United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 11-1013**
	)	**Issued: February 17, 2012**
U.S. POSTAL SERVICE, O'HARE AIR MAIL CENTER, Chicago, 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 March 10, 2011 appellant filed a timely appeal of the September 13, 2010 schedule award decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) 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 three percent impairment of the left arm, for which he received a schedule award.

[1] Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of OWCP's decision. *See* 20 C.F.R. § 501.3(f)(2). As OWCP's decision was issued September 13, 2010, the 180-day computation begins on September 14, 2010. Since using March 16, 2011, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the postmark is March 10, 2011, which rendered the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

On appeal, appellant contends that despite the medical opinion of an OWCP medical adviser, he is entitled to a greater schedule award than that awarded due to permanent damage to his left shoulder and diminished quality of life.

FACTUAL HISTORY

OWCP accepted that appellant, then a 43-year-old regular mail handler, sustained adhesive capsulitis and a complete rotator cuff rupture of the left shoulder when he fell in the performance of duty on September 8, 2008. It authorized left shoulder arthroscopic superior labrum anterior and posterior (SLAP) repair and acromioplasty which were performed on February 20, 2009 by Dr. Christos S. Giannoulias, an attending Board-certified orthopedic surgeon.

In a July 7, 2009 medical report, Dr. Giannoulias noted appellant's ongoing complaint of left shoulder pain. Appellant was doing significantly better after conditioning and was basically performing his regular work duties. On physical examination of the left shoulder, Dr. Giannoulias reported full elevation and external and internal rotation. He found some soreness with compression anteriorly. There was normal strength in elevation and external rotation. A belly-press test was negative. Appellant's sensation and pulses were present. Dr. Giannoulias diagnosed a left shoulder labral tear. He concluded that appellant could return to his activities, work and sports, as tolerated.

On April 9, 2010 appellant filed a claim for a schedule award.

By letter dated April 27, 2010, OWCP requested that Dr. Giannoulias submit a medical report determining the extent of appellant's left upper extremity impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a May 4, 2010 report, Dr. Giannoulias again noted appellant's complaint of pain and grinding in the left shoulder. In general, appellant's shoulder felt good, but he experienced soreness and pain with changes in the weather. Dr. Giannoulias provided findings on physical examination, including range of motion measurements for the left shoulder. He found 170 degrees of elevation and 80 degrees of external rotation. Internal rotation and extension each lacked 20 degrees, abduction lacked 40 degrees. There was some crepitation with abduction and internal rotation. Strength was 4/5. Elbow and wrist range of motion was normal. A belly-press test was negative. There was no instability with anterior or posterior loading. Dr. Giannoulias diagnosed left shoulder pain with degenerative changes. He rated appellant at 20 percent impairment of the left shoulder. Dr. Giannoulias concluded that he had reached maximum medical improvement in September 2009.

On July 5, 2010 Dr. David H. Garelick, an OWCP medical adviser, reviewed the medical record including the reports of Dr. Giannoulias. He recommended that OWCP disregard Dr. Giannoulias' impairment rating because the physician did not cite the tables in the A.M.A., *Guides* he used to calculate impairment. Dr. Garelick determined that appellant had three percent impairment of the left shoulder based on the default value for a SLAP repair performed on February 20, 2009 with residual symptoms and normal range of motion under Table 15-5,

page 404 of the A.M.A., *Guides*. He stated that there was no change to this award with use of the net adjustment formula. Dr. Garelick concluded that appellant had reached maximum medical improvement on July 7, 2009, the date he was discharged from Dr. Giannoulias' care.

In a September 13, 2010 decision, OWCP granted appellant a schedule award for three percent impairment of the left upper extremity. The period of the award ran from July 7 to September 10, 2009.

LEGAL PRECEDENT

The schedule award provision of FECA[3] and its implementing federal regulations,[4] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members, functions and organs of the body. 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[5] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[6] Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides*[7] as the appropriate edition for all awards issued after that date.[8]

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the shoulder, the relevant portion of the upper extremity for the present case, reference is initially made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. Then the associated class is determined from the Shoulder Regional Grid and the adjustment grid and grade modifiers (including functional history, physical examination and clinical studies) are used to determine what grade of associated impairment should be chosen within the class defined by the regional grid. The evaluator then uses the regional grid to identify the appropriate impairment rating value for the impairment class as modified by the adjustments as calculated.[9] Under Chapter 2.3, evaluators are directed to

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Ausbon N. Johnson*, 50 ECAB 304 (1999).

[6] *Supra* note 4.

[7] A.M.A., *Guides* (6th ed. 2009).

