

**United States Department of Labor
Employees' Compensation Appeals Board**

C.L., Appellant)	
)	
and)	Docket No. 11-68
)	Issued: August 22, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Charlotte, NC, 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
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 12, 2010 appellant filed a timely appeal from the June 16, 2010 Office of Workers' Compensation Programs' (OWCP) schedule award decision.¹ Pursuant to the Federal Employees' Compensation Act² and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than a 10 percent permanent impairment of his left upper extremity.

¹ The record also contains a March 19, 2010 nonmerit decision; however, appellant has not appealed this decision.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 29, 2008 appellant, then a 57-year-old distribution clerk, filed a traumatic injury claim alleging that on August 5, 2008, he sustained a left shoulder condition in the performance of duty. He was using both hands moving a “flat arc” when he felt a joint pop and snap with “knife like pain.” Appellant did not stop work. OWCP accepted the claim for a left shoulder small full-thickness tear of the distal subscapularis tendon. On February 13, 2009 appellant underwent an authorized arthroscopic subacromial decompression of the left shoulder, arthroscopic distal clavicle excision and mini-open rotator cuff repair. He received compensation benefits.³

On August 28, 2009 appellant claimed a schedule award. In an August 5, 2009 report, Dr. Glenn B. Perry, a Board-certified orthopedic surgeon, advised that appellant had 15 percent permanent impairment based on minimal weakness and diminished pain. He stated that appellant could return to work without restrictions. In a letter dated September 28, 2009, OWCP requested that appellant’s treating physician provide an impairment rating utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6th ed. 2009) (*hereinafter*, A.M.A., *Guides*).

In an October 5, 2009 report, Dr. Perry described appellant’s history of injury and treatment and examined appellant. He referenced the North Carolina Industrial Commission Guides and opined that appellant had a 15 percent impairment of the left upper extremity. Dr. Perry advised that appellant reached maximum medical improvement on August 5, 2009. He noted that appellant had excellent range of motion and only minimal weakness. Additionally, Dr. Perry advised that appellant’s pain had diminished. He noted that appellant had medial tenderness with pinching but denied any injury or swelling.

In an October 21, 2009 report, OWCP’s medical adviser noted appellant’s history of injury and treatment, which included a left shoulder resection of the acromioclavicular (AC) joint, subacromial decompression and debridement with an excellent result. Appellant had excellent range of motion and slight weakness and had returned to full duty. The medical adviser explained that the impairment rating provided by Dr. Perry could not be utilized as it was based upon North Carolina guidelines while OWCP used the A.M.A., *Guides*. He referred to Table 15-5 of the A.M.A., *Guides* and noted that the principal impairment was a resection of the AC joint.⁴ OWCP’s medical adviser assigned a class 1 with a default grade of C, found that the application of the net adjustment formula yielded no adjustment, and determined that appellant had 10 percent impairment of the left upper extremity.

³ In an August 17, 2009 decision, OWCP’s hearing representative found that appellant actually sustained two distinct work injuries. The first injury occurred on August 5, 2008 and resulted in modified duty with no medical care or lost time work. OWCP’s hearing representative noted that a second injury occurred on September 29, 2008 and occurred while he was moving heavy tubs of mail. She found that the date of injury should be changed to September 29, 2008.

⁴ A.M.A., *Guides* 403.

In an October 26, 2009 decision, OWCP granted appellant a schedule award for 10 percent permanent impairment of the left upper extremity. The award covered a period of 31.2 weeks from August 5, 2009 to March 11, 2010.

On November 4, 2009 appellant requested reconsideration. In an undated letter, he asserted that Dr. Perry's rating was more accurate than that of the medical adviser. In an October 26, 2009 report, Dr. Perry reiterated that appellant had 15 percent left arm impairment.

In a November 18, 2009 report, OWCP's medical adviser noted that Dr. Perry listed appellant's impairment without explanation as to how the rating was made. He indicated that Dr. Perry needed to include range of motion measurements of the left shoulder.

In a December 16, 2009 decision, OWCP denied modification of the October 26, 2009 decision.⁵

On April 1, 2010 appellant requested reconsideration. He submitted a March 16, 2010 report from Dr. Perry who noted that he utilized the A.M.A., *Guides* (sixth edition). Dr. Perry provided findings which included forward elevation of 100 degrees of flexion and that equated to three percent impairment. He advised that extension of 30 degrees equated to one percent impairment, abduction of 90 degrees equated to three percent impairment, adduction of 20 degrees correlated to one percent impairment, external rotation of 35 degrees equated to two percent impairment, and internal rotation of 90 degrees correlated to two percent impairment. Dr. Perry stated that appellant had "one grade" of decreased strength in abduction, internal rotation, external rotation, and flexion with full strength, in adduction and extension. He combined the 12 percent for decreased range of motion with four percent for the decreased strength and opined that appellant had 16 percent left arm impairment. Dr. Perry advised that appellant reached maximum medical improvement on August 8, 2009.

