

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

A.H., Appellant	)	
	)	
and	)	<b>Docket No. 10-1187</b>
	)	<b>Issued: March 18, 2011</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Oak Park, IL, Employer	)	
	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Appellant, pro se</i>	
<i>Office of the Solicitor, for the Director</i>	

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On March 24, 2010 appellant filed a timely appeal from the March 11, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant has more than one percent permanent impairment of his right upper extremity, for which he received a schedule award.

**FACTUAL HISTORY**

On March 3, 2009 appellant, then a 45-year-old letter carrier, filed an occupational disease claim alleging that his right shoulder pain was caused or aggravated by the repetitive casing and delivering of mail that he performed daily. He advised that he first realized his disease on May 10, 2008 and that it was caused or aggravated by his employment on February 3, 2009. The employing establishment indicated that appellant had not lost any time

from work, but worked with limitations. The Office accepted the claim for aggravation of right shoulder calcifying tendinitis.

On December 18, 2009 appellant filed a claim for a schedule award. On December 21, 2009 the Office advised him that it evaluated permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) and asked that his physician provide an impairment determination under the A.M.A., *Guides*.

In a January 21, 2010 report, Dr. Edward S. Forman, an osteopath specializing in orthopedic surgery, noted the history of injury and appellant's medical treatment and set forth his physical examination findings. He noted that appellant continued to have pain in the right shoulder exacerbated with repetitive overhead activity. Dr. Forman advised that appellant's right shoulder had full range of motion with forward flexion, abduction, adduction, internal and external rotation. He had a minimally positive Neer test and negative Jobe, Speed and Yergason tests with no evidence of anterior, posterior or inferior instability. Circulation, sensation and motor examinations were grossly intact. Dr. Forman advised that January 6, 2010 x-rays were negative for fracture or dislocation, but had some calcification consistent with calcific tendinitis. He advised that the February 18, 2009 magnetic resonance imaging (MRI) scan did not reveal a rotator cuff tear. While a small effusion was noted, there was no obvious calcification of the biceps tendon. An impression of chronic impingement syndrome of the right shoulder was provided. Under the sixth edition of the A.M.A., *Guides*, Dr. Forman opined that appellant had five percent right arm impairment. Under Table 15-5, page 402, he advised that appellant had Class 1 impairment for his impingement syndrome. Under Table 15-8, page 408, Dr. Forman advised that appellant had Grade Modifier 0 for physical examination of the upper extremity for range of motion. Under Table 15-9, page 410, he stated that appellant had Grade Modifier 2 for clinical studies for shoulder biceps tendon pathology. Under Table 15-7, page 406, Dr. Forman found that appellant had Grade Modifier 1 for functional history. Utilizing the net adjustment formula, he found that appellant had a zero net adjustment, which equated to a grade of C. Under Table 15-10, page 412, Dr. Forman found a Grade C under Class 1 yielded five percent arm impairment.

In a February 15, 2010 report, an Office medical adviser reviewed the medical record for the purpose of determining permanent impairment of the right arm due to the accepted shoulder tendinitis. He determined that the date of maximum medical improvement occurred on September 18, 2009, when appellant was given permanent restrictions by Dr. Ronald L. Silver, a Board-certified orthopedic surgeon, and discharged from care. Based on Dr. Forman's findings, the Office medical adviser opined that appellant had one percent permanent impairment of the right upper extremity under the sixth edition of the A.M.A., *Guides*. He advised that, while Dr. Forman used the net adjustment formula correctly in arriving at a net adjustment of zero, he disagreed with Dr. Forman's use of Table 15-10 to arrive at the five percent impairment rating. The Office medical adviser stated that Table 15-10 is a generic table used as an example to determine the grade in an impairment class and is not related to the diagnostic-based impairment of shoulder impingement. He stated that Table 15-5, page 402, was the appropriate table to evaluate impairment for shoulder impingement syndrome. As agreed with Dr. Forman that there was no change with the net adjustment formula, the Office medical adviser found that appellant had one percent right upper extremity impairment under Table 15-5.

