

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

M.S., Appellant)

and)

DEPARTMENT OF AGRICULTURE,)
FOREST SERVICE, St. Maries, ID, Employer)

**Docket No. 11-126
Issued: August 2, 2011**

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 October 19, 2010 appellant timely appealed the August 6, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which granted a schedule award. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has more than 10 percent impairment of the right arm.

¹ 5 U.S.C. §§ 8101-8193.

² The record on appeal contains evidence received after OWCP issued its August 6, 2010 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1) (2010).

FACTUAL HISTORY

Appellant, then a 54-year-old forestry technician, has an accepted OWCP claim for right shoulder acromioclavicular sprain, right rotator cuff sprain and right shoulder impingement syndrome, which occurred on August 24, 2007. He underwent authorized right shoulder arthroscopy on November 23, 2009. On April 8, 2010 appellant's surgeon released appellant to return to his regular duties. Appellant subsequently filed a claim for a schedule award, Form CA-7.

In a report dated May 11, 2010, Dr. George R. Harper, a Board-certified orthopedic surgeon, found 10 percent impairment of the right upper extremity. He applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2008). Based on appellant's November 2009 right shoulder arthroscopy, Dr. Harper found a class 1, grade C impairment of the acromioclavicular (AC) joint, with a default rating of 10 percent.³

On June 23, 2010 the district medical adviser (DMA) reviewed the record, including Dr. Harper's report and concurred with the finding of ten percent impairment of the right upper extremity.

By decision dated August 6, 2010, OWCP issued a schedule award for 10 percent impairment of the right arm. The award covered a period of 31.2 weeks from May 11 to December 15, 2010.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁴ 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 under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁵ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).⁶

ANALYSIS

Under the sixth edition of the A.M.A., *Guides*, impairments of the upper extremities are covered by Chapter 15. Section 15-2, entitled *Diagnosis-Based Impairment*, indicates that

³ Table 15-5, A.M.A., *Guides* 403.

⁴ For a total loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

⁵ 20 C.F.R. § 10.404.

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

“[d]iagnosis-based impairment is the primary method of evaluation of the upper limb.”⁷ The initial step in the evaluation process is to identify the impairment class by using the corresponding diagnosis-based regional grid. Dr. Harper and the DMA utilized the “Shoulder Regional Grid,” Table 15-5, A.M.A., *Guides* 403 and identified a class 1 impairment based on an AC joint injury. Appellant’s November 23, 2009 right shoulder arthroscopy included a distal clavicle excision. Under Table 15-5, status post distal clavicle resection represents an upper extremity impairment range of 8 to 12 percent. Once the impairment class has been determined based on the diagnosis, the grade is initially assigned the default value “C,” which in this instance corresponds to 10 percent impairment of the upper extremity.⁸

After determining the Impairment Class (CDX) and default grade, the next step is to determine if there are any applicable grade adjustments. These include adjustments for Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS). The grade modifiers are used in the Net Adjustment Formula to calculate a net adjustment.⁹ The final impairment grade is determined by adjusting the grade up or down from the default value C by the calculated net adjustment. According to Dr. Harper and the DMA, there was no basis for an adjustment from the default grade C, which represented 10 percent impairment of the right arm. The Board finds that the reports of the physicians of record conform to the A.M.A., *Guides* (6th ed. 2008) and represent the weight of the medical evidence regarding the extent of appellant’s right upper extremity impairment. Appellant has not submitted any medical evidence to establish greater than 10 percent impairment of the right upper extremity.

A claimant retains the right to file for an increased schedule award, at anytime based on new exposure or on medical evidence indicating progression of an employment-related condition, resulting in permanent impairment or increased impairment.¹⁰

CONCLUSION

Appellant failed to establish that he has greater than 10 percent impairment of the right upper extremity.

⁷ Section 15.2, A.M.A., *Guides* 387.

⁸ Table 15-5, A.M.A., *Guides* 403.

⁹ Net Adjustment = GMFH - CDX + GMPE - CDX + GMCS - CDX. Section 15.3d, A.M.A., *Guides* 411.

¹⁰ See *Tommy R. Martin*, 56 ECAB 273 (2005).

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2011
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