

FACTUAL HISTORY

On February 14, 2001 appellant, then a 43-year-old mail processor, filed an occupational disease claim, alleging that right shoulder impingement with rotator cuff tear and medial epicondylitis were caused by repetitious job duties. The Office accepted as employment-related a right rotator cuff tear and right shoulder tendinitis. On July 9, 2001 Dr. Thomas L.P. Johnson, a Board-certified orthopedic surgeon, performed arthroscopic subacromial decompression and mini-arthrotomy with rotator cuff repair of the right shoulder. Appellant returned to full-time sedentary duty on September 12, 2001.² By decision dated May 1, 2003, the Office found that her actual earnings as a mail processing clerk fairly and reasonably represented her wage-earning capacity with zero loss.

On May 13, 2003 appellant was granted a schedule award for an eight percent impairment of the right arm. She resigned from the employing establishment on February 5, 2005, stating that it was for personal reasons.

In a July 2, 2008 report, Dr. George M. Hill, a Board-certified orthopedic surgeon, noted appellant's previous federal employment and that she currently worked in private employment making automobile parts. He advised that bilateral shoulder range of motion was decreased, and diagnosed bilateral, chronic rotator cuff tears with bilateral shoulder pain. A July 22, 2008 magnetic resonance imaging scan of the right shoulder demonstrated postoperative changes versus partial tear and hypertrophic osteoarthritic change of the acromioclavicular joint. On October 29, 2008 Dr. Hill performed arthroscopic repair of the right rotator cuff tear. Appellant stopped work at that time and was placed on the wage-loss compensation rolls.

A March 6, 2009 functional capacity evaluation (FCE), signed by Dr. Hill on March 19, 2009, advised that the overall results were questionable due to inconsistent effort. The report provided right shoulder range of motion measurements and advised that the measurements obtained during the test did not reflect observed range of motion when distracted.³ Lifting was restricted to 40 pounds. In a July 22, 2009 report, Dr. Hill advised that appellant felt that her shoulder was no better since the surgery. He stated that she could work as described in the FCE.

On August 6, 2009 appellant filed a schedule award claim, and in an August 20, 2009 report, Dr. Guillermo Pujadas, a Board-certified orthopedic surgeon and Office medical adviser, noted the previous schedule award and October 2008 surgery. He advised that the date of maximum medical improvement (MMI) was March 6, 2009 and noted that the right shoulder

² On March 9, 1998 appellant filed an occupational disease claim that was accepted for left shoulder impingement and left rotator cuff tear. On July 7, 1999 Dr. Johnson performed arthroscopic repair on the left. On October 26, 2001 appellant was granted a schedule award for a seven percent permanent impairment of the left shoulder. The left shoulder claim was adjudicated under Office file number xxxxxx800, and the right under file number xxxxxx852. On June 7, 2007 the claims were doubled, with the former becoming the master file.

³ The FCE reported right shoulder flexion of 105 degrees, extension of 52 degrees, adduction of 56 degrees, abduction of 90 degrees, internal rotation of 40 degrees and external rotation of 72 degrees.

range of motion measurements, found on the FCE, were invalid. Dr. Pujadas recommended clarification of the range of motion measurements in all directions.⁴

By letter dated September 30, 2009, the Office informed appellant of the type evidence needed to establish entitlement to an increased schedule award. A note to Dr. Hill was appended, informing him that the impairment was to be evaluated in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).⁵ In a report dated October 28, 2009, Dr. Hill advised that appellant was last seen on July 22, 2009 and that MMI was reached on February 25, 2009. He provided range of motion measurements, noting 120 degrees of flexion, 52 degrees of extension, 56 degrees of adduction, 90 degrees of abduction, 40 degrees of internal rotation and 70 degrees of external rotation, and stated that the impairment measurements were based on range of motion measurements both “when and when not aware of measurements.” Dr. Hill concluded that, in accordance with the fourth edition of the A.M.A., *Guides*, appellant had an 11 percent impairment of the right upper extremity.