In an April 9, 2010 report, OWCP's medical adviser explained that Dr. Perry made a calculation error in the use of Table 15-34.⁶ He noted that range of motion measurements stood alone and that forward elevation of 100 degrees was a three percent impairment, backward elevation of 30 degrees was one percent impairment, abduction of 90 degrees was a three percent impairment, adduction of 20 degrees correlated to one percent impairment, internal rotation of 90 degrees represented zero (no) percent impairment, and external rotation of 35 degrees correlated to two percent impairment. The medical adviser added these values to determine that appellant had a 10 percent impairment of the left arm. He commented that, while Dr. Perry also noted impairment for loss of strength, lost range of motion was a stand-alone approach under the A.M.A., *Guides*. The medical adviser found the evidence did not support a greater award.

In a June 16, 2010 decision, OWCP denied modification of the prior decisions.

⁵ On March 11, 2010 appellant requested reconsideration. No additional evidence accompanied his request. In a March 19, 2010 decision, OWCP denied appellant's request for reconsideration as the evidence submitted was immaterial and not sufficient to warrant merit review of the prior decision.

⁶ A.M.A., *Guides* 475.

LEGAL PRECEDENT

The schedule award provision of the Act,⁷ and its implementing federal regulations,⁸ 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, the Act 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁹ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹⁰

ANALYSIS

In support of his schedule award claim, appellant submitted several reports from Dr. Perry. In his August 5, October 5 and 26, 2009 reports, Dr. Perry opined that appellant had 15 percent impairment to the left upper extremity. However, he relied upon North Carolina guidelines as opposed to the A.M.A., *Guides*. Thus, it was not based on a correct application of the A.M.A., *Guides*.¹¹ As these reports did not comport with the A.M.A., *Guides*, they were insufficient to establish appellant's left arm impairment. OWCP properly referred the matter to OWCP's medical adviser,¹² who used the diagnosis-based method to find that appellant had 10 percent left arm impairment. The medical adviser, on October 21, 2009, referred to Table 15-5, the shoulder regional grid, and explained that the principal impairment was the resection of the AC joint.¹³ He explained that appellant's impairment for this diagnosis was class 1 with a default grade of C, which provides 10 percent impairment.¹⁴

In his March 16, 2010 report, Dr. Perry noted that he utilized the A.M.A., *Guides* (sixth edition), in finding 16 percent impairment. This was comprised of 12 percent for decreased range of motion and four percent for decreased strength. Although Dr. Perry provided findings

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ *Id.* at § 10.404(a).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹¹ 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 little probative value in determining the extent of a claimant's permanent impairment. *I.F.*, Docket No. 08-2321 (issued May 21, 2009).

¹² *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹³ A.M.A., *Guides* 403.

¹⁴ The medical adviser applied the net adjustment formula, page 411 of the A.M.A., *Guides*, to the grade modifiers to find a zero percent net adjustment.

for range of motion, he did not clearly identify the specific tables in the A.M.A., *Guides* and explain the basis of his calculations. Thus, this report is of limited probative value.

OWCP's medical adviser in his April 9, 2010 report applied Dr. Perry's range of motion findings to the A.M.A., *Guides*.¹⁵ He found that a calculation error had occurred in the use of Table 15-34.¹⁶ The Board notes that Dr. Perry erred in his calculation of the two percent impairment of the range of motion with regard to internal rotation. Table 15-34 indicates that the threshold for impairment in this category is less than or equal to 80 degrees. Dr. Perry found a 90 percent internal rotation which is in excess of 80 degrees and awarded 2 percent. As his clinical findings were over the 80 degree threshold, this was a calculative error.

The Board notes that the other range of motion measurements were properly determined and include three percent impairment for forward elevation of 100 degrees, one percent impairment for backward elevation of 30 degrees, three percent impairment for abduction of 90, one percent impairment for adduction of 20 degrees and two percent impairment for external rotation of 35 degrees.¹⁷ The medical adviser added these values and found 10 percent impairment of the left arm for lost range of motion. He also explained that Dr. Perry's inclusion of four percent impairment for decreased strength was not appropriate under the A.M.A., *Guides*, as the range of motion impairment is a stand-alone rating.¹⁸ Although the A.M.A., *Guides*, allow for functional history adjustments to range of motion impairment,¹⁹ Dr. Perry did not indicate how decreased strength accounted for an additional four percent impairment under these adjustment provisions in the A.M.A., *Guides*. Thus, OWCP's medical adviser properly found that Dr. Perry's March 16, 2010 report supported no more than 10 percent left arm impairment pursuant to the A.M.A., *Guides*.

The Board finds that there is no medical evidence in conformance with the sixth edition of the A.M.A., *Guides*, which establishes that appellant has no more than 10 percent impairment of the left upper extremity.

On appeal, appellant asserts that his physician's opinion should be accorded more weight. However, as noted above, it was not based upon a correct application of the A.M.A., *Guides* (sixth edition). The evidence which properly applies the A.M.A., *Guides* does not support a greater schedule award. 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.

¹⁵ Although Chapter 15 of the A.M.A., *Guides*, provides that the determination of most arm impairments should be diagnosis based, Table 15-5, the Shoulder Regional Grid, allows that, for AC joint injury or disease, section 15.7, Range of Motion Impairment, may be used as a stand alone alternative which is not to be combined with diagnosis impairment. A.M.A., *Guides* 387, 403, 405.

¹⁶ A.M.A., *Guides* 475.

¹⁷ *Id.*

¹⁸ *See supra* note 15.

¹⁹ A.M.A., *Guides* 473-77.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he has more than a 10 percent permanent impairment of his left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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