[8] Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

[9] *See* A.M.A., *Guides* 405-12.

provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[10]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[11]

OWCP may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.[12]

ANALYSIS

OWCP accepted appellant's claim for adhesive capsulitis and a complete rotator cuff rupture of the left shoulder. On February 20, 2009 appellant underwent left shoulder arthroscopic SLAP repair and acromioplasty. On September 13, 2010 he received a schedule award for three percent impairment of the left upper extremity. The Board finds that appellant did not meet his burden of proof to establish that he sustained greater impairment.

In a May 4, 2010 impairment evaluation, Dr. Giannoulias, an attending physician, found that appellant had 20 percent impairment of the left shoulder and had reached maximum medical improvement in September 2009. He noted appellant's complaint of pain and grinding in the left shoulder. Dr. Giannoulias also noted that appellant's shoulder felt good, but he experienced soreness and pain with changes in the weather. On physical examination, he reported range of motion measurements for the left shoulder which included 170 degrees of elevation, 80 degrees of external rotation, 20 degrees of internal rotation, 20 degrees of extension and 40 degrees of abduction. Dr. Giannoulias found some crepitation with abduction and internal rotation. He further found that strength was 4/5. Dr. Giannoulias reported normal elbow and wrist range of motion and a belly-press test. He stated that there was no instability with anterior or posterior loading. Dr. Giannoulias advised that appellant had left shoulder pain with degenerative changes. He failed to explain how he arrived at his impairment rating for appellant's accepted conditions. Dr. Giannoulias did not refer to the sixth edition of the A.M.A., *Guides* or the specific tables or figures he applied to support his rating. Further, he did not explain the basis for the change in his prior July 7, 2009 opinion that appellant had full range of motion and normal strength in his left shoulder such that he was released to return to work and his activities and sports. The Board finds that Dr. Giannoulias' opinion is of diminished probative value in

[10] *Id.* at 23-28.

[11] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002); *L.H.*, 58 ECAB 561 (2007) (FECA's procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*).

[12] *See Ronald J. Pavlik*, 33 ECAB 1596 (1982); *Robert R. Snow*, 33 ECAB 656 (1982); *Quincy E. Malone*, 31 ECAB 846 (1980).

determining the extent of appellant's permanent impairment.[13] After receiving Dr. Giannoulias' report, OWCP properly referred the matter to its medical adviser.[14]

In a July 5, 2010 report, Dr. Garelick, an OWCP medical adviser, discussed his review of the medical records and provided an opinion that appellant had three percent impairment of left upper extremity under the standards of the sixth edition of the A.M.A., *Guides*. The Board finds that he properly applied these standards to reach his conclusion about appellant's permanent left shoulder impairment.[15]

Dr. Garelick noted Dr. Giannoulias' July 7, 2009 examination findings of full range of motion and strength in elevation and external rotation, soreness with anterior compression and the presence of sensation and pulses. He determined that the default value for residual symptoms of a SLAP repair performed on February 20, 2009 and normal range of motion resulted in three percent impairment of the left shoulder (A.M.A., *Guides* 404, Table 15-5). Dr. Garelick did not identify any modifiers based on functional history, physical examination or clinical studies that warranted adjustment of the default rating.[16] The Board notes that there is no other medical evidence of record showing that appellant had more than three percent permanent impairment of the left shoulder, for which he already received a schedule award. For these reasons, the Board finds that the evidence does not establish entitlement to additional schedule award compensation.

Appellant's contention on appeal is that he has greater impairment due to permanent damage to his left upper extremity and a diminished quality of life. Dr. Garelick discussed the physical findings of Dr. Giannoulias and properly applied the appropriate provisions of the A.M.A., *Guides* to support his impairment rating. The Board finds that Dr. Garelick's opinion is entitled to the weight of the medical evidence.[17]

With regard to appellant's assertion that his quality of life has been diminished, the Board notes that the amount payable pursuant to a schedule award does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other lifestyle activities.[18] Under the schedule award provisions, Congress has specified a maximum number of weeks of compensation payable for permanent impairment of the arm. Since appellant was rated as having three percent impairment to his left shoulder, he is entitled to three percent of 312 weeks[19] or 9.36 weeks of compensation, the amount paid by OWCP.

[13] *See Richard Niedert*, 57 ECAB 474 (2006); *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

[14] *See supra* note 11.

[15] *See* cases cited *supra* note 12.

[16] A.M.A., *Guides* 411 for the net adjustment formula.

[17] *See* cases cited *supra* note 12.

[18] *Ruben Franco*, 54 ECAB 496 (2003).

[19] *See* 5 U.S.C. § 8107(c)(1).

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 has failed to establish that he has more than three percent impairment of the left upper extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 17, 2012
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