

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

M.A., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, NEWARK-LIBERTY)
INTERNATIONAL AIRPORT, Newark, NJ,)
Employer)

**Docket No. 10-1676
Issued: March 14, 2011**

Appearances:

James D. Muirhead, Esq., for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On June 9, 2010 appellant filed a timely appeal from an April 30, 2010 merit decision of the Office of Workers' Compensation Programs concerning his schedule award. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than 12 percent impairment of his left upper extremity, for which he received a schedule award.

FACTUAL HISTORY

On August 3, 2005 appellant, then a 30-year-old baggage screener, filed a traumatic injury claim stating that on that date he experienced a sharp and numbing pain in his left shoulder while reaching up to get a bin. The Office accepted the claim for left shoulder strain

and paid compensation benefits. Appellant stopped work on the date of injury. The Office authorized left shoulder surgeries on January 6 and December 15, 2006,¹ as well as physical therapy. Appellant returned to work eight hours a day with restrictions on June 25, 2007.

On December 19, 2008 appellant requested a schedule award. In a September 16, 2008 report, Dr. David Weiss, an osteopath, noted the history of injury, his review of available medical records and presented his findings. He opined that appellant had 23 percent left upper extremity impairment under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

In a June 30, 2009 letter, the Office advised Dr. Weiss that as of May 1, 2009 impairment determinations would be accomplished according to the sixth edition of the A.M.A., *Guides*. It requested that he provide an additional impairment determination using the sixth edition of the A.M.A., *Guides*.

In a July 31, 2009 report, Dr. Weiss utilized the results of his September 16, 2008 examination. He found that appellant reached maximum medical improvement on September 16, 2008 and opined that appellant had 12 percent left arm impairment under the sixth edition of the A.M.A., *Guides*. Under Table 15-5, page 403, Dr. Weiss assigned 10 percent impairment for Class 2 diagnosis based AC joint injury with distal clavicle resection. Based on *QuickDASH* functional scale score of 81, he assigned a Grade Modifier 4 for functional history adjustment under Table 15-7, page 406. Based on appellant's muscle atrophy, Dr. Weiss assigned a Grade Modifier 2 for physical examination adjustment under Table 15-8, page 408. Based on imaging studies, he assigned a Grade Modifier 4 for clinical studies adjustment under Table 15-9, page 410. Dr. Weiss utilized the net adjustment formula of (GMFH - CDX) + (GMPE - DCX) + (GMCS - CDX) or (4-2) + (2-2) + (4-2) to find a net adjustment of four. He opined that the final left upper extremity impairment after net adjustment was 12 percent.

On October 9, 2009 an Office medical adviser reviewed Dr. Weiss' July 31, 2009 impairment report. He opined that the date of maximum medical improvement was September 16, 2008, the date of Dr. Weiss' examination. The medical adviser agreed that an AC joint injury with distal clavicle resection under Table 15-5, page 403 was a CDX (Class of Diagnosis) 2 impairment with a default impairment (Grade C) of 10 percent. He also agreed with Dr. Weiss' grade modifiers for functional history (GMFH) of 4,³ for physical examination (GMPE) of 2⁴ and clinical studies (GMCS) of 4.⁵ The Office medical adviser stated that the net modifier adjustment formula resulted in a net adjustment modifier of 4, which moved the default value to the right which resulted in 12 percent impairment for the left arm. He noted that while

¹ On January 6, 2006 appellant underwent a left shoulder acromioplasty and subacromial decompression, acromioclavicular (AC) joint arthrotomy with disc resection and distal clavicle resection. On December 15, 2006 he underwent a revision acromioplasty AC joint resection.

² A.M.A., *Guides* (5th ed. 2001).

³ A.M.A., *Guides* (6th ed.) Table 15-7, page 406.

⁴ *Id.* at Table 15-8, page 408.

⁵ *Id.* at Table 15-9, page 410.

the grade modifier for clinical studies might be either a three or two, this would not change the 12 percent impairment for the left arm as the net modifier adjustment would end up a minimum of two to reach the 12 percent impairment (Grade E).

