



traumatic arthritis. It subsequently accepted a benign neoplasm. On July 27, 2002 OWCP accepted a recurrence of disability. Appellant retired from the employing establishment in 1989.

By decision dated October 28, 2005, OWCP awarded appellant 14 percent loss of use to the right upper extremity and 14 percent loss of use to the left upper extremity, due to his shoulder conditions. The period of the award ran from September 19, 2005 to May 23, 2007, for a period of 87.36 weeks. On July 15, 2009 appellant underwent a right shoulder rotator cuff repair, right shoulder distal clavicle excision and right shoulder subacromial decompression with acromioplasty.

On March 18, 2010 appellant filed a claim for an increased schedule award. In a February 18, 2010 report, Dr. John G. Westkaemper, a Board-certified orthopedic surgeon, provided examination findings and opined that appellant reached maximum medical improvement from the right shoulder acromioplasty with rotator cuff repair and distal clavicle resection. Under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (hereinafter), he opined that appellant had 19 percent upper extremity impairment, which converted to 11 percent whole person impairment. Dr. Westkaemper noted that appellant was previously awarded eight percent impairment and subtracted that amount to find three percent new whole person impairment.

Dr. Joseph M. Tejan, a Board-certified orthopedic surgeon, provided progress reports on appellant's condition. In a November 30, 2009 report, he noted that appellant was four months status post rotator cuff repair in the right shoulder. Dr. Tejan advised that the pain and range of motion were improving. He noted that appellant was concerned that he had return his rotator cuff and indicated that a magnetic resonance imaging (MRI) scan should be repeated. In a March 31, 2010 report, Dr. Tejan stated that appellant's painful left shoulder was getting worse. He indicated that a repeat MRI scan and x-ray for a possible rotator cuff tear were needed.

In an April 5, 2010 letter, OWCP informed appellant of the medical evidence needed to support a schedule award claim, which included an impairment rating under the sixth edition of the A.M.A., *Guides*. It advised him that his claim for a schedule award could not be considered as the medical evidence of file was deficient.

On May 25, 2010 appellant claimed an increased schedule award. In an April 28, 2010 report, Dr. Gregory Powell, a Board-certified pain specialist to whom appellant was referred by Dr. Westkaemper, noted the history of injury and his treatment. He reported that the left shoulder was treated conservatively and had no tearing on MRI scan. Examination of the right shoulder showed marked reduction in internal and external rotation. Forward flexion was limited by about 25 percent compared to the left. Extension was limited by 10 percent compared to left and abduction was limited by 40 percent compared to the left. There was negative impingement sign and no muscular atrophy noted about the shoulder girdle or upper extremities. Dr. Powell concluded that appellant was at maximum medical improvement and opined, in accordance with the sixth edition of the A.M.A., *Guides*, that appellant had no impairment of the left arm and five percent right arm impairment. Under Table 15-5, page 401, he stated that the left shoulder was classified as a sprain/strain as a class 0 as there were no significant objective abnormal findings of muscle or tendon injury. Thus, the left shoulder had zero percent arm impairment. Under Table 15-5, page 401, Dr. Powell classified the right shoulder as a class 1 partial thickness

rotator cuff tear with residual loss, functional with normal motion. Under Table 15-7, page 406, he stated that appellant had grade 3 Functional History modifier (GMFH); under Table 15-8, page 408, appellant had grade 2 Physical Examination modifier (GMPE); and under Table 15-9, page 410, appellant had grade 2 Clinical Studies modifier (GMCS). Dr. Powell opined that those modifiers warrant the highest impairment grade under Table 15-5 and, thus, appellant had five percent left arm impairment.

On June 25, 2010 OWCP's medical adviser applied Dr. Powell's April 28, 2010 examination findings to the sixth edition of the A.M.A., *Guides* and concurred that appellant has zero percent impairment of the left upper extremity and five percent impairment of the right upper extremity. As appellant previously received 14 percent permanent impairment for his left upper extremity and 14 percent permanent impairment for his right upper extremity, the medical adviser subtracted that amount from the current determination. For the left arm, 14 percent impairment previously received minus 0 percent yielded no additional impairment. For the right arm, 14 percent impairment previously received minus 5 percent yielded no additional impairment. Thus, OWCP's medical adviser opined that appellant was not entitled to additional impairment in either his left or right upper extremities.

By decision dated July 1, 2010, OWCP denied appellant's claim for an increased schedule award.

