



## **FACTUAL HISTORY**

OWCP accepted that on October 5, 2005 appellant, then a 24-year-old city carrier, sustained a right rotator cuff tear and right shoulder sprain when he lifted a container of mail.<sup>2</sup> On February 26, 2007 Dr. Scott T. Gray, an attending Board-certified orthopedic surgeon, performed arthroscopic repair of a torn right rotator cuff with subacromial decompression. He held appellant off work through April 2007. Appellant received compensation for total disability.<sup>3</sup> He remained off work through April 20, 2008 and received compensation. Appellant returned to limited-duty work on April 21, 2008. The employing establishment terminated him in July 2008 due to a personnel issue.

On June 2, 2009 appellant claimed a schedule award. He submitted a July 10, 2008 impairment rating from Dr. David Weiss, an attending osteopathic physician, who found five percent permanent impairment of the right upper extremity according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, "A.M.A., *Guides*") then in effect.<sup>4</sup>

In an updated September 28, 2009 report, Dr. Weiss revised his July 10, 2008 opinion to conform to the sixth edition of the A.M.A., *Guides*. He opined that appellant had reached maximum medical improvement. Dr. Weiss noted a *QuickDASH* score of 25 percent for the right arm. Right shoulder forward elevation was 160/180 degrees, abduction 116/180 degrees, cross-over adduction 65/75 degrees, external rotation 80/90 degrees and internal rotation was to T8. Dr. Weiss noted normal muscle strength throughout the right upper arm and a positive impingement sign. He diagnosed post-traumatic impingement syndrome, status post right shoulder arthroscopy and a partial thickness rotator cuff tear. Referring to Table 15-5, page 403<sup>5</sup> of the sixth edition of the A.M.A., *Guides*, Dr. Weiss found a class 1 diagnosis-based impairment (CDX) for a partial thickness rotator cuff tear with residual symptoms, entailing a default rating of three percent. He noted a grade modifier for Functional History (GMFH) of 1 according to Table 15-7, page 406,<sup>6</sup> for pain with strenuous activity and a *QuickDASH* score of 25.

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<sup>2</sup> An October 10, 2005 magnetic resonance imaging (MRI) scan of the right shoulder showed acromioclavicular impingement, fluid in the subdeltoid bursa and an intact rotator cuff.

<sup>3</sup> On April 24, 2007 OWCP obtained a second opinion from Dr. Robert Israel, a Board-certified orthopedic surgeon, who opined that appellant could work full-time limited duty. Dr. Gray submitted an April 16, 2007 report finding appellant remained totally disabled. OWCP found a conflict of medical opinion between Drs. Israel and Gray. To resolve the conflict, OWCP obtained an impartial opinion from Dr. Martin Wolpin, a Board-certified orthopedic surgeon. In an October 31, 2007 report, Dr. Wolpin found appellant capable of full-time light-duty work with lifting limited to five pounds. A December 4, 2007 investigative report indicated that appellant attended college classes and participated in dance lessons while receiving compensation for total disability from January 9 to October 23, 2007. In a January 16, 2008 addendum, Dr. Wolpin noted reviewing surveillance information from the employer and stated that appellant's academic and dance activities did not alter his opinion that appellant could work full time with limited lifting.

<sup>4</sup> In a July 28 and November 13, 2009 letters, OWCP advised appellant to submit an impairment rating from his attending physician referring to the sixth edition of the A.M.A., *Guides*, in effect as of May 1, 2009.

<sup>5</sup> Table 15-5, page 403 of the A.M.A., *Guides* is entitled "Shoulder Regional Grid."

<sup>6</sup> Table 15-7, page 406 of the A.M.A., *Guides* is entitled "Adjustment Grid Summary."

