

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

M.P., Appellant

and

**U.S. POSTAL SERVICE, BULK MAIL
CENTER, Memphis, TN, Employer**

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**Docket No. 11-221
Issued: August 11, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 1, 2010 appellant timely appealed the July 8, 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 13 percent impairment of the right upper extremity.

¹ 5 U.S.C. §§ 8101-8193 (2006).

² The record on appeal contains evidence received after OWCP issued its July 8, 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 53-year-old retired mail handler, injured her right shoulder in the performance of duty on September 22, 2007. OWCP accepted her claim for right rotator cuff sprain, right shoulder impingement syndrome and permanent aggravation of right shoulder arthritis.³ On June 18, 2008 appellant underwent OWCP-approved right shoulder arthroscopy. She returned to work in a limited-duty capacity in August 2008. Due to an unrelated medical condition, appellant stopped work in February 2009. She subsequently received a disability annuity from the Office of Personnel Management (OPM) and retired effective June 12, 2009.

In April 2010, appellant, with the assistance of counsel, filed a claim for a schedule award (Form CA-7). In a January 4, 2010 report, Dr. Rommel G. Childress, an attending Board-certified orthopedic surgeon,⁴ applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2008), to find 13 percent impairment of the right upper extremity. He based the impairment rating on the diagnosis of right shoulder partial rotator cuff tear, which he identified as a class 1, grade E impairment, citing Table 15-5, A.M.A., *Guides* 401-05 (6th ed. 2008).

On June 17, 2010 Dr. James W. Dyer, the district medical adviser, reviewed the record. He agreed with Dr. Childress' rating of 13 percent impairment of the right upper extremity. The district medical adviser found that appellant reached maximum medical improvement (MMI) on January 4, 2010 the date of Dr. Childress' evaluation.

By decision dated July 8, 2010, OWCP granted a schedule award for 13 percent impairment of the right upper extremity. The award covered a period of 40.56 weeks from January 4 to October 14, 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.⁵ 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

³ Appellant has another claim for injury arising on June 20, 2007 (File No. xxxxxx579). OWCP accepted both left and right shoulder conditions under claim File No. xxxxxx579. The previously accepted right shoulder condition (supraspinatus sprain) has been combined with appellant's September 22, 2007 right shoulder injury, with the latter claim being designated as the master file. The left shoulder injuries appellant sustained on June 20, 2007 have been separately adjudicated under claim File No. xxxxxx579.

⁴ Dr. Childress treated appellant for both her left and right shoulder conditions dating back to June 29, 2007. Additionally, he performed her June 18, 2008 right shoulder arthroscopy. Dr. Childress' January 4, 2010 evaluation also included an impairment rating of the left upper extremity, which OWCP separately adjudicated under claim File No. xxxxxx579.

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

evaluating schedule losses.⁶ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).⁷

ANALYSIS

Appellant did not specifically challenge the percentage of impairment found Dr. Childress and Dr. Dyer. On appeal, she argued that the January 4, 2010 date of MMI was incorrect. This date coincided with the date of Dr. Childress' evaluation, which OWCP relied upon in awarding 13 percent impairment of the right arm. Appellant noted that Dr. Childress stated that she reached MMI on March 6, 2009.

Before an award may be made it must be medically determined that no further improvement can be anticipated and the impairment must reach a fixed and permanent state, known as MMI.⁸ MMI arises at the point at which an injury has stabilized and will not improve further.⁹ This determination is factual in nature and depends primarily on the medical evidence.¹⁰ In the absence of evidence to the contrary or a conflict in the medical evidence requiring resolution under 5 U.S.C. § 8123, the date of MMI is usually considered to be the date of the attending physician's evaluation that is accepted as definitive by OWCP.¹¹ In this instance, OWCP relied upon Dr. Childress' January 4, 2010 evaluation and properly utilized the date of his evaluation as the date of MMI.

As noted, appellant did not specifically challenge the 13 percent impairment rating of her right arm. She has not submitted any medical evidence to establish greater impairment of the right upper extremity than awarded.

CONCLUSION

Appellant has not established that she has greater than 13 percent impairment of the right upper extremity.

⁶ 20 C.F.R. § 10.404.

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁸ *Id.* at Chapter 3.700.3a (1).

⁹ *Peter C. Belkind*, 56 ECAB 580, 585 (2005).

¹⁰ *Id.*

¹¹ *See supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 11, 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