United States Department of Labor
Employees' Compensation Appeals Board

E.W., Appellant	)	
and	)	**Docket No. 10-312**
	)	**Issued: October 1, 2010**
U.S. COAST GUARD, COAST GUARD YARD, Curtis Bay, MD, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 13, 2009 appellant filed a timely appeal from an October 27, 2009 decision of the Office of Workers' Compensation Programs regarding a schedule award. Pursuant to 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 more than a 46 percent impairment of the right upper extremity, for which he received a schedule award.

On appeal, appellant contends that he has a 55 percent impairment to the right arm due to arthritis, pain, fatigue and the effects of multiple surgeries.

FACTUAL HISTORY

The Office accepted that on February 18, 1994 appellant, then a 24-year-old electrical worker, sustained a recurrent dislocated right shoulder. Appellant sustained a prior right

shoulder dislocation in the performance of duty on September 27, 1991.[1] He underwent an open Bankart repair with reconstruction of a complete glenoid labrum tear on February 11, 1992. On July 21, 1994 appellant underwent a repeat Bankart repair with reattachment of the glenolabral capsule and subscapularis tendon. By decision dated October 11, 1995, the Office granted appellant a schedule award for a five percent permanent impairment of the right shoulder due to restricted motion.

Appellant claimed additional impairment on November 29, 1997. In a January 5, 1998 report, an Office medical adviser reviewed an August 14, 1997 report from Dr. Michael S. Propper, an attending Board-certified orthopedic surgeon. The medical adviser opined that, according to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, "A.M.A., *Guides*"), appellant had a 10 percent right upper extremity impairment due to restricted motion and 9 percent impairment due to deltoid atrophy and axillary nerve impairment.[2] The medical adviser combined these impairments to total 18 percent. In a March 1, 1998 decision, the Office granted appellant an additional schedule award for a 13 percent right arm impairment or a total of 18 percent impairment. Following additional medical development, on August 12, 2000, the Office granted appellant a schedule award for an additional 28 percent permanent impairment of the right upper extremity or a total of 46 percent.

Beginning in April 2002, appellant was followed by Dr. Constantine A. Misoul, an attending Board-certified orthopedic surgeon. In reports dated through August 2002, Dr. Misoul noted weakness and limited motion in the right shoulder. He prescribed physical therapy and administered cortisone injections. On November 13, 2007 Dr. Misoul noted that x-rays showed post-traumatic arthritis on the glenohumeral joint and a lesion of the humeral head. He diagnosed post-traumatic arthritis of the glenohumeral joint related to the accepted dislocations and surgeries. A January 22, 2008 right shoulder arthrogram and accompanying magnetic resonance imaging (MRI) scan showed metallic anchors in the glenoid rim, bursal irregularities, possible intrabursal debris, fraying of the supraspinatus tendon and acromioclavicular degeneration. On January 11, 2008, Dr. Misoul performed arthroscopy of the right shoulder, authorized by the Office. The procedure included lysis of glenohumeral lesions, synovectomy of the anterior and posterior capsules, chondroplasty of the humeral head, subdeltoid bursectomy, coracoacromial ligament release, acromioplasty and rotator cuff debridement.

On January 17, 2009 appellant claimed an additional schedule award. He submitted reports from Dr. Misoul dated September 25, 2008 to April 14, 2009, finding appellant reached maximum medical improvement as of February 25, 2008. Dr. Misoul performed an impairment rating on April 28, 2009. He observed the following ranges of motion for the right shoulder: 60 degrees forward flexion; 10 degrees extension; 60 degrees abduction; 10 degrees adduction; 20 degrees internal rotation; 20 degrees external rotation. Dr Misoul noted all motion as

[1] The September 27, 1991 injury was originally processed under a separate claim number. Effective October 28, 1996 the Office doubled appellant's right shoulder injury claims under master File No. xxxxxx559.

[2] The medical adviser assessed a three percent impairment due to right shoulder adduction limited to 110 degrees, a five percent impairment due to flexion limited to 110 degrees and a two percent impairment due to restricted external rotation. The medical adviser also assessed a nine percent impairment due to deltoid atrophy and impairment of the axillary motor nerve.

accompanied by pain, weakness and crepitus. Referring to the 6th edition of the A.M.A., *Guides*, he found a 25 percent impairment of the right upper extremity due to restricted motion, according to Table 15-34, page 475. Dr. Misoul also noted a 30 percent impairment of the right arm due to pain, weakness, crepitus, loss of function and loss of endurance. He totaled these impairments to equal a 55 percent impairment of the right upper extremity.

