

workout session at work on that date. He indicated that he felt a tear and pop in his right shoulder during a set of shoulder presses. The findings of an April 5, 2013 magnetic resonance imaging (MRI) scan of appellant's right shoulder demonstrated a full-thickness tear of his right supraspinatus muscle and OWCP accepted his claim for a tear of the rotator cuff of his right shoulder.²

On July 29, 2013 Dr. Richard Wilk, an attending Board-certified orthopedic surgeon, performed an arthroscopic repair of the rotator cuff of appellant's right shoulder. The procedure was authorized by OWCP. Appellant stopped work on July 29, 2013 and began receiving disability compensation on the daily rolls beginning July 29, 2013, and on the periodic rolls beginning October 20, 2013.

On September 19, 2013 OWCP received appellant's claim (Form CA-7) for a schedule award due to his accepted employment injury. Appellant returned to regular duty on a full-time basis on January 2, 2014 and retired from the employing establishment effective July 31, 2014.

In an October 29, 2013 report, Dr. Wilk reported that physical examination of appellant on that date revealed good motion of his shoulders, elbows, wrists, and hands and reasonable strength in his upper extremities. He indicated that appellant was making progress after his surgery.

Due to a lack of reports in the case record from attending physicians, OWCP referred appellant in November 2014 to Dr. Christopher B. Geary, a Board-certified orthopedic surgeon, for a second opinion examination and impairment rating of his right upper extremity under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*).

In a December 24, 2014 report, Dr. Geary detailed appellant's factual and medical history and reported the findings of the physical examination he performed on December 10, 2014. He indicated that examination of appellant's neck was benign with negative Spurling testing. Examination of his left shoulder showed full range of motion with no weakness or impingement, and examination of his right shoulder showed well-healed surgical incisions from his previous repair. Dr. Geary reported that appellant had mild tenderness to palpation over his right biceps groove, but not over his right acromioclavicular joint or greater tuberosity. He lacked 20 degrees of forward flexion of his right shoulder, 10 degrees of external rotation, and 10 degrees of internal rotation. Appellant exhibited 5/5 strength in his supraspinatus and infraspinatus muscles and he was neurovascularly intact distally. Dr. Geary indicated that, using Table 15-5 on page 403 of the sixth edition of the A.M.A., *Guides*, appellant's diagnosis of full-thickness rotator cuff tear fell under class 1 with a default value of five percent impairment. Appellant had a grade modifier for Functional History (GMFH) of 2 given his pain with normal activities and a grade modifier for Physical Examination (GMPE) of 1 due to his slight loss of range of motion. Application of the net adjustment formula required moving one space to the right of the default

² OWCP previously accepted that appellant sustained other work-related traumatic injuries, including a right knee sprain on February 2, 2001, a left ankle sprain on July 8, 2011, and a partial-thickness tear of his left rotator cuff on February 23, 2012. These injuries are not the subject of the present appeal.

value on Table 15-5. Dr. Geary concluded that appellant had six percent permanent impairment of his right upper extremity.³

On January 12, 2015 Dr. Morley Slutsky, a Board-certified occupational medicine physician serving as an OWCP medical adviser, indicated that he had reviewed the case record, including the December 24, 2014 report of Dr. Geary. He noted that a diagnosis-based impairment method was the preferred rating method to assess appellant's right upper extremity impairment.⁴ Using Table 15-5 of the sixth edition of the A.M.A., *Guides*, appellant fell under class 1 for the most impairing diagnosis in the shoulder region of full-thickness rotator cuff tear with residual dysfunction. Dr. Slutsky indicated that appellant's right shoulder still was symptomatic, but that the rating report did not document him having to perform functional modifications in order to achieve self-care activities (as discussed in Table 15-7). Therefore, appellant had a grade modifier functional history of 1. Dr. Slutsky reported that appellant had mild tenderness to palpation which was equal to a grade modifier physical examination of 1. He indicated that no other objective deficits were documented. An April 8, 2013 MRI scan of appellant's right shoulder demonstrated a full-thickness tear of his right supraspinatus muscle, possible labral tear, and minor degenerative changes in the acromioclavicular joint and, therefore, appellant had a grade modifier for Clinical Studies (GMCS) of 2. Dr. Slutsky applied the net adjustment formula and concluded that appellant had six percent permanent impairment of his right upper extremity. He indicated that appellant reached maximum medical improvement on December 10, 2014, the date of Dr. Geary's examination.