Dr. Weiss determined a grade modifier for Physical Examination (GMPE) of 1 according to Table 15-8<sup>7</sup> for “mild motion loss.” He noted a grade modifier for Clinical Studies (GMCS) of 2 according to Table 15-9<sup>8</sup> due to MRI scan evidence of a partial rotator cuff tear. Using the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), or (1-1) + (1-1) + (2-1), Dr. Weiss calculated a grade adjustment of 1, raising the CDX default of three percent to a four percent impairment of the right arm. Dr. Weiss explained that appellant’s impairment could also be evaluated using the range of motion method. Referring generally to Table 15-34, page 475,<sup>9</sup> he found three percent impairment for limited flexion and three percent impairment for limited abduction, totaling six percent impairment of the right arm. Dr. Weiss opined that the range of motion rating method should be used as it resulted in a higher calculated percentage of impairment than the diagnosis-based method.

On February 20, 2010 an OWCP medical adviser concurred with Dr. Weiss’ calculation of a diagnosis-based four percent impairment of the right arm. In an April 1, 2010 report, the medical adviser explained that diagnosis-based assessment was the most appropriate to appellant’s case as the range of motion method should not be used if other rating methods were applicable. On May 18, 2010 OWCP requested that appellant submit a supplemental report from Dr. Weiss explaining his reliance on the range of motion assessment method. As appellant did not respond, OWCP referred appellant to Dr. Stanley Soren, a Board-certified orthopedic surgeon, for a second opinion. In an August 3, 2010 report, Dr. Soren reviewed the medical record and a statement of accepted facts. He found full abduction, adduction and internal rotation of the right shoulder, with external rotation limited to 80/90 degrees. Dr. Soren concurred with Dr. Weiss’ determination of four percent right upper extremity impairment using the diagnosis-based method. On September 7, 2010 an OWCP medical adviser concurred with Dr. Soren’s opinion.

By decision dated September 15, 2010, OWCP granted appellant a schedule award for four percent permanent impairment of the right upper extremity.

In a September 21, 2010 letter, counsel requested a telephonic video hearing, held January 25, 2011. At the hearing, he asserted that appellant had six percent impairment based on restricted motion as it was greater than the four percent awarded for diagnosis-based impairment. After the hearing, counsel submitted a February 11, 2011 report from Dr. Weiss contending that a range of motion rating was more applicable to appellant’s case as he had limited motion after subacromial decompression.

By decision dated and finalized April 26, 2011, an OWCP hearing representative affirmed OWCP’s September 15, 2010 schedule award determination based on the opinions of Dr. Soren and OWCP’s medical advisers who explained that the diagnosis-based rating method was the most applicable to appellant’s situation.

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<sup>7</sup> Table 15-8, page 408 of the A.M.A., *Guides* is entitled “Physical Examination Adjustment: Upper Extremities.”

<sup>8</sup> Table 15-9, page 410 of the A.M.A., *Guides* is entitled “Clinical Studies Adjustment: Upper Extremities.”

<sup>9</sup> Table 15-34, page 475 of the A.M.A., *Guides* is entitled “Shoulder Range of Motion.”

In a July 27, 2011 letter, appellant requested reconsideration. He contended that he was entitled to a schedule award based on loss of motion as it was higher than the diagnosis-based impairment calculation. Alternatively, appellant asserted a conflict of medical opinion between Dr. Weiss and Dr. Soren.

On August 10, 2011 OWCP asked an OWCP medical adviser to explain which rating method was most appropriate to evaluate appellant's right arm impairment. In an August 12, 2011 report, the medical adviser opined that Dr. Soren was justified in using the diagnosis-based method. He also noted that, using Dr. Soren's findings, appellant had no more than four percent right arm impairment based on limited range of motion. The medical adviser noted that appellant's range of motion improved during the two years between Dr. Weiss' July 10, 2008 examination and Dr. Soren's August 3, 2010 examination. He explained that the diagnosis-based method was more appropriate as appellant had essentially normal motion on Dr. Soren's examination.

By decision dated November 1, 2011, OWCP denied modification on the grounds that the medical evidence did not demonstrate that appellant sustained more than a four percent impairment of the right upper extremity for which he received the September 15, 2010 schedule award. It found that Dr. Soren's opinion continued to represent the weight of the medical evidence.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>10</sup> provide for compensation to employees sustaining impairment from loss or loss of use of specified members 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 sound 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. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.<sup>11</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.<sup>12</sup>

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).<sup>13</sup> Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE

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<sup>10</sup> 5 U.S.C. § 8107.

