

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

S.B., Appellant)	
)	
and)	Docket No. 11-521
)	Issued: September 15, 2011
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Carol Stream, IL, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 28, 2010 appellant filed a timely appeal of a November 23, 2010 Office of Workers' Compensation Programs' (OWCP) schedule award decision. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c)(1) and 501.3, the Board has jurisdiction to consider the merits of the schedule award case.

ISSUE

The issue is whether appellant has more than six percent impairment of the right upper extremity for which she received a schedule award.

Appellant disagreed with the amount of her schedule award and asked that the medical evidence be evaluated to include her pain and suffering from her surgery.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 20, 2009 appellant, then a 44-year-old mail processor, filed an occupational disease claim alleging that she developed a right shoulder condition due to factors of her federal employment. On July 24, 2009 OWCP accepted her claim for right rotator cuff tear. Appellant underwent a magnetic resonance imaging (MRI) scan on May 18, 2009 which demonstrated tendinosis and partial thickness tear of the supraspinatus with associated hypertrophic degenerative changes of the acromioclavicular joint. On September 21, 2009 she underwent a right shoulder arthroscopy with arthroscopic rotator cuff repair, arthroscopic SLAP repair and arthroscopic subacromial decompression performed by Dr. Raghu Pulluru, a Board-certified orthopedic surgeon.

Appellant filed a claim for a schedule award on March 9, 2010. In a letter dated April 8, 2010, OWCP requested that she provide information regarding the extent of her permanent impairment for schedule award purposes. On April 7, 2010 Dr. Pulluru stated that appellant had reached maximum medical improvement. He found that she had a full range of motion shoulder on physical examination with no instability and significantly improved strength.

In a report dated July 20, 2010, Dr. Arius Patolot, a physician Board-certified in physical medicine and rehabilitation, examined appellant for schedule award purposes. He listed her range of motion as abduction 160 degrees, adduction 50 degrees, flexion 180 degrees, extension 40 degrees, internal rotation 70 degrees, external rotation 80 degrees. Dr. Patolot stated that elbow wrist and hand range of motion and motor strength were normal. He concluded that appellant had two percent impairment due to loss of range of motion. In regards to motor strength testing, Dr. Patolot found 4/5 in abduction for a two percent impairment and 4/5 of flexion for two percent impairment or a total four percent impairment for loss of motor strength. He concluded that appellant had six percent impairment of her right upper extremity.

On November 1, 2010 Dr. David H. Garelick, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed Dr. Patolot's report. He found that it failed to comport with the A.M.A., *Guides*, as Dr. Patolot rated both loss of strength and loss of motion. Dr. Garelick noted that appellant demonstrated 40 degrees of extension, one percent impairment, 160 degrees of abduction, three percent impairment and 70 degrees of internal rotation, two percent impairment.² He found that the remainder of her range of motion was not ratable. Dr. Garelick concluded that appellant had six percent impairment of her right upper extremity due to loss of range of motion. He noted that appellant's range of motion deficit qualified for a grade 1 modifier.³ Appellant also had significant residual complaints which qualified a grade 0 modifier.⁴ Dr. Garelick stated, "Given the functional history modifier is less than the [range of motion] deficit modifier, no additional [permanent impairment] is awarded." He concluded that appellant reached maximum medical improvement on July 20, 2010.

² A.M.A., *Guides* 475, Figure 15-34.

³ *Id.* at 477, Table 15-35.

⁴ *Id.* at 406, Table 15-7.

On November 23, 2010 OWCP granted appellant a schedule award for six percent impairment of her right upper extremity.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing regulations⁶ 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. FECA, 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 OWCP. 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁷

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).⁸ Under the sixth edition, for upper extremity impairments 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).⁹ The net adjustment formula is GMFH - CDX + GMPE - CDX + GMCS - CDX.¹⁰

Although the diagnosis-based approach is the preferred method of evaluating permanent impairment under the sixth edition of the A.M.A., *Guides*,¹¹ Table 15-5, Shoulder Regional Grid, provides that, if loss of motion is present, the impairment may alternatively be assessed under section 17-7, range of motion impairment.¹² A range of motion impairment stands alone and is not combined with a diagnosis-based impairment.¹³

⁵ 5 U.S.C. §§ 8101-8193, 8107.

⁶ 20 C.F.R. § 10.404.

⁷ For new decisions issued after May 1, 2009 OWCP 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); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁸ A.M.A., *Guides* (6th ed. 2009).

⁹ *Id.* at 385-419.

¹⁰ *Id.* at 411.

¹¹ *Id.* at 461, Section 15.7.

¹² *Id.* at 401-05.

¹³ *Supra* note 11.

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with its medical adviser providing rationale for the percentage of impairment specified.¹⁴

ANALYSIS

The Board finds that appellant has six percent impairment of the right upper extremity. Dr. Patolot did not provide an impairment rating that correlated his findings of physical examination and to the A.M.A., *Guides*. The only medical report of record that properly references the applicable tables and grids of the sixth edition was that of Dr. Garelick, OWCP's medical adviser, who reviewed Dr. Patolot's finding on examination of the right shoulder and noted that appellant had 40 degrees of extension, one percent impairment, 160 degrees of abduction, three percent impairment and 70 degrees of internal rotation, two percent impairment.¹⁵ Dr. Garelick found that the remainder of appellant's range of motion was not ratable. The Board finds that he properly concluded that appellant had six percent impairment of her right upper extremity due to loss of range of motion.

Table 15-36 provides that a range of motion impairment may be adjusted by functional history.¹⁶ Dr. Garelick noted that appellant had a range of motion modifier of grade 1,¹⁷ based on a loss of range of motion of less than 20 percent of the member. He further noted that she had no significant residual complaints for a grade 0 modifier.¹⁸ Dr. Garelick stated, "Given the [GMFH] modifier is less than the [range of motion] deficit modifier, no additional [permanent impairment] is awarded." The Board finds that he properly applied the A.M.A., *Guides* and determined that appellant had six percent impairment of her right arm.

On appeal, appellant contended that she had additional impairment based on pain and suffering from surgery. As noted, the A.M.A., *Guides* provide the method for calculating the extent of permanent impairment. FECA provides for an impairment rating only after maximum medical improvement has been reached. The medical evidence of record does not support appellant's claim of impairment due to pain resulting from her accepted employment injury. For these reasons, the weight of the medical evidence establishes that she has no more than six percent impairment of her right upper extremity.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

¹⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹⁵ *Supra* note 2.

¹⁶ *Id.* at 477, Table 15-36.

¹⁷ *Supra* note 3.

¹⁸ *Supra* note 16.

CONCLUSION

The Board finds that the weight of the medical evidence establishes that appellant has no more than six percent impairment of her right upper extremity for which she has received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2011
Washington, DC

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

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

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