

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

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**J.T., Appellant**

**and**

**U.S. POSTAL SERVICE, CORINTH POST  
OFFICE, Corinth, NY, Employer**

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**Docket No. 10-1530  
Issued: May 6, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of 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 May 18, 2010 appellant filed a timely appeal from an April 20, 2010 decision of the Office of Workers' Compensation Programs regarding a schedule award. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has established that he sustained more than a 22 percent impairment of the left upper extremity, for which he received a schedule award.

**FACTUAL HISTORY**

The Office accepted that on January 8, 2005 appellant, then a 45-year-old city carrier, slipped and fell on ice, sustaining a left shoulder sprain. Beginning on March 18, 2005, he was followed by Dr. Richard A. Saunders, an attending Board-certified orthopedic surgeon, who

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

diagnosed left acromioclavicular arthropathy, synovitis and impingement related to the January 8, 2005 injury. On June 22, 2006 Dr. Saunders performed arthroscopic subacromial decompression of the left shoulder with an open Mumford resection of the distal clavicle, removing one centimeter of bone. The Office authorized these procedures. Appellant returned to light duty on August 30, 2006 and to full duty in early 2007.

In a June 8, 2007 report, Dr. Saunders opined that appellant had reached maximum medical improvement. Appellant obtained ranges of motion for the left shoulder. Referring to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (hereinafter), Dr. Saunders found that according to Figure 16-40, page 476,<sup>2</sup> flexion limited to 120 degrees equaled a four percent impairment of the left upper extremity and extension limited to 38 degrees equaled a one percent impairment. He combined the two impairments to equal five percent. Referring generally to pages 474 to 479 of the A.M.A., *Guides*, Dr. Saunders also found a four percent impairment for internal rotation limited to 30 degrees and a one percent impairment for external rotation limited to 35 degrees. He combined the rotation impairments to equal five percent. Dr. Saunders also found a three percent impairment for abduction limited to 110 degrees. He then combined the 5, 5 and 3 percent impairments to equal a 13 percent impairment of the left upper extremity.

On July 19, 2007 appellant claimed a schedule award. The Office referred the medical record and a statement of accepted facts to an Office medical adviser for an impairment evaluation. In a September 7, 2007 report, the medical adviser found that appellant had reached maximum medical improvement. He noted that Dr. Saunders correctly utilized Figure 16-43, page 477<sup>3</sup> of the A.M.A., *Guides* to determine the abduction/adduction impairments and Figure 16-46, page 479<sup>4</sup> to determine the rotation impairments. The medical adviser found an additional 10 percent impairment for open resection of the distal clavicle under Table 16-27, page 506.<sup>5</sup> He combined the 13 percent and 10 percent ratings to equal a 23 percent impairment of the left upper extremity.

By decision dated January 9, 2008, the Office granted appellant a schedule award for a 23 percent impairment of the left upper extremity. The period of the award ran from June 8, 2007 to September 30, 2008.

Dr. Saunders submitted periodic reports from January to September 2008 diagnosing recurrent impingement of the left shoulder. On November 6, 2008 he performed arthroscopic left rotator cuff repair. Appellant returned to restricted duty in March 2009.

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<sup>2</sup> Figure 16-40, page 476 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack of Flexion and Extension of Shoulder."

<sup>3</sup> Figure 16-43, page 477 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack of Abduction and Adduction of Shoulder."

<sup>4</sup> Figure 16-46, page 479 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack of Internal and External Rotation of Shoulder."

<sup>5</sup> Table 16-27, page 506 of the fifth edition of the A.M.A., *Guides* is entitled "Impairment of the Upper Extremity After Arthroplasty of Specific Bones or Joints."

Dr. Saunders submitted progress notes through October 2009 finding worsening left shoulder pain and stiffness, impingement with abduction and forward flexion and atrophy of the deltoid, supraspinatus and infraspinatus. The rotator cuff remained intact.

On December 28, 2009 appellant claimed an additional schedule award. In a January 5, 2010 letter, the Office advised him to obtain an updated impairment rating from his physician utilizing the sixth edition of the A.M.A., *Guides*, in effect as of May 1, 2009.