By decision dated November 10, 2015, OWCP granted appellant a schedule award for six percent permanent impairment of his right upper extremity. The award ran for 18.72 weeks from December 10, 2014 to April 20, 2015 and was based on the impairment rating of Dr. Slutsky as applied to the findings of Dr. Geary.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing regulation⁶ 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 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

³ See *infra* note 9. Dr. Geary indicated that maximum medical improvement was achieved on May 29, 2014.

⁴ Dr. Slutsky indicated that Dr. Geary provided range of motion findings for only three of the six motions described in section 15.7 on page 464 for measuring range of motion. He posited that, therefore, the range of motion rating method was not valid for measuring appellant's right upper extremity impairment.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

appropriate standard for evaluating schedule losses.⁷ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁸

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the shoulder, the relevant portion of the arm for the present case, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the Class of Diagnosis (CDX) is determined from the Shoulder Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for functional history, grade modifier for physical examination and grade modifier for clinical studies. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁹

ANALYSIS

OWCP accepted that appellant sustained a tear of the rotator cuff of his right shoulder. He filed a claim for a schedule award due to his accepted employment injury. By decision dated November 10, 2015, OWCP granted appellant a schedule award for six percent permanent impairment of his right upper extremity. The award based on the impairment rating of Dr. Slutsky, a Board-certified occupational medicine physician serving as an OWCP medical adviser, as applied to the findings of Dr. Geary, an attending Board-certified orthopedic surgeon and second opinion physician.

The Board finds that appellant has not submitted evidence establishing that he has more than a six percent permanent impairment of his right arm, for which he received a schedule award. In a January 12, 2015 report, Dr. Slutsky explained that appellant has six percent permanent impairment of his right upper extremity under the standards of the sixth edition of the A.M.A., *Guides*. He noted that he had reviewed the case record, including the December 10, 2014 examination findings of Dr. Geary. Using Table 15-5 on page 403 of the sixth edition of the A.M.A., *Guides*, Dr. Slutsky indicated that appellant fell under class 1 for the most impairing diagnosis in the shoulder region of full-thickness rotator cuff tear with residual loss/dysfunction. This condition fell under the default value of five percent on Table 15-5. Dr. Slutsky calculated a grade modifier for functional history of 1, grade modifier for physical examination of 1, and grade modifier for clinical studies of 2. Dr. Slutsky applied the net adjustment formula, which required moving one space to the right of the default value on Table 15-5. He concluded that

⁷ *Id.* See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (January 2010); see also, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (January 2010).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁹ See A.M.A., *Guides* 401-11 (6th ed. 2009). Table 15-5 also provides that, if motion loss is present for a claimant who has a rotator cuff injury (full-thickness tear), impairment may alternatively be assessed using Section 15.7 (range of motion impairment). Such a range of motion impairment stands alone and is not combined with a diagnosis-based impairment. *Id.* at 403, 475-78.

appellant has six percent permanent impairment of his right upper extremity.¹⁰ The Board notes that Dr. Geary also determined, in his December 24, 2014 report, that appellant has six percent permanent impairment of his right arm.¹¹

On appeal, appellant argues that his schedule award compensation should be greater because he has limited use of his right shoulder and upper arm. However, the Board has explained that the amount of schedule award compensation he received is appropriate. Appellant did not submit any medical evidence showing that he has more than six percent permanent impairment of his right upper extremity.

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 did not meet his burden of proof to establish more than six percent permanent impairment of his right upper extremity, for which he received a schedule award.

¹⁰ Dr. Slutsky indicated that appellant reached maximum medical improvement on December 10, 2014, the date of Dr. Geary's examination.

¹¹ Dr. Geary provided a different figure for grade modifier for functional history but calculated the same impairment percentage for appellant's right upper extremity as Dr. Slutsky, *i.e.*, six percent.

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board