United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 10-2064**
	)	**Issued: May 9, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Las Vegas, NV, Employer	)	

Appearances:
Philip J. Trenchak, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2010 appellant filed a timely appeal of an April 12, 2010 Office of Workers' Compensation Programs' merit decision denying a schedule award. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has permanent impairment of his left upper extremity entitling him to a schedule award.

On appeal appellant alleged that he was given a default finding of zero percent impairment as Dr. Ronald C. Koe, a Board-certified orthopedic surgeon, had not provided an impairment rating.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 18, 2009 appellant, then a 62-year-old mail handler, filed a traumatic injury claim when he injured his left shoulder and back that day pushing a cage of mail up the ramp into a trailer. By decision dated May 29, 2009, the Office accepted the claim for sprain of the left shoulder and upper arm, acromioclavicular (AC) joint injury and complete rotator cuff rupture. Dr. Koe reviewed a magnetic resonance imaging (MRI) scan on June 2, 2009 and found a full thickness left rotator cuff tear with possible labral tear. He performed left shoulder arthroscopic labral repair, rotator cuff repair acromioplasty with subacromial decompression and partial distal clavicle resection on June 24, 2009.

On October 27, 2009 appellant filed a claim for a schedule award. He submitted a note from Dr. Koe dated October 27, 2009 stating that he could return to full-duty work and had reached maximum medical improvement.

In a separate note dated October 27, 2009, Dr. Koe provided appellant's left shoulder range of motion finding 160 degrees of flexion and 150 degrees of abduction. He stated that appellant had no tenderness, no muscle spasm and no impingement. Dr. Koe found normal strength and no abnormality on sensory examination. He responded to the Office's November 2, 2009 request for information on November 9, 2009. Dr. Koe stated that appellant reached maximum medical improvement on October 27, 2009 and had no loss of range of motion, no loss of strength, atrophy, ankylosis or sensory changes. He stated that appellant had no subjective complaints such as pain or discomfort. Dr. Koe noted that he was not a certified rating physician and did not provide a percentage of impairment.

The Office referred the medical records to the district medical consultant, Dr. Ellen Pichey, a Board-certified family practitioner. On February 22, 2010 Dr. Pichey applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.*[2] She stated that the diagnosis-based estimate for AC joint injury was 10 percent.[3] Dr. Pichey awarded a clinical studies grade modifier of two[4] and physical examination grade modifier of one.[5] She found functional history grade modifier of zero and a modification factor of zero.[6] Dr. Pichey found that appellant had no impairment of the left upper extremity.

By decision dated April 12, 2010, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence did not support any ratable permanent impairment of the left arm to warrant a schedule award.

[2] A.M.A., *Guides*, 6th edition (2009).

[3] *Id.* at 403, Table 15-5.

[4] *Id.* at 410, Table 15-9.

[5] *Id.* at 408, Table 15-8.

[6] *Id.* at 406, Table 15-7 and p. 411.

LEGAL PRECEDENT

The schedule award provision of the Act[7] and its implementing regulations[8] set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of use, of scheduled members or functions 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 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 Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[9]

In addressing upper extremity impairments, 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). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10]

ANALYSIS

The Office accepted that appellant sustained left shoulder injuries including sprain of shoulder and upper arm, AC injury as well as complete rotator cuff rupture on the left. On June 24, 2009 Dr. Koe performed left shoulder arthroscopic labral repair, rotator cuff repair acromioplasty with subacromial decompression and partial distal resection. He found that appellant reached maximum medical improvement on October 27, 2009. Dr. Koe stated that appellant had 160 degrees of flexion and 150 degrees of abduction with no tenderness, no muscle spasm and no impingement. He reported that appellant had normal strength and normal sensory examination. Dr. Koe stated that appellant did not report pain or discomfort.

The Office medical adviser reviewed Dr. Koe's report and found that under the A.M.A., *Guides*, the diagnosis-based estimate for AC joint injury was class 1, with impairment ratings from 1 to 10 percent based on appellant's surgery for distal clavicle resection.[11] She applied the formula in the A.M.A., *Guides* and awarded a clinical studies grade modifier two as appellants June 2, 2009 MRI scan confirmed a rotator cuff tear[12] and physical examination grade modifier one due to appellant's loss of range of motion from three percent impairment due of flexion and

[7] 5 U.S.C. §§ 8101-8193, 8107.

[8] 20 C.F.R. § 10.404.

[9] For new decisions issued after May 1, 2009 the Office began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6th ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[10] A.M.A., *Guides* 411.

[11] *Id.* at 403, Table 15-5.

[12] *Id.* at 410, Table 15-9.

three percent impairment due loss of abduction.[13] Dr. Pichey found functional history grade modifier zero, as appellant had no other ongoing symptoms as reported by Dr. Koe. The Office medical adviser determined through applying the formula that appellant had a modification factor of zero.[14] The Board finds that the Office medical adviser properly determined the grade modifiers and that appellant had a modification factor of zero.

Although the Office medical adviser properly determined the elements of appellant's impairment rating, she failed to apply the final step of the A.M.A., *Guides* formula which notes that a zero modification factor results in a grade C in appellant's class 1 impairment of the upper extremity or 10 percent impairment.[15] The Board finds that, based on the medical evidence in the record and proper application of the A.M.A., *Guides*, appellant has 10 percent impairment of his left arm. As the medical adviser erred in the rating, the case will be remanded for a *de novo* decision conforming to this decision of the Board.

CONCLUSION

The Board finds that appellant has 10 percent impairment of his left upper extremity.

[13] *Id.* at 472, 475, Table 15-34.

[14] (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) or (0-1) + (1-1) + (2-1) = 0; A.M.A., *Guides*, 406, Table 15-7 and p. 411.

[15] A.M.A., *Guides* 411-13; 403, Table 15-5.

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2010 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for further development consistent with this decision of the Board.

Issued: May 9, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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