 28, 2003 and January 18, 2010. In a decision dated May 20, 2004, OWCP granted appellant a schedule award for a 15 percent permanent impairment of the right upper extremity.

On June 14, 2010 appellant requested an increased schedule award. She submitted a June 7, 2010 report from Dr. Dean, who indicated that she had decreased pain following her January 18, 2010 shoulder surgery but significant arthritis. Dr. Dean found that appellant had weakness and reduced external rotation. He asserted that she had a total right upper extremity impairment of 20 percent or an additional 5 percent above her prior impairment rating. In response to a request from OWCP for additional information, Dr. Dean measured range of motion for the right shoulder and provided findings on examination of weakness and some grinding in the shoulder joint. Dr. Dean again opined that appellant had a 20 percent right shoulder impairment. He did not, however, explain his impairment rating or refer to the A.M.A., *Guides* in support of his conclusion. As Dr. Dean's report does not conform to the A.M.A., *Guides*, it is of diminished probative value.¹⁰

⁵ *Id.* at § 10.404(a).

⁶ 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).

⁷ A.M.A., *Guides* 494-531.

⁸ *Id.* at 401-05.

⁹ *Id.* at 390.

¹⁰ *See Carl J. Cleary*, 57 ECAB 563 (2006) an opinion which is not based upon the standards adopted by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of permanent impairment.

An OWCP medical adviser applied the provisions of the sixth edition of the A.M.A., *Guides* to Dr. Dean's clinical findings for range of motion of the right shoulder. Table 15-5 on page 405 of the sixth edition of the A.M.A., *Guides*, relevant to determining shoulder impairments, marks the shoulder impairment diagnoses with asterisks. The asterisks indicate that, if motion loss is present, the shoulder impairment may alternatively be assessed using loss of range of motion.¹¹ The impairment due to loss of range of motion stands alone and is not combined with a diagnosis-based impairment.¹² OWCP's medical adviser utilized Table 15-34 and found that 150 degrees forward elevation yielded a two percent impairment, 45 degrees backward elevation yielded a one percent impairment, 105 degrees abduction yielded a three percent impairment, 20 degrees adduction yielded a one percent impairment, 40 degrees internal rotation yielded a three percent impairment and 75 degrees external rotation yielded no impairment.¹³ The Board notes, however, that 40 degrees internal rotation constitutes a four rather than a three percent impairment and 150 degrees forward elevation constitutes a three rather than a two percent impairment. Added together, the total impairment due to loss of range of motion is 12 percent. Consequently, any error by OWCP's medical adviser is harmless as appellant's total right upper extremity impairment is still less than the 15 percent previously awarded. There is no evidence conforming to the A.M.A., *Guides* showing a greater impairment.

On appeal, appellant argues that the medical adviser failed to consider her right arm weakness in determining the extent of her impairment. As discussed, however, an impairment rating based on range of motion stands alone and is not combined with any other impairment.¹⁴

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 is not entitled to an increased schedule award.

¹¹ A.M.A., *Guides* 403-05, Table 15-5.

¹² *Id.* at 475, Table 15-34.

¹³ *Id.* at 475, Table 15-34.

¹⁴ *Id.* at 390.

ORDER

IT IS HEREBY ORDERED THAT the February 15, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2011
Washington, DC

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

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

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