By decision dated April 30, 2010, the Office issued a schedule award for 12 percent impairment to the left upper extremity. The period of the award was for 37.44 weeks of compensation for the period September 16, 2008 to June 5, 2009.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁶ 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.⁷ Schedule award decisions issued between February 1, 2001 and April 30, 2009 utilize the fifth edition of the A.M.A., *Guides*.⁸ Effective May 1, 2009, the Office adopted the sixth edition of the A.M.A., *Guides*,⁹ published in 2008, as the appropriate edition for all awards issued after that date.¹⁰

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).¹¹ 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).¹² The net adjustment formula is (GMFH - CDX) + (GMPE - DCX) + (GMCS - CDX).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁸ *B.M.*, 61 ECAB ___ (Docket No. 09-2231, issued May 14, 2010).

⁹ FECA Bulletin No. 09-03 (issued March 15, 2009).

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

¹¹ A.M.A., *Guides* (6th ed., 2008), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

¹² *Id.* at pp. 494-531 (6th ed. 2008).

ANALYSIS

The schedule award decision in this case was issued on April 30, 2010. As noted, all schedule awards issued after May 1, 2009 must be based on the sixth edition of the A.M.A., *Guides*. The Office medical adviser found that the impairment was represented by Dr. Weiss' July 31, 2009 impairment report. Under Table 15-5, page 403 of the A.M.A., *Guides*, an AC joint injury and distal clavicle resection is a CDX (Class of Diagnosis) 1 impairment with a default impairment (Grade C) of 10 percent. This differs from the CDX 2 found by both Dr. Weiss and the Office medical adviser for an AC joint injury and distal clavicle resection for a default impairment of 10 percent. This appears to have been a typographical error by Dr. Weiss and the medical adviser. As noted above, the final impairment is determined by using a net adjustment formula based on grade modifiers for functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS). In this case, the grade modifier applied was 4 for GMFH,¹³ 2 for physical examination (GMPE)¹⁴ and 4 for clinical studies (GMCS).¹⁵ The net adjustment formula is (GMFH-CDX) + (GMPE – CDX) + (GMCS – CDX).¹⁶ As the CDX is 1, the formula results in $(4-1) + (2-1) + (4-1) = 7$. According to the A.M.A., *Guides*, the Grade C default impairment of 10 percent is modified to a Grade E of 12 percent to the left upper extremity.¹⁷

Both Dr. Weiss and the Office medical adviser concurred that appellant had 12 percent left upper extremity impairment. The Board finds that the A.M.A., *Guides* were properly applied as modified to reflect a CDX of 1 to determine the left upper extremity impairment.

On appeal, appellant notes that his impairment rating was 23 percent as calculated under the fifth edition of the A.M.A., *Guides*. He argues that the fifth edition of the A.M.A., *Guides* should have been applied as he was examined, was found to be at maximum medical improvement and submitted the schedule award claim to the Office prior to May 1, 2009, the effective date of the sixth edition of the A.M.A., *Guides*. As noted above, Office procedures and FECA Bulletin No. 09-03 provide that for decisions issued effective May 1, 2009 the sixth edition of the A.M.A., *Guides* is to be used.¹⁸ The procedures and the bulletin make no provision for determining the sixth edition of the A.M.A., *Guides* based on when maximum medical

¹³ *Id.* at Table 15-7, page 406.

¹⁴ *Id.* at Table 15-8, page 408.

¹⁵ *Id.* at Table 15-9, page 410.

¹⁶ *Id.* at 411.

¹⁷ *Id.* at Table 15-5, page 403. Although proper application of the net adjustment formula for Class 1 CDX results in a net adjustment of +7, this does not result in any greater impairment than that calculated by Dr. Weiss or the Office medical adviser. The A.M.A., *Guides* provide that any adjustments greater than +2 will automatically be considered "E." The A.M.A., *Guides* point out that "grade modifiers allow movement within a class but do not allow movement into a different class." A.M.A., *Guides* 387.

¹⁸ *See supra* notes 9, 10.

improvement is reached.¹⁹ As the Office issued a schedule award on April 30, 2010, it properly used the sixth edition of the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant has not established more than 12 percent permanent impairment of the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 14, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁹ The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury. The determination of whether maximum medical improvement has been reached is based on the medical evidence and is usually the date of the medical examination which determined the extent of the impairment. *See J.H.*, 60 ECAB ___ (Docket No. 08-2432, issued June 15, 2009).