United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 10-1199**
	)	**Issued: January 20, 2011**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION FACILITY, Duluth, MN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 29, 2010 appellant filed a timely appeal from a November 4, 2009 merit decision of the Office of Workers' Compensation Programs granting him a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has more than 3 percent permanent impairment of the left upper extremity and 10 percent permanent impairment of the right upper extremity.

FACTUAL HISTORY

On September 20, 2006 appellant, then a 43-year-old maintenance mechanic, filed an occupational disease claim alleging that he sustained a rotator cuff injury to both shoulders due to factors of his federal employment. The Office accepted the claim for bilateral disorders of the bursae and tendons in the shoulder and a bilateral sprain of the shoulder, upper arm and rotator cuff.

On December 14, 2006 Dr. Michael A. Gibbons, an attending Board-certified orthopedic surgeon, performed an arthroscopic acromioplasty with a distal clavical excision of the rotator cuff on the right shoulder. He diagnosed acromioclavicular joint arthrosis, impingement and a near full thickness rotator cuff tear. On March 10, 2008 Dr. Gibbons performed an arthroscopic acromioplasty of the left shoulder to repair a full thickness rotator cuff tear.

On June 5, 2007 Dr. Gibbons measured right shoulder flexion of 170 degrees, abduction of 160 degrees, external rotation of 90 degrees and internal rotation of 70 degrees. He noted that appellant complained of continued pain but was otherwise doing well. On October 15, 2008 Dr. Gibbons referred him for a functional capacity evaluation.[1]

On September 19, 2008 appellant filed a claim for a schedule award. By letter dated October 1, 2008, the Office requested that he submit an impairment evaluation from his attending physician in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

A functional capacity evaluation, performed on December 10, 2008, noted that appellant complained of "bilateral shoulder burning fatigue" after a work test. The evaluator's recommendations included no lifting over 40 pounds overhead and no elevated work over two minutes at a time.

On January 7, 2009 Dr. Gibbons discussed appellant's history of bilateral rotator cuff repairs and distal clavicle resection on the right side. He opined that appellant reached maximum medical improvement for the right shoulder on June 11, 2007 and for the left shoulder on October 15, 2008. Dr. Gibbons referred to treatment notes dated June 5, 2007 and October 15, 2008 for range of motion measurements and findings on examination for the right and left shoulder, respectively.[2] He determined that, according to the fifth edition of the A.M.A., *Guides*, appellant had 10 percent impairment of the right upper extremity due to a distal clavicle resection.[3] Dr. Gibbons found no impairment of the left shoulder "given return of range of motion and strength without distal clavicle resection on the left side."

On June 1, 2009 an Office medical adviser applied the sixth edition of the A.M.A., *Guides* to Dr. Gibbon's findings. He discussed appellant's history of a subacromial decompression, distal clavicle resection and rotator cuff repair on the right and a subacromial decompression and rotator cuff repair on the left. The Office medical adviser noted that appellant had "done well as far as the left shoulder is concerned, but does note some weather[-]related pain as well as discomfort following activity." He found a grade modifier of 1 for a mild problem under Table 15-6 on page 406 of the A.M.A., *Guides* with no modifier for physical examination as strength and motion were normal. The Office medical adviser determined that a modifier for clinical studies was not applicable as there were no postsurgical imaging studies. He found that, under Table 15-5 on page 403 of the sixth edition of the A.M.A.,

[1] On August 12, 2008 a physical therapist found that appellant had "essentially full range of motion" of the left upper extremity which forward flexion of 170 degrees, abduction of 160 degrees, external rotation of 90 degrees and internal rotation of 70 degrees.

[2] The October 15, 2008 treatment note in the case record does not contain range of motion measurements.

[3] A.M.A., *Guides* 506, Table 16-27.

Guides, appellant had three percent left upper extremity impairment due to "a rotator cuff tear with some residual symptoms but a normal physical examination." For the right shoulder, the Office medical adviser noted that appellant had "done equally as well" with full range of motion and a small loss of strength. He opined that he had 10 percent permanent impairment due to his distal clavical resection according to Table 15-15. The Office medical adviser found that appellant reached maximum medical improvement on October 15, 2008 on the left and June 11, 2007 on the right.