By decision dated March 11, 2010, the Office awarded appellant one percent right upper extremity impairment. The award ran for 3.12 weeks from September 18 to October 9, 2008. Determinative weight was accorded to the Office medical adviser's opinion.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> provides for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act however does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.<sup>2</sup> Effective May 1, 2009, the Office adopted the sixth edition of the A.M.A., *Guides*,<sup>3</sup> published in 2008, as the appropriate edition for all awards issued after that date.<sup>4</sup>

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).<sup>5</sup> Under the sixth edition, the evaluator identifies 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).<sup>6</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - DCX) + (GMCS - CDX).

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*.<sup>7</sup>

### **ANALYSIS**

The Office accepted appellant's claim for aggravation right shoulder calcifying tendinitis. On December 18, 2009 appellant filed a claim for a schedule award. The Board finds that the evidence establishes no more than one percent impairment to his right upper extremity.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>3</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

<sup>6</sup> A.M.A., *Guides* 494-531 (6<sup>th</sup> ed. 2008).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

Dr. Forman opined that appellant had five percent impairment of the right upper extremity under Table 15-10, page 412, of the A.M.A., *Guides*. The Board notes that Table 15-10 however provides methodology for determining the grade in an impairment class and does not provide specific impairment ratings for a diagnostic-based shoulder impairment. In this case, both Dr. Forman and the Office medical adviser agreed that appellant had an impairment based on shoulder impingement syndrome. Thus, the final impairment rating would come from Table 15-5, page 402. As Dr. Forman used the wrong table of the A.M.A., *Guides* in making his impairment determination, his report does not conform to the A.M.A., *Guides* and is of diminished probative value.<sup>8</sup>

The Office medical adviser reviewed Dr. Forman's report and evaluated impairment by identifying the impairing diagnosis as shoulder impingement syndrome, the same diagnosis identified by Dr. Forman. The Board notes that the initial step in the evaluation process is to identify the impairment class by using the corresponding diagnosis-based regional grid. The Office medical adviser utilized the shoulder regional grid, Table 15-5 and identified a Class 1 impairment based on Dr. Forman's findings of history of painful injury and residual symptoms without consistent objective findings.<sup>9</sup> Once the impairment class was determined based on the diagnosis, the grade was initially assigned the default value, C. Under Table 15-5, the default Grade C, for a Class 1 impairment represents one percent upper extremity impairment.<sup>10</sup>

After determining the impairment class and default grade, the Office medical adviser addressed the applicable grade adjustments for so-called nonkey factors or modifiers. 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.<sup>11</sup> The final impairment grade is determined by adjusting the grade up or down from the default value C by the calculated net adjustment. In this case, the Office medical adviser agreed with Dr. Forman's net adjustment of zero. Regarding a GMPE, he assigned a Grade Modifier 0 for appellant's normal range of motion.<sup>12</sup> For the GMCS, the medical adviser assigned a Grade Modifier 2 based on shoulder biceps tendon pathology.<sup>13</sup> For the GMFH, he assigned a Grade Modifier 1.<sup>14</sup> Applying the net adjustment formula (GMFH (1) – CDX (1) = 0) + (GMPE (0) – CDX (1) = -1) + (GMCS (2) – CDX (1) = 1) resulted in a Grade Modifier 0, which equals a net adjustment of zero. Thus, the upper extremity impairment for a Class 1, Grade C impingement syndrome of the shoulder is one percent upper extremity impairment.<sup>15</sup>

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<sup>8</sup> See *Mary L. Henninger*, 52 ECAB 408 (2001).

<sup>9</sup> A.M.A., *Guides* 402, Table 15-5.

<sup>10</sup> *Id.*

<sup>11</sup> Net Adjustment = (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). A.M.A., *Guides* 411, section 15.3d.

<sup>12</sup> A.M.A., *Guides* 402, Table 15-8.

<sup>13</sup> *Id.* at 410, Table 15-9.

<sup>14</sup> *Id.* at 406, Table 15-7.

<sup>15</sup> *Id.* at 402, Table 15-5.

The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to rate impairment to appellant's right shoulder as one percent under the formula of the sixth edition. The rating of the Office medical adviser is in accordance with the protocols pertaining to upper extremity impairment determinations and represents the weight of medical opinion.

On appeal, appellant contends that the Office medical adviser is trying to override the findings of his physician. As noted, the Office medical adviser clearly explained his rating under the sixth edition of the A.M.A., *Guides* and explained the error made by Dr. Forman in calculating impairment.

**CONCLUSION**

The Board finds that appellant has no more than one percent impairment of the right upper extremity, for which he received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 11, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 18, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board