On November 16, 2009 the Office asked that Dr. Hill provide an impairment analysis in accordance with the sixth edition of the A.M.A., *Guides* and to provide right shoulder range of motion measurements. In a December 21, 2009 decision, it denied appellant’s claim for an additional schedule award on the grounds that the record did not contain a medical report in accordance with the sixth edition of the A.M.A., *Guides*. On December 31, 2009 appellant requested reconsideration and submitted a December 14, 2009 report in which Dr. Hill referenced page 403 of the sixth edition of the A.M.A., *Guides*, and advised that appellant had a class 1 impairment due to a rotator cuff injury, full thickness tear, for an 11 percent right upper extremity impairment. He attached a copy of page 403 of the sixth edition, Table 15-5, Shoulder Regional Grid.

In a January 12, 2010 report, Dr. Pujadas noted his review of Dr. Hill’s December 14, 2009 report and advised that the physician did not explain how he reached his impairment rating. The Office medical adviser again recommended getting clarification of appellant’s right shoulder range of motion measurement in all directions. In a merit decision dated February 17, 2010, the Office found that Dr. Hill provided no rationale for his impairment rating and denied modification of the December 21, 2010 decision. Appellant again requested reconsideration on March 25, 2010, and submitted a March 22, 2010 report in which Dr. Hill advised that MMI was reached on April 1, 2009 and provided the same range of motion measurements as in his October 29, 2009 report. By decision dated April 2, 2010, the Office denied appellant’s reconsideration request.

⁴ By decision dated September 22, 2009, the Office terminated appellant’s monetary compensation, effective September 26, 2009, on the grounds that her physician had released her to modified duty, and at the time she resigned from the employing establishment, she was performing sedentary duty. Appellant did not file an appeal of this decision with the Board.

⁵ A.M.A., *Guides* (6th ed. 2008).

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Act, and its implementing federal regulations,⁶ 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.⁷ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸ For decisions issued after May 1, 2009, the sixth edition will be used.⁹

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).¹⁰ Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment class for the diagnosed condition, Class for Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).¹¹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹²

The sixth edition of the A.M.A., *Guides* also provides for an impairment rating for loss of range of motion. Under section 15.7, the sixth edition states that range of motion is to be used as a stand-alone rating when other grids refer to this section or when no other diagnosis-based sections for the upper extremity are applicable for impairment rating of a condition.¹³

ANALYSIS -- ISSUE 1

The Board finds this case is not in posture for decision as to the degree of right upper extremity impairment, and thus the case will be remanded to the Office for further development. The accepted conditions relevant to this claim are right rotator cuff tear and right shoulder tendinitis. The record reflects that appellant was granted a schedule award on May 13, 2003 for an eight percent impairment of the right arm and on August 6, 2009 she filed a claim for an additional schedule award.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

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

¹⁰ A.M.A., *Guides*, *supra* note 5 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

¹¹ *Id.* at 385-419.

¹² *Id.* at 411.

¹³ *Id.* at 461.

In an August 20, 2009 report, Dr. Pujadas, an Office medical adviser, properly noted that the range of motion values provided on the March 2009 FCE were invalid and recommended clarification of right upper extremity of range of motion in all directions. In an October 28, 2009 report, Dr. Hill, an attending orthopedist, provided right shoulder range of motion measurements and an impairment rating in accordance with the fourth edition of the A.M.A., *Guides*. He noted that appellant was last seen on July 22, 2009 and advised that she had an 11 percent right upper extremity impairment, stating that the range of motion measurements were done “when and when not aware of measurements.” Subsequent to May 1, 2009, the appropriate edition of the A.M.A., *Guides* to be used for determining impairments is the sixth edition.¹⁴ A medical opinion, such as Dr. Hill’s October 28, 2009 report, not based on the appropriate edition of the A.M.A., *Guides*, is of diminished probative value in determining the extent of a claimant’s permanent impairment.¹⁵