<sup>11</sup> *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>13</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008), page 3, Section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

and GMCS.<sup>14</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX). The A.M.A., *Guides* divides the upper extremity into regions for rating purposes. The hand is one of the designated regions.<sup>15</sup>

### ANALYSIS

OWCP accepted that appellant sustained a right shoulder sprain and right rotator cuff tear, requiring a right rotator cuff repair with subacromial decompression on February 26, 2007. Appellant claimed a schedule award on June 2, 2009. In support of his claim, he submitted the July 10, 2008 and updated September 28, 2009 reports from Dr. Weiss, an attending physician. In the September 28, 2009 report, Dr. Weiss noted using the sixth edition of the A.M.A., *Guides* and found a class 1 diagnosis-based impairment for a partial thickness right rotator cuff tear with residuals. He noted a grade 1 modifier for functional history for pain with vigorous activity and a *QuickDASH* score of 25, a grade 1 modifier for physical examination for mild motion loss, and a grade 2 modifier for clinical studies due to MRI scan evidence of a partial rotator cuff tear. The net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX) resulted in a grade adjustment of 1, raising the default three percent impairment to four percent. However, Dr. Weiss contended that appellant had six percent impairment based on limited motion, but did not clearly explain why the alternative rating method was the more appropriate.

Dr. Soren, a second opinion physician, submitted an August 3, 2010 report concurring with Dr. Weiss' four percent impairment rating, finding essentially normal motion in the right shoulder. Based on Dr. Soren's opinion, OWCP issued a schedule award on September 15, 2010 for a four percent impairment of the right upper extremity.

Pursuant to a hearing, Dr. Weiss asserted that the range of motion method was more applicable to appellant's case as he had residuals after subacromial decompression. However, an OWCP medical adviser explained on August 12, 2011 that the diagnosis-based model was the most appropriate rating method as appellant had essentially normal right shoulder motion as of Dr. Soren's August 3, 2010 examination, significantly improved from Dr. Weiss' July 10, 2008 examination. OWCP affirmed the schedule award on November 1, 2011.

The Board finds that Dr. Soren applied the appropriate tables and grading schemes of the A.M.A., *Guides* in determining four percent impairment using the diagnosis-based rating method. Dr. Soren based his opinion on the medical record and a statement of accepted facts. He performed a thorough clinical examination, noting normal findings with the exception of a 10-degree loss of external rotation. Dr. Soren used the A.M.A., *Guides* net adjustment formula to calculate a four percent diagnosis-based impairment of the right upper extremity. An OWCP medical adviser explained that it was inappropriate for Dr. Weiss to rely on a range of motion based impairment as the diagnosis-based method was the preferred rating rubric. Additionally, the medical adviser noted that a range of motion impairment would not yield any greater impairment as appellant's range of motion improved significantly between Dr. Weiss' July 10, 2008 examination and Dr. Soren's August 3, 2010 assessment. Therefore, OWCP's

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<sup>14</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008), pp. 494-531.

<sup>15</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008), page 384, Figure 15-1, "Upper Extremity Regions."

November 1, 2011 decision affirming the September 15, 2010 schedule award is appropriate under the law and facts of this case.

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.

On appeal, counsel asserts that appellant sustained a six percent impairment of the right upper extremity based on the range of motion rating method. As stated above, the medical evidence supports that the diagnosis-based assessment method was appropriate for appellant's case. Alternatively, counsel contends that there is a conflict of medical opinion between Dr. Weiss and Dr. Soren, requiring resolution by an impartial medical examiner. The Board finds that there is no conflict of opinion as Dr. Weiss did not properly apply the A.M.A., *Guides*.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained more than a four percent impairment of the right upper extremity, for which he received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 1, 2011 is affirmed.

Issued: August 2, 2012  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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