

FACTUAL HISTORY

OWCP accepted that appellant, a part-time flexible clerk, sustained an aggravation of right shoulder impingement and degenerative joint disease as a result of her repetitive work duties. It authorized right shoulder arthroscopy, subacromial decompression, acromioplasty, distal clavicle excision, debridement of partial anterior superior labral tear and arthroscopic rotator cuff repair performed on March 2, 2012 by Dr. Steven K. Below, an attending Board-certified orthopedic surgeon.

On August 2, 2012 Dr. Below released appellant to return to full-time, full-duty work with no restrictions. He advised that she should reach maximum medical improvement in one month.³

On September 13, 2012 appellant filed a claim for a schedule award.

In a December 21, 2012 medical report, Dr. Lisa E. Snyder, a Board-certified physiatrist, noted appellant's ongoing severe right shoulder pain and a history of the March 2, 2012 right shoulder surgery. She noted that it was estimated that appellant reached maximum medical improvement on September 2, 2012. Dr. Snyder reviewed an August 22, 2011 magnetic resonance imaging (MRI) scan of the right shoulder, which revealed a partial thickness articular surface tear of the supraspinatus tendon and its far lateral insertion and associated tenderness of the rotator cuff tendon. There was also spurring on the undersurface of the acromion process.

On physical examination of the upper extremities, Dr. Snyder reported full active range of motion to 180 degrees of abduction and flexion and well-healed surgical incisions of the right shoulder. There was no swelling or erythema. Tenderness to palpation was present. On neurological examination, Dr. Snyder found that strength throughout the upper extremities was 5/5 and symmetrical. Sensation to pin was intact. Reflexes were trace in the upper and lower extremities.

Dr. Snyder determined that under Table 15-5, Shoulder Region Grid: Upper Extremity Impairments, of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a class 0 impairment rating for right rotator cuff partial thickness tear. There were no significant objective abnormal findings at maximum medical improvement. Utilizing Table 15-7, Functional History Adjustment: Upper Extremities, on page 406, Dr. Snyder assessed a grade modifier 0 as no problems were reported. She also assessed a grade modifier 0 under Table 15-8, Physical Examination Adjustment: Upper Extremities, on page 408, as no abnormalities on physical examination were noted. Based upon the A.M.A., *Guides*, a rotator cuff injury partial thickness tear with no significant objective abnormal findings at maximum medical improvement yielded a class 0 impairment rating. Dr. Snyder advised that currently the functional status and physical examination were also within normal limits. She concluded that appellant had no impairment of the right upper extremity and that she reached maximum medical improvement on September 2, 2012.

³ A September 4, 2012 report from an OWCP field nurse indicated that appellant returned to work on August 4, 2012.

On May 6, 2013 Dr. David H. Garelick, an OWCP medical adviser, reviewed the medical record and Dr. Snyder's report. He noted that appellant was doing well following her right shoulder surgery, that she had returned to her normal activities and had been discharged from ongoing orthopedic care. Dr. Garelick agreed that maximum medical improvement had been reached on September 2, 2012 and agreed with Dr. Snyder's finding that appellant had no impairment of the right upper extremity.

In a July 18, 2013 decision, OWCP found that appellant was not entitled to a schedule award as the medical evidence did not establish any permanent impairment.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing federal regulations,⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁶ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷ Effective May 1, 2009, FECA adopted the sixth edition of the A.M.A., *Guides*⁸ as the appropriate edition for all awards issued after that date.⁹

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).¹⁰ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹¹

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Ausbon N. Johnson*, 50 ECAB 304 (1999).

⁷ *Supra* note 5; *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

⁸ A.M.A., *Guides* (6th ed. 2009).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

¹⁰ A.M.A., *Guides* 494-531.

¹¹ *Id.* at 521.

percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.¹²

ANALYSIS

OWCP accepted that appellant sustained an aggravation of right shoulder impingement and degenerative joint disease while in the performance of duty. On March 2, 2012 Dr. Below performed a right shoulder arthroscopy, subacromial decompression, acromioplasty, distal clavicle excision, debridement of partial anterior superior labral tear and arthroscopic rotator cuff repair. Appellant subsequently claimed a schedule award due to her accepted conditions. OWCP denied her claim for a schedule award. The Board finds that appellant has not met her burden of proof to establish permanent impairment to her right arm due to her accepted conditions.¹³

Dr. Snyder completed an impairment evaluation on December 21, 2012. She found that appellant had no impairment to the right shoulder under the sixth edition of the A.M.A., *Guides*. Dr. Snyder's examination of the upper extremities was essentially normal with full active range of motion to 180 degrees of abduction and flexion (Table 15-34 on page 475), no swelling or erythema and well-healed surgical incisions of the right shoulder. She found some tenderness to palpation. A neurological examination revealed 5/5 symmetrical strength throughout the upper extremities and intact sensation to pin. Reflexes were trace in the upper and lower extremities. Dr. Snyder noted that a right shoulder MRI scan performed prior to appellant's March 2, 2012 authorized right shoulder surgery revealed a partial thickness articular surface tear of the supraspinatus tendon and its far lateral insertion, associated tenderness of the rotator cuff tendon and spurring on the undersurface of the acromion process. She determined that under Table 15-5 on page 404 appellant had a class 0 impairment for right rotator cuff partial thickness tear. Dr. Snyder explained that there were no significant objective abnormal findings at maximum medical improvement. Utilizing Table 15-7 on page 406, she assessed a grade modifier 0 as no problems were reported. Dr. Snyder also assessed a grade modifier 0 under Table 15-8 on page 408 as no abnormalities on physical examination were noted. She concluded that based upon the A.M.A., *Guides*, a rotator cuff injury partial thickness tear with no significant objective abnormal findings at maximum medical improvement resulted in a class 0 impairment rating for the right upper extremity. Dr. Snyder concluded that appellant had no right upper extremity impairment and she reached maximum medical improvement on September 2, 2012.

On May 6, 2013 Dr. Garelick a medical adviser, reviewed Dr. Snyder's report.¹⁴ He agreed with her determination that appellant had no right upper extremity impairment under the sixth edition of the A.M.A., *Guides* and had reached maximum medical improvement on September 2, 2012.

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010). See *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

¹³ An employee seeking a schedule award has the burden of proof to establish permanent impairment. See *Denise D. Cason*, 48 ECAB 530 (1997).

¹⁴ See *supra* note 12.

The Board finds that Dr. Snyder's report was well rationalized and provided a sufficient basis for the schedule award determination. Dr. Snyder and Dr. Garelick considered the medical evidence under the standards of the A.M.A., *Guides* to find that appellant did not sustain permanent impairment of the right arm based on her accepted shoulder injury. Therefore, appellant failed to submit sufficient medical evidence to establish entitlement to a schedule award for her accepted right shoulder conditions.

On appeal, appellant contended that she was entitled to compensation for her right shoulder injury and for total disability from March to August 2012. The Board finds that the weight of the medical evidence does not establish permanent impairment. There is no other medical evidence of record supporting permanent impairment under the sixth edition of the A.M.A., *Guides*. The issue of appellant's disability for work was not adjudicated in the July 18, 2013 schedule award denial and is not an issue presently before the Board.¹⁵

Appellant may request a 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 failed to establish that she has any permanent impairment to the right upper extremity, warranting a schedule award.

¹⁵ See *supra* note 2 and 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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