United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 13-1843**
	)	**Issued: January 13, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Newington, CT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 5, 2013 appellant filed a timely appeal from a February 5, 2013 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 merits of this case.[2]

ISSUE

The issue is whether OWCP properly found appellant had an 11 percent permanent impairment to his right upper extremity.

[1] 5 U.S.C. § 8101 *et seq.*

[2] A claimant has 180 days to file an appeal with the Board. 20 C.F.R. § 501.3(e). The 180th day following the February 5, 2013 OWCP decision was Sunday, August 4, 2013. Pursuant to Board regulations, the time period for filing a timely appeal was extended until the next business day, Monday August 5, 2013. *See* 20 C.F.R. § 501.3(f)(2).

FACTUAL HISTORY

On February 18, 2009 appellant, then a 58-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 5, 2009 he sustained injuries when he slipped on ice while in the performance of duty. OWCP initially accepted the claim on May 6, 2009 for right shoulder subscapular tear and right hip contusion. Appellant underwent right shoulder arthroscopic surgery on May 21, 2009 performed by Dr. Joseph Mazzara, a Board-certified orthopedic surgeon. In a report of that date, Dr. Mazzara indicated that the surgery involved an arthroscopic distal clavicle excision and debridement superior labral tear from anterior to posterior lesion of the right shoulder. Appellant returned to a light-duty position on July 16, 2009.

The record indicates that appellant underwent additional right shoulder surgery on June 24, 2010. Dr. Mazzara described the surgery in his report of that date as right shoulder arthroscopy, debridement of partial rotator cuff tear and subacromial bursa and acromioplasty of subacromial space. According to a statement of accepted facts (SOAF) dated January 26, 2011, OWCP also accepted the conditions of right shoulder osteoarthritis and right shoulder rotator cuff strain.

In a report dated June 14, 2011, Dr. Mazzara provided results on examination. He opined that appellant had reached maximum medical improvement and had a 15 percent permanent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* based on the right shoulder. Dr. Mazzara stated that the percentage impairment took into account the acromioplasty, distal clavicle excision, biceps tenodesis and residual symptoms of tendinopathy. He did not discuss any specific tables under the A.M.A., *Guides*.

By report dated February 26, 2012, OWCP's medical adviser opined that appellant had an 11 percent right arm permanent impairment. The medical adviser identified Table 15-5 under the sixth edition of the A.M.A., *Guides*. According to the medical adviser, the default impairment was 10 percent for distal clavicle resection of the acromioclavicular (AC) joint. An additional one percent was added based on grade modifiers for Functional History (GMFH), Clinical Studies (GMCS) and Physical Examination (GMPE).

In a report dated July 3, 2012, Dr. Mazzara stated that he had used the fifth edition of the A.M.A., *Guides*. He stated that the A.M.A., *Guides* provided guidelines, not rules, as to a permanent impairment rating. Dr. Mazzara opined that an impairment between 11 and 15 percent would be reasonable.

By decision dated February 5, 2013, OWCP issued a schedule award for an 11 percent right arm permanent impairment. The period of the award was 34.32 weeks from June 14, 2011.

LEGAL PRECEDENT

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the

permanent impairment of the scheduled member or function.[3] Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[4] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.[5]

With respect to a shoulder impairment, the A.M.A., *Guides* provides a regional grid at Table 15-5. The class of impairment CDX is determined based on specific diagnosis and then the default value for the identified CDX is determined. The default value (grade C) may be adjusted by using grade modifiers for GMFH, Table 15-7, GMPE, Table 15-8 and GMCS, Table 15-9. The adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[6]

ANALYSIS

In the present case, the attending orthopedic surgeon, Dr. Mazzara, provided an opinion that appellant had a 15 percent permanent impairment in his June 14, 2011 report. As to the percentage of impairment, this opinion is of diminished probative value. As noted above, the sixth edition of the A.M.A., *Guides* must be used to determine the impairment. Dr. Mazzara indicated in his July 3, 2012 report that he had used the fifth edition for his impairment rating.

OWCP properly referred the case to its medical adviser.[7] In the February 26, 2012 report, the medical adviser applied the sixth edition of the A.M.A., *Guides*. The shoulder regional grid at Table 15-5 provides a 10 percent grade C (default) arm impairment for status post distal clavicle resection of the AC joint.[8] The impairment is then modified in accord with the formula noted above. The medical adviser assigned a grade modifier 1 (mild) for GMFH and GMPE, with a grade modifier 2 for GMCS. Since CDX for the distal clavicle resection is 1, the adjustment formula is (1-1) + (1-1) + (2-1). Therefore the net adjustment is +1 or a grade D impairment, which is 11 percent under Table 15-5.[9]

The Board finds that OWCP's medical adviser is the only physician of record to apply the sixth edition of the A.M.A., *Guides* and his report represents the weight of the medical evidence. Although Dr. Mazzara opined the A.M.A., *Guides* were not a set of rules, under

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[3] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

[4] *A. George Lampo*, 45 ECAB 441 (1994).

[5] FECA Bulletin No. 09-03 (March 15, 2009).

[6] The net adjustment is up to +2 (grade E) or -2 (grade A).

[7] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f)(February 2013) (after obtaining the necessary medical evidence, the file is referred to an OWCP medical adviser for an opinion as to the nature and extent of the impairment).

[8] A.M.A., *Guides* 403, Table 15-5.

[9] *Id.*

FECA a schedule award must be based on a proper application of the sixth edition of the A.M.A., *Guides*. The medical adviser applied the specific provisions of Table 15-5 and the net adjustment formula. The Board finds that the probative evidence of record does not establish more than an 11 percent right arm permanent impairment.

The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the arm, the maximum number of weeks of compensation is 312 weeks. Since appellant's impairment was 11 percent, he is entitled to 11 percent of 312 weeks or 34.32 weeks of compensation. The period of the award commences with the date of maximum medical improvement,[10] which Dr. Mazzara indicated was June 14, 2011. Appellant may request an increased schedule award at any time before OWCP and submit new and relevant evidence with respect to an increased permanent impairment.

CONCLUSION

The Board finds that OWCP properly found appellant had an 11 percent permanent impairment to this right upper extremity based on the evidence of record.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 5, 2013 is affirmed.

Issued: January 13, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

[10] *Albert Valverde*, 36 ECAB 233, 237 (1984).