

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

L.M., Appellant

and

**U.S. POSTAL SERVICE, PROCESSING
& DISTRIBUTION CENTER, Nashville, TN,
Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 11-1246
Issued: December 13, 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
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 26, 2011 appellant filed a timely appeal from an April 12, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 a five percent employment-related permanent impairment to her right arm.

¹ 5 U.S.C. § 8101 *et seq.*

² The appeal was postmarked April 18, 2011. Pursuant to 20 C.F.R. § 501.3, the Board has jurisdiction over OWCP decisions dated October 22, 2010 and April 12, 2011.

FACTUAL HISTORY

On June 25, 2009 appellant, then a 53-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury in the performance of duty on June 18, 2009. On the claim form she stated that she was pulling a tray of mail when she felt pain in her neck, shoulder and arm, with tingling in her hands. OWCP accepted a right shoulder sprain. Appellant underwent right shoulder arthroscopic surgery and right rotator cuff repair on September 14, 2009. She returned to work in a modified-duty position.³

In a report dated August 11, 2010, Dr. Damon Petty, an orthopedic surgeon, noted that appellant had intermittent discomfort on a regular basis. He provided range of motion results for the right shoulder and noted some hypertrophic scarring on the shoulder. Dr. Petty stated that appellant had reached maximum medical improvement with regard to her right shoulder and an impairment rating would be provided.

In a form report dated September 22, 2010, Dr. Petty opined that appellant had a five percent right arm impairment. He identified Table 15-5 with a diagnosis of rotator cuff tear. With respect to grade modifiers, Dr. Petty assigned a value of zero for functional history, one for physical examination and two for clinical studies. He concluded that the impairment was a grade C arm impairment of five percent under Table 15-5.

By report dated October 14, 2010, an OWCP medical adviser concurred with Dr. Petty as to a permanent impairment. The medical adviser opined that appellant had a five percent right arm impairment, with a date of maximum medical improvement of September 22, 2010.

In a decision dated October 22, 2010, OWCP issued a schedule award for a five percent permanent impairment to the right arm. The period of the award was 15.60 weeks from October 9, 2010.

On March 1, 2011 appellant requested reconsideration of her claim. She resubmitted evidence regarding her right shoulder treatment. In addition, the record contains evidence regarding the left shoulder, including an October 25, 2010 report of a left shoulder rotator cuff repair.

By report dated March 17, 2011, an OWCP medical adviser opined that appellant did not have an additional impairment to the right arm. The medical adviser noted that the October 25, 2010 surgery was for the left shoulder, not the right shoulder.

By decision dated April 12, 2011, OWCP found that appellant was not entitled to an additional schedule award based on the evidence of record.

LEGAL PRECEDENT

FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent

³ Appellant also has a claim for a left shoulder injury on August 25, 2009.

impairment of the scheduled member or function.⁴ Neither, FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A. *Guides*) as the uniform standard applicable to all claimants.⁵ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁶

With respect to a shoulder impairment, the A.M.A., *Guides* provides a regional grid at Table 15-5.⁷ The class of impairment (CDX) is determined based on specific diagnosis and then the default value for the identified CDX is determined. The default value, grade C, may be adjusted by using grade modifiers for Functional History (GMFH) Table 15-7, Physical Examination (GMPE) Table 15-8 and Clinical Studies (GMCS) Table 15-9. The adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁸

ANALYSIS

In the present case, appellant's attending physician, Dr. Petty provided an opinion that appellant had a five percent right arm impairment based on application of Table 15-5. Dr. Petty identified the diagnosis as a rotator cuff injury, which for class (CDX) 1 has a default impairment, grade C, of five percent for "residual loss, functional with normal motion."⁹ As noted above, the impairment may be adjusted by the grade modifiers for functional history, physical examination and clinical studies. Dr. Petty assigned a value of zero for GMFH, one for GMPE and two for GMCS.¹⁰ Applying the adjustment formula, the result is zero or no net adjustment from the default value. Accordingly, Dr. Petty concluded that appellant had a five percent right arm impairment. An OWCP medical adviser concurred with the five percent impairment rating.

Therefore, the only probative medical evidence of record regarding a right shoulder impairment supported an impairment of five percent to the right arm based on Table 15-5. On reconsideration appellant did not submit any new medical evidence as to a permanent impairment to the right arm. The evidence submitted after the October 22, 2010 decision was duplicative with respect to a right arm impairment. An OWCP medical adviser confirmed in a March 17, 2011 report that there was no additional relevant evidence regarding a right arm

⁴ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁵ A. *George Lampo*, 45 ECAB 441 (1994).

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

⁷ A.M.A., *Guides* 401, Table 15-5.

⁸ The net adjustment is up to +2 (grade E) or -2 (grade A).

⁹ A.M.A., *Guides* 403, Table 15-5.

¹⁰ *See id.* at 406-11, Tables 15-7 to 15-9.

permanent impairment. The Board finds that the evidence does not establish more than a five percent employment-related permanent impairment to the right arm.

The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the arm, the maximum number of weeks of compensation is 312 weeks. Since appellant's impairment was five percent, she is entitled to five percent of 312 weeks or 15.60 weeks of compensation. A schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.¹¹ In this case, an OWCP medical adviser found that the date of maximum medical improvement was September 22, 2010, the date of examination by Dr. Petty. OWCP administratively began the award on October 9, 2010 and the award ran for 15.60 weeks.

On appeal, appellant expresses concern that evidence from her left shoulder injury was placed in the current case record and she felt that OWCP did not review all the evidence from her right shoulder. The existence of additional evidence in the current case record does not establish that relevant evidence regarding the right shoulder was placed in another case record. Appellant did not identify any specific relevant evidence as to a right arm permanent impairment that OWCP failed to consider. The schedule award she received was based on a report from her own physician, Dr. Petty. The Board notes that 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.¹² Relevant evidence of an increased impairment to her right shoulder may be submitted with a request for an increased schedule award.

CONCLUSION

The Board finds that the evidence does not establish more than a five percent permanent impairment to the right arm.

¹¹ *Albert Valverde*, 36 ECAB 233, 237 (1984).

¹² *See Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation programs dated April 12, 2011 and October 22, 2010 are affirmed.

Issued: December 13, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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