By decision dated November 4, 2009, the Office granted appellant a schedule award for 3 percent permanent impairment of the left upper extremity and 10 percent permanent impairment of the right upper extremity. The period of the award ran for 40.56 weeks from December 20, 2008 to September 29, 2009.

On appeal appellant asserts that his left shoulder is worse than his right shoulder. He questions why his impairment on the left side was not determined using range of motion measurements and subjective findings from the functional capacity evaluation and October 15, 2008 progress report.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing federal regulations,[5] 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.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

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).[8] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

ANALYSIS

The Office accepted appellant's claim for bilateral disorders of the bursae and shoulder tendons, and sprain of the bilateral shoulders, upper arm and rotator cuff. On December 14,

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id.* at § 10.404(a).

[7] 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).

[8] A.M.A., *Guides* 494-531.

2006 appellant underwent a distal clavicle resection and rotator cuff repair on the right and on March 10, 2008 he underwent a rotator cuff repair on the left.

On September 19, 2008 appellant filed a claim for a schedule award. He submitted an impairment evaluation dated January 7, 2009 from Dr. Gibbons. Applying the fifth edition of the A.M.A., *Guides*, Dr. Gibbons found that appellant had 10 percent impairment of the right upper extremity due to his distal clavicle resection. He found no impairment of the left upper extremity as he had normal motion and strength.

On June 1, 2009 an Office medical adviser applied the sixth edition of the A.M.A., *Guides* to Dr. Gibbons' findings. For the left side, he identified the impairment class using the diagnosis-based regional grid for the shoulder set forth in Table 15-5 as a rotator cuff tear. The Office medical adviser found that appellant had three percent impairment, the default impairment for a Class 1 impairment for a rotator cuff tear. After determining the impairment class and default grade, the Office medical adviser addressed the grade modifiers. He opined that appellant had a grade modifier for functional history (GMFH) of 1 due to a continued mild problem pursuant to Table 15-6. The Office medical adviser found a grade modifier of 0 for physical examination (GMPE) based on his normal strength and range of motion. He determined that a grade modifier for clinical studies (GMCS) was inapplicable as there were no postoperative diagnostic tests. Applying the net adjustment formula, (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), the Office medical adviser calculated that appellant should receive no adjustment from the default grade.[9] He concluded that he had three percent permanent impairment of the left upper extremity.

For the right side, the Office medical adviser identified the default Class 1 impairment as 10 percent for status post distal clavicle resection according to Table 15-15. He noted that appellant had done equally well on the right as the left postsurgery and so did not adjust the impairment for grade modifiers. The Office medical adviser determined that appellant had 10 percent permanent impairment of the right upper extremity. The Board finds that the evidence supports that he has no more than 10 percent permanent impairment of the right upper extremity and 3 percent permanent impairment of the left upper extremity. There is no medical evidence establishing a greater percentage of impairment.

On appeal appellant asserts that his left upper extremity bothers him more than the right upper extremity. He questions why his impairment was not determined using range of motion and physical findings. The sixth edition of the A.M.A., *Guides* advises that most impairment values are calculated using the diagnosis-based impairment (DBI) method.[10] In certain circumstances, range of motion may be used as an alternative approach to rating impairments.[11] In this case, however, Dr. Gibbons, appellant's attending physician, opined that he had no left shoulder impairment as he had full range of motion and strength. Consequently, he has not met

[9] The Board notes that the net adjustment formula would be (1-1) + (0-1), for a net adjustment of -1. The Office medical adviser thus should have reduced the default grade to B and found two percent impairment of the left upper extremity.

[10] A.M.A., *Guides* 385, 461.

[11] *Id*. at 390.

his burden of proof to submit medical evidence supporting that he has a greater permanent impairment of the left upper extremity.[12]

CONCLUSION

The Board finds that appellant has no more than 3 percent permanent impairment of the left upper extremity and 10 percent permanent impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 2011
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[12] *See D.H.*, 58 ECAB 358 (2007); *Annette M. Dent*, 44 ECAB 403 (1993).