

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

M.H., Appellant)	
)	
and)	Docket No. 11-1860
)	Issued: April 3, 2012
DEPARTMENT OF THE INTERIOR, BUREAU)	
OF LAND MANAGEMENT, Ridgecrest, CA,)	
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
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 9, 2011 appellant filed a timely appeal from a July 19, 2011 merit schedule award decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant sustained more than a seven percent permanent impairment of the left upper extremity for which he received a prior schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 15, 2008 appellant, then a 50-year-old wrangler and motor vehicle operator, was kicked in the left shoulder by a horse.² An October 30, 2008 magnetic resonance imaging (MRI) scan obtained by Dr. Viken Manjikian, a Board-certified diagnostic radiologist, exhibited arthritis involving the anterolateral aspect of the humeral head and acromioclavicular joint, subacromial bursitis and anterolateral supraspinatus tendinosis. Progress notes for the period September 18 to December 18, 2008 from Dr. Mohamed Z. Lameer, an orthopedic surgeon, diagnosed ruptured long head of the biceps tendon. Appellant filed a claim for a schedule award on November 24, 2008.

On January 8, 2009 OWCP accepted appellant's claim for left superior glenoid labrum lesion. Appellant received compensation for temporary disability.

Appellant filed a claim for a schedule award on March 6, 2009 and submitted medical evidence. In a January 20, 2009 progress note, Dr. Lameer observed left arm discomfort, stable range of motion (ROM) and diminished strength and diagnosed ruptured long head of the biceps tendon. In a March 9, 2009 note, he documented similar clinical findings and stated that appellant reached maximum medical improvement. Dr. Lameer recommended conservative treatment and remarked, "We will have at least an 80 percent return of function."

On February 2, 2011 OWCP requested that appellant's physician submit a medical report which rated impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).³

On June 30, 2011 Dr. Arthur S. Harris, OWCP's medical adviser and a Board-certified orthopedic surgeon, reviewed Dr. Lameer's findings and pointed out that he did not calculate an impairment rating based on the A.M.A., *Guides*. Because the medical evidence did not demonstrate any significant change in appellant's level of impairment, Dr. Harris determined that an additional schedule award was not warranted. He listed March 9, 2009 as the date of maximum medical improvement.

By decision dated July 19, 2011, OWCP denied appellant's claim for a schedule award, finding that the medical evidence did not establish that he sustained additional impairment above seven percent.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from

² The case record indicates that appellant previously injured his left shoulder at work on August 21, 2007, which OWCP accepted for left rotator cuff strain and tear. OWCP File No. xxxxxx148. Appellant underwent arthroscopic surgery on October 29, 2007. Subsequently, OWCP granted a schedule award for seven percent permanent impairment of the left upper extremity.

³A.M.A., *Guides* (6th ed. 2008).

loss of or loss of use of scheduled members or functions of the body.⁴ However, FECA 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 to all claimants, good administrative practice necessitates 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 implementing regulations as the appropriate standard for evaluating schedule losses.⁵

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). 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). The net adjustment formula is (GMFH -- CDX) + (GMPE -- CDX) + (GMCS -- CDX).⁶ Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.⁷

ANALYSIS

Appellant sustained a left shoulder injury in the performance of duty on September 15, 2008, which OWCP accepted for left superior glenoid labrum lesion. He thereafter filed a claim for an additional schedule award and submitted January 20 and March 9, 2009 progress notes from Dr. Lameer, the latter of which suggested appellant would have an 80 percent return of function of the left arm following conservative treatment. Dr. Lameer did not specifically calculate any impairment under the sixth edition of the A.M.A., *Guides*. On February 2, 2011 OWCP requested that appellant submit a physician's report rating his impairment under the sixth edition of the A.M.A., *Guides*.

The Board finds that the medical evidence did not sufficiently establish that appellant sustained more than a seven percent permanent impairment of the left upper extremity for which he received a prior schedule award. According to OWCP procedures, an attending physician's impairment rating report must include a detailed description of the impairment and a rationalized opinion as to the percentage of permanent impairment under the A.M.A., *Guides*.⁸ In the present case, Dr. Lameer did not provide any explanation to support his opinion that appellant's left upper extremity would "have at least an 80 percent return of function." Furthermore, as Dr. Harris correctly noted, Dr. Lameer failed to calculate an impairment rating using the

⁴ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

⁵ *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

⁶ *R.Z.*, Docket No. 10-1915 (issued May 19, 2011).

⁷ *J.W.*, Docket No. 11-289 (issued September 12, 2011).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6(a)-(c) (January 2010).

appropriate scheme set forth in the A.M.A., *Guides*. Because appellant submitted insufficient medical evidence, OWCP properly denied his claim for an additional schedule award.

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.

CONCLUSION

The Board finds that appellant did not sustain more than a seven percent permanent impairment of the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board