Following an Office request that he provide an impairment evaluation in accordance with the sixth edition of the A.M.A., *Guides*, in a December 14, 2009 report, Dr. Hill again found that appellant had an 11 percent right upper extremity impairment. In a brief, two-line report, he stated that, in accordance with page 403 of the sixth edition, appellant had a class 1 impairment for rotator cuff injury, full thickness tear. Under Table 15-5, Shoulder Regional Grid, on page 403 of the sixth edition, a full-thickness rotator cuff injury can be rated as class 0, for no impairment, or class 1, for a “residual loss, functional with normal motion,” and provides that a class 1 impairment would be in a range from three to seven percent.¹⁶ As noted above, under the sixth edition, for upper extremity impairments the evaluator identifies the impairment class for the diagnosed condition, which is then adjusted by grade modifiers. Dr. Hill merely provided a conclusory impairment rating of 11 percent under the sixth edition and did not address how he rated impairment based on the appropriate formula and grade modifiers described above. Accordingly, Dr. Hill’s December 14, 2009 report is insufficient to establish that appellant is entitled to an additional right upper extremity schedule award.

Table 15-5, however, marks the shoulder impairment diagnosis due to a rotator cuff injury with an asterisk. The asterisk indicates that, if motion loss is present, the shoulder impairment may alternatively be assessed using loss of range of motion.¹⁷ The record contains two right shoulder range of motion measurements, those done at the March 2009 FCE that were deemed invalid, and those provided by Dr. Hill on October 28, 2009. In his October 28, 2009 report, Dr. Hill indicated that he had last seen appellant on July 22, 2009. His report dated July 22, 2009 did not include range of motion measurements. It is therefore unclear when the range of motion measurements provided in the October 28, 2009 report were completed. Moreover, in his January 12, 2010 report, Dr. Pujadas referenced his August 20, 2009 and the FCE range of motion findings. He, however, did not indicate that he had reviewed the range of motion findings provided by Dr. Hill on October 28, 2009. Nonetheless, in his January 12, 2010

¹⁴ *Supra* note 9.

¹⁵ *Fritz A. Klein*, 53 ECAB 642 (2002).

¹⁶ A.M.A., *Guides*, *supra* note 5 at 403.

¹⁷ *Id.*

report, Dr. Pujadas again requested clarification of right shoulder range of motion in all directions, and there is nothing in the case record to indicate that the Office asked Dr. Hill for further clarification or further developed the evidence prior to issuing the merit decision on February 17, 2010 denying modification of the December 21, 2010 decision.

The Board also notes that the record contains contradictory dates of MMI. Dr. Pujadas consistently advised that it was reached on March 6, 2009. Dr. Hill, however, initially advised that MMI was reached on February 25, 2009, yet later stated that the date of MMI was April 1, 2009.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. Once the Office has begun an investigation of a claim, it must pursue the evidence as far as reasonably possible. It has an obligation to see that justice is done.¹⁸ Without a detailed report comporting with the standards of the sixth edition of the A.M.A., *Guides*, the Board is unable to determine whether appellant has an increased impairment due to the accepted right upper extremity conditions that would entitle her to an additional schedule award. Accordingly, as there is no medical evidence of record that fully comports with the A.M.A., *Guides* or provides a complete analysis of appellant's right upper extremity impairment, the Board finds that the case is not in posture for decision. The case is remanded to the Office for further development on the extent of impairment of appellant's right upper extremity in accordance with the sixth edition of the A.M.A., *Guides*.

In light of the Board's findings regarding Issue 1, Issue 2 is rendered moot.

CONCLUSION

The Board finds that the case is not in posture for decision as to the extent of appellant's right upper extremity impairment.

¹⁸ A.A., 59 ECAB 726 (2008).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 12 and February 17, 2010 be set aside and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: May 16, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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