In a September 15, 2009 report, an Office medical adviser reviewed Dr. Misoul's April 28, 2009 opinion. The medical adviser explained that Dr. Misoul misapplied the A.M.A., *Guides* by combining impairments for restricted motion with pain and weakness. According to Table 15-5, page 405 of the A.M.A., *Guides* the Shoulder Regional Grid, range of motion stood alone and was not combined with diagnosis-based impairment. Referring to Table 15-5, page 403, the adviser noted a Class 1 or "mild" impairment with a default value of 10 percent. He then referred to the grade modifiers for range of motion under Table 15-34, page 475.[3] The medical adviser calculated the following percentages of right upper extremity impairment: nine percent for flexion limited to 60 degrees; two percent for extension limited to 10 degrees; six percent for abduction limited to 60 degrees; two percent for adduction limited to 10 degrees; eight percent for internal rotation limited to 20 degrees; two percent for external rotation limited to 20 degrees. Using the Combined Values Chart on page 604, the medical adviser calculated a 27 percent impairment of the right upper extremity based on restricted motion. In a supplemental report, the medical adviser stated that the 27 percent impairment was the total percentage, less than the 46 percent previously awarded.

By decision dated October 27, 2009, the Office denied appellant's claim for an additional schedule award, based on the Office medical adviser's opinion that appellant had only a 27 percent impairment of the right upper extremity, less than the 46 percent previously awarded. It found that the medical adviser properly applied the appropriate portions of the sixth edition of the A.M.A., *Guides* to Dr. Misoul's clinical findings.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act[4] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a mater which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluation of schedule

[3] Table 15-34, page 475 of the sixth edition of the A.M.A., *Guides* is entitled "Shoulder Range of Motion."

[4] 5 U.S.C. §§ 8101-8193.

losses and the Board has concurred in such adoption.[5] For a schedule award after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides* published in 2008.[6]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[7] Under the sixth edition of the A.M.A., *Guides* the evaluator identifies 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).[8] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

ANALYSIS

With respect to the right upper extremity, Dr. Misoul stated in his April 28, 2009 report that appellant had a 55 percent right upper extremity impairment due to restricted motion, pain and weakness. An Office medical adviser reviewed this report. He assessed a 10 percent or Class 1 impairment of the right upper extremity according to Table 15-5. The adviser explained that Dr. Misoul had misapplied the A.M.A., *Guides* by assessing impairments pain and weakness in addition to restricted motion. Table 15-5, page 405 of the A.M.A., *Guides* specifies that range of motion impairment is not combined with diagnosis-based impairments.

The medical adviser applied Table 15-34, "Shoulder Range of Motion," to Dr. Misoul's clinical findings. The medical adviser found that according to Table 15-34, appellant had a nine percent impairment of the right upper extremity for limited flexion, two percent for limited extension, six percent for limited abduction, two percent for limited adduction, eight percent for limited internal rotation and two percent for limited external rotation. Using the Combined Values Chart on page 604, the medical adviser calculated a 27 percent impairment of the right arm.

The Board finds that the medical adviser's impairment rating is incomplete and requires further clarification. He made reference to the shoulder regional grid on page 405 of the A.M.A., *Guides* and selected a class rating, but did not clearly specify the category. Also, while the medical adviser evaluated the grade modifiers for range of motion, he did not evaluate the functional history and clinical studies. These elements are factors used to determine the final impairment rating. The case will be remanded for further development to clarify the medical adviser's impairment rating.

On remand of the case the medical adviser should address the medical evidence consistent with the protocols for determining upper extremity impairment under such

[5] *Bernard A. Babcock, Jr*, 52 ECAB 143 (2000).

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

[7] A.M.A., *Guides* (6th ed., 2008), page 3, section 1.3, "*The International Classification of Functioning, Disability and Health* (ICF): A Contemporary Model of Disablement."

[8] A.M.A., *Guides* (6th ed., 2008), pp. 494-531.

development as it deems necessary, the Office shall issue an appropriate decision on appellant's claim for a schedule award.

On appeal, appellant contends that he sustained a 55 percent impairment to the right arm due to arthritis, pain, fatigue and the effects of multiple surgeries. As noted, the case will be remanded for further development to determine the appropriate percentage of permanent impairment.

CONCLUSION

The Board finds that the case is not in posture for a decision. The case will be remanded to the Office for further development of the medical evidence, to be followed by issuance of an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 27, 2009 is set aside and the case remanded to the Office for further development consistent with this decision.

Issued: October 1, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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