In a December 13, 2009 report, Dr. Saunders stated that appellant had attained maximum medical improvement following the November 6, 2008 rotator cuff repair. Referring to the sixth edition of the A.M.A., *Guides*, he opined that appellant had a grade 2 modifier for Functional History (GMFH) due to severe left shoulder pain with overhead work and weakness in the left arm. Dr. Saunders found a grade 3 modifier for Physical Examination (GMPE) due to a severe decrease in functioning compared to the uninjured side, with internal rotation limited to 70 degrees and severe atrophy of the supraspinatus. He also found that, according to Table 15-5,<sup>6</sup> appellant had a class 1 diagnosis-based impairment (CDX) for left shoulder impingement with a rotator cuff tear, which he graded at “C” or seven percent. Dr. Saunders also found a grade 2 modifier for Clinical Studies (GMCS) for a rotator cuff tear confirmed by MRI scan. Applying the net adjustment formula on page 411 of the A.M.A., *Guides*, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), he calculated that (2-1) + (3-1) + (2-1) or 1 + 2 + 1, equaled a net adjustment of four, indicating a seven percent impairment of the left upper extremity based on the primary diagnosis.

On February 17, 2010 the Office referred the medical record and statement of accepted facts to an Office medical adviser for an impairment evaluation. In a February 17, 2010 report, a medical adviser reviewed the medical and surgical history, noting that a “previous schedule award was granted on January 9, 2008 for a 22 percent [impairment] of the left upper extremity.” He concurred with Dr. Saunders’ December 11, 2009 impairment rating and application of the A.M.A., *Guides*. The medical adviser agreed with Dr. Saunders’ finding of a grade modifier of four, elevating the default value of five to E, equaling a seven percent impairment of the left upper extremity.

By decision dated April 20, 2010, the Office issued appellant a schedule award for a seven percent impairment of the left upper extremity. The period of the award ran from December 11, 2009 to May 12, 2010. The decision does not mention the January 9, 2008 schedule award for a 22 percent impairment of the left upper extremity.

### **LEGAL PRECEDENT**

The schedule award provisions of the Act<sup>7</sup> provide 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

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<sup>6</sup> Table 15-5, page 403 of the sixth edition of the A.M.A., *Guides* is entitled “Shoulder Regional Grid: Upper Extremity Impairments.”

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

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>8</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.<sup>9</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>10</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 GMFH, GMPE and GMCS.<sup>11</sup> The net adjustment formula is (GMFH - CDX) + (GMPE -CDX) + (GMCS - CDX).

### ANALYSIS

On January 9, 2008 the Office issued a schedule award for a 22 percent impairment of the left upper extremity, based on impairments from an accepted left shoulder sprain, subacromial decompression and open resection of the distal clavicle. Appellant claimed an additional schedule award after undergoing a November 6, 2008 arthroscopic left rotator cuff repair. Dr. Saunders, an attending Board-certified orthopedic surgeon, submitted a December 13, 2009 report finding a seven percent impairment of the left upper extremity according to the sixth edition of the A.M.A., *Guides*. An Office medical adviser concurred with Dr. Saunders' impairment rating of seven percent. Based on these opinions, the Office issued an April 20, 2010 schedule award for a seven percent impairment of the left upper extremity. However, it is unclear if the April 20, 2010 schedule award was for an additional 7 percent impairment greater than the 22 percent awarded on January 9, 2008 or if it was a duplicate award issued in error.

The Office medical adviser noted the January 9, 2008 schedule award in his February 17, 2010 report. However, he did not state whether he interpreted the 7 percent impairment rating offered by Dr. Saunders on December 13, 2009 as the total impairment of the left arm or an additional impairment above the 22 percent already paid. The Office's April 20, 2010 decision does not mention the January 9, 2008 schedule award. Therefore, it is not clear whether the Office found an additional seven percent impairment of the left upper extremity or mistakenly issued a duplicate schedule award. This issue requires clarification.

On remand of the case, the Office will conduct appropriate development to determine if the April 20, 2010 schedule award for a 7 percent left upper extremity impairment was in

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<sup>8</sup> *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>9</sup> See FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>10</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>11</sup> A.M.A., *Guides* (6<sup>th</sup> ed., 2008), pp. 494-531.

addition to the January 9, 2008 award for a 22 percent impairment of the left arm. Following this and all other development deemed necessary, it will issue an appropriate decision in the case.

**CONCLUSION**

The Board finds that the case is not in posture for decision. The case will be remanded to the Office for additional development.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 20, 2010 is set aside and the case remanded to the Office for further action consistent with this decision and order.

Issued: May 6, 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