On July 17, 2010 appellant requested reconsideration of OWCP's decision. In support of his request, he submitted a July 19, 2010 statement providing his argument of increased impairment an MRI scan on CD, April 30, 2010 MRI scans of the left and right shoulder; a duplicate copy of Dr. Powell's April 28, 2010 report, previously of record; and a partial copy of a November 30, 2009 report from Dr. Tejan, previously of record.

By decision dated August 6, 2010, OWCP denied modification of the July 1, 2010 decision.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>2</sup> and its implementing regulations<sup>3</sup> 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.<sup>4</sup> 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

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<sup>2</sup> *Id.* at § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup>

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).<sup>7</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>8</sup>

It is well established that preexisting impairments to the scheduled member are to be included when determining entitlement to a schedule award.<sup>9</sup> OWCP's procedures state that any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.<sup>10</sup>

### ANALYSIS

Appellant was previously granted schedule awards for 14 percent impairment to the right upper extremity and 14 percent impairment to the left upper extremity. He filed a claim for increased impairment to both members. In July 1 and August 6, 2010 decisions, OWCP denied appellant's claim for an increased impairment.

The November 30, 2009 report from Dr. Tejan and the MRI scan reports do not contain any impairment rating pertaining to the accepted conditions. Thus, OWCP properly determined that this medical evidence does not provide a basis for increased schedule award under FECA.<sup>11</sup> Dr. Westkaemper provided an impairment rating in accordance with the fifth edition of the A.M.A., *Guides*. As noted above, the sixth edition of the A.M.A., *Guides* is to be used in calculating impairment after May 1, 2009.<sup>12</sup> Since Dr. Westkaemper's report was not in

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<sup>5</sup> *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>6</sup> 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).

<sup>7</sup> A.M.A., *Guides* 494-531.

<sup>8</sup> *Id.* at 521.

<sup>9</sup> *Michael C. Milner*, 53 ECAB 446, 450 (2002); *Raymond E. Gwynn*, 35 ECAB 247 (1983).

<sup>10</sup> Federal (FECA) Procedure Manual, *supra* note 6, Chapter 2.808.7.a(2) (November 1998).

<sup>11</sup> The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. *See Peter C. Belkind*, 56 ECAB 580, 585 (2005).

<sup>12</sup> *Supra* note 6.

accordance with the appropriate edition of the A.M.A., *Guides*, it is of diminished probative value.<sup>13</sup>

In his April 28, 2010 report, Dr. Powell opined that appellant was at maximum medical improvement. He further opined, in accordance with the sixth edition of the A.M.A., *Guides*, there was no impairment with regard to the left upper extremity and five percent right upper extremity impairment. OWCP's medical adviser concurred with those results. For the left upper extremity, under Table 15-5, page 401, Dr. Powell classified the left shoulder as a sprain/strain as a class 0 with no significant objective abnormal findings of muscle or tendon injury. Thus, the left shoulder had zero percent upper extremity impairment. For the right upper extremity, under Table 15-5, page 402, Dr. Powell classified the right shoulder as a class 1 partial thickness rotator cuff tear with residual loss, functional with normal motion. Under Table 15-7, page 406, he assigned a grade 3 Functional History modifier (GMFH); under Table 15-8, page 408, a grade 2 Physical Examination modifier (GMPE) was assigned; and under Table 15-9, page 410, a grade 2 Clinical Studies modifier (GMCS) was assigned. OWCP's medical adviser properly utilized the net adjustment formula of  $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$  or  $(3 - 1) + (2 - 1) + (2 - 1)$  to find a net adjustment of 4. This results in a final impairment of class 1, grade E or 5 percent impairment. The medical adviser properly concluded that appellant had no additional impairment to the left arm and also properly advised that, due to the previous schedule award for 14 percent impairment of the right arm, there was no additional impairment to the right arm.

The Board finds that OWCP's medical adviser properly relied upon the findings in Dr. Powell's April 28, 2010 report in the extent of determining impairment to appellant's bilateral upper extremities. There is no other medical evidence of record to establish greater impairment than 14 percent of the left upper extremity and 14 percent of the right upper extremity, previously awarded.

On appeal and before OWCP appellant states his shoulder conditions have deteriorated and he has torn ligaments in both shoulders. As noted, the medical evidence of record does not establish greater impairment than 14 percent of the right and left upper extremity, previously awarded. Appellant may request an 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 has no more than 14 percent permanent impairment of the right and left upper extremity, previously awarded.

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<sup>13</sup> See *I.F.*, Docket No. 08-2321 (issued May 21, 2009) (an opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of diminished probative value in determining the extent of permanent impairment).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 6 and July 1, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 19, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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