United States Department of Labor
Employees' Compensation Appeals Board

F.T., Appellant	)	
and	)	**Docket No. 11-339**
	)	**Issued: September 14, 2011**
U.S. POSTAL SERVICE, RICHMOND PROCESSING & DISTRIBUTION CENTER ANNEX, Sandston, VA, Employer	)	

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 23, 2010 appellant timely appealed the November 2, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which granted a schedule award. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than 21 percent impairment of the left upper extremity.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

Appellant, then a 63-year-old mail processing clerk, injured his left upper extremity in the performance of duty on August 5, 2008.[2] OWCP accepted the claim for left shoulder rotator cuff sprain. It also authorized two arthroscopic procedures, the latest of which involved an April 2, 2009 revision rotator cuff repair.[3] Appellant received appropriate wage-loss compensation. In July 2009, he returned to work in a limited-duty capacity. Appellant subsequently filed a claim for a schedule award (Form CA-7). Dr. Thomas G. Franck provided an April 1, 2010 impairment rating under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

Dr. Franck based his upper extremity impairment rating on a March 4, 2010 physical examination, which noted left shoulder range of motion measurements. He reported left shoulder active range of motion (ROM) results as follows: 90 degrees flexion; 40 degrees extension; 90 degrees abduction; 20 degrees adduction; 50 degrees internal rotation and 40 degrees external rotation.

Dr. Franck diagnosed left rotator cuff tear and left proximal biceps tendon tear, status post surgical repair. He noted that he had calculated both a diagnosis-based impairment (DBI) and a ROM impairment in accordance with Chapter 15 (The Upper Extremities), A.M.A., *Guides* (6th ed. 2008). However, Dr. Franck considered the DBI rating inappropriate because it did not include classification for proximal biceps tear and because there were significant deficits of active and passive left shoulder ROM. Applying Table 15-34, A.M.A., *Guides* 475, he found 12 percent left upper extremity impairment due to loss of shoulder ROM.

On June 8, 2010 the district medical adviser (DMA) reviewed the record, including Dr. Franck's impairment rating, and found 21 percent impairment of the left upper extremity. He applied the sixth edition of the A.M.A., *Guides* and concurred with Dr. Franck's 12 percent rating for loss of left shoulder ROM. However, the DMA found an additional 10 percent DBI due to appellant's November 2008 distal clavicle excision. With respect to this latter DBI rating, he cited Table 15-5 (Shoulder Regional Grid), A.M.A., *Guides* 403. The DMA found that appellant had reached maximum medical improvement on April 9, 2010.

By decision dated November 2, 2010, OWCP granted a schedule award for 21 percent impairment of the left upper extremity. The award covered a period of 65.52 weeks beginning April 9, 2010.

[2] Appellant reported injuring himself while lifting a sack. He had a preexisting right shoulder injury for which he had undergone surgery in July 2007.

[3] Dr. William E. Nordt, III, a Board-certified orthopedic surgeon, performed both procedures. On November 11, 2008 he performed a left rotator cuff repair with acromioplasty and distal clavicle excision. Dr. Nordt's postoperative diagnosis was torn left rotator cuff. Following the second surgery, his postoperative diagnoses included recurrent rotator cuff tear and left biceps tendon rupture.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[4] FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[5] Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.[6]

ANALYSIS

Appellant's physician, Dr. Franck, found that appellant had 12 percent left upper extremity permanent impairment due to loss of motion in the shoulder. The DMA agreed with the 12 percent ROM impairment and found an additional 10 percent impairment DBI based upon appellant's November 11, 2008 left shoulder distal clavicle excision, for a combined left upper extremity impairment rating of 21 percent. Appellant argued that the DMA meant to award 22 percent impairment rather than 21 percent as specifically noted in his June 8, 2010 report.

The Board finds that the evidence of record does not establish that appellant has more than a 21 percent permanent impairment of the left upper extremity.

Dr. Franck found a 12 percent impairment of the left upper extremity based on loss of shoulder motion. He stated that the alternative rating method DBI was inappropriate because it did not adequately reflect appellant's proximal biceps tear and because there were significant motion deficits in the left shoulder. The A.M.A., *Guides* instruct that ROM may under specific circumstances be selected as an alternative approach to rating impairment, however an impairment rating that is calculated using ROM may not be combined with the DBI, which stands alone as the rating.[7] It was error on the part of OWCP's medical adviser to combine the range of motion rating with the diagnosis-based rating to total 21 percent.

The Board finds that, pursuant to Table 15-34, appellant's 90 degrees shoulder flexion equals three percent impairment, 40 degrees extension equals one percent impairment, 90 degrees abduction equals three percent impairment, 20 degrees adduction equals one percent impairment, 50 degrees internal rotation equals two percent impairment and 40 degrees of

[4] For a total loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

[5] 20 C.F.R. § 10.404 (2010).

[6] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *see* also Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

[7] A.M.A., *Guides* 390.

external rotation equals two percent impairment. When added the range of motion permanent impairment of the left shoulder totals 12 percent.[8]

Despite appellant's contended that he is entitled to an award for a 22 percent permanent impairment of the left upper extremity, the A.M.A., *Guides* clearly state that he is entitled to an award calculated by either the range of motion methodology, or the DBI methodology, but not both. The Board concludes that he has not submitted any probative medical evidence to establish greater than 21 percent impairment of the left upper extremity.

CONCLUSION

The Board finds that appellant does not have more than 21 percent impairment of the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the November 2, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[8] *Id*. at 475.