United States Department of Labor
Employees' Compensation Appeals Board

P.B., Appellant	)	
and	)	**Docket No. 11-1153**
	)	**Issued: February 13, 2012**
DEPARTMENT OF THE AIR FORCE, RANDOLPH AIR FORCE BASE, TX, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 13, 2011 appellant filed a timely appeal from a March 9, 2011 decision of the Office of Workers' Compensation Programs (OWCP) granting a schedule award. Pursuant to the Federal Employees' Compensation Act[1] (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 10 percent permanent impairment of the left upper extremity attributable to his August 23, 2008 injury, for which he received a schedule award.

FACTUAL HISTORY

On August 23, 2008 appellant, then a 56-year-old facility maintenance plumber, sustained an injury to the left triceps area while installing a sink. A September 12, 2008 cervical

[1] 5 U.S.C. § 8101 *et seq.*

magnetic resonance imaging (MRI) scan obtained by Dr. John L. Wright III, a Board-certified diagnostic radiologist, exhibited spondylosis, C5-6 stenosis and ligamentum flavum hypertrophy, signal abnormality, uncovertebral joint hypertrophy and lordotic loss. A subsequent January 26, 2009 cervical x-ray report from Dr. Rafael Parra, a Board-certified neurological surgeon, confirmed multilevel degenerative changes. In October 3 and 8, 2008 electrodiagnostic records, Dr. Meyer L. Proler, a clinical neurophysiologist, found evidence of bilateral median and ulnar neuropathy. OWCP accepted appellant's claim for left ligamentous laxity, neck sprain, cervical intervertebral disc degeneration and cervical intervertebral disc displacement without myelopathy.[2]

Appellant underwent cervical discectomy and fusion on April 29, 2009 and returned to limited duty on June 22, 2009.[3] Postoperative x-rays from May 11 to September 14, 2009 showed post-anterior fusion of the C4-5, C5-6 and C6-7 vertebrae. In a series of reports for the period May 29 to August 24, 2009, Dr. Michael P. Zietlin, a family practitioner, related that appellant experienced left arm and neck symptoms necessitating electrical stimulation and manual therapy. An October 6, 2009 functional capacity evaluation signed by a physical therapist assessed a physical demand level of medium.

In a December 30, 2009 impairment rating report, Dr. Robert C. Lowry, a general surgeon, reviewed the medical file and examined appellant's upper extremities. He observed +0 deep tendon reflexes, 3/5 motor strength, diffuse right upper extremity paresthesia, decreased left upper extremity sensation and loss of left triceps muscle strength. Dr. Lowry also found loss of left hand grip strength with permanent thenar and hypothensar eminence atrophy and restricted cervical range of motion (ROM). Appellant scored 111 on a pain disability questionnaire (PDQ).[4] Applying Table 17-2 (Cervical Spine Regional Grid) of the A.M.A., *Guides*, Dr. Lowry assigned an impairment class (CDX) of 3 for cervical disc herniations with radiculopathy affecting the bilateral upper extremities.[5] Based on the PDQ score, he selected a grade modifier value of 3 for Functional History (GMFH).[6] Dr. Lowry decided on a grade modifier value of 2 for Physical Examination (GMPE) in consideration of his upper extremity atrophy, diminished sensation and 3/5 motor strength findings.[7] Lastly, citing that diagnostic evidence showed

[2] Appellant filed two prior claims, to which OWCP assigned File Nos. xxxxxx955 and xxxxxx534. OWCP accepted File No. xxxxxx534 for loss of motion of the left index finger and wrist and sensory deficit of the median nerve and granted a schedule award for 10 percent permanent impairment of the left upper extremity for the period March 8 to October 12, 2002.

[3] By decision dated December 11, 2009, OWCP reduced appellant's entitlement to wage-loss compensation on the grounds that the actual earnings from his modified assignment, which were equal to the wages he received at the time of the injury, fairly and reasonable represented his wage-earning capacity.

[4] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2008) at 599-600. Dr. Lowry added that appellant scored 83.33 on a "Disabilities of the Arm, Shoulder and Hand" questionnaire (DASH) and 100 on an optional DASH "Work Module" form.

[5] *Id.* at 564.

[6] Dr. Lowry attached photocopies of Tables 17-6 (Functional History Adjustment: Spine) and 17-A (PDQ Scoring), both of which indicated that a PDQ score between 101 and 130 signified severe disability and a GMFH adjustment of 3. *Id.* at 575, 599.

[7] Dr. Lowry attached a photocopy of Table 17-7 (Physical Examination Adjustment: Spine). *Id.* at 576.

"major surgical complications" and multiple nerve root radiculopathy, he identified a grade modifier value of 4 for Clinical Studies (GMCS).[8] Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) or (3 - 3) + (2 - 3) + (4 - 3), Dr. Lowry calculated a net adjustment of 0 and concluded that appellant had sustained a 19-percent whole person impairment. He listed December 30, 2009 as the date of maximum medical improvement.

Appellant filed a claim for a schedule award on January 11, 2010.

In January 15 and May 17, 2010 reports, Dr. Parra remarked that appellant was "doing very well." On examination, he observed paravertebral muscle spasms and limited movement of the neck. Neurological examinations were normal and cervical x-rays demonstrated postanterior fusion of the C5-6 and C6-7 vertebrae.[9]

On May 22, 2010 OWCP's medical adviser reviewed the December 30, 2009 report. He pointed out that since Dr. Lowry diagnosed a spinal injury resulting in radiculopathy, only the multiple nerve root condition should have been rated. Thereafter, in a June 23, 2010 letter, OWCP directed Dr. Lowry to use the standard set forth in the American Medical Association's supplement "Rating Spinal Nerve Extremity Impairment Using the Sixth Edition" (hereinafter A.M.A., *Guides Newsletter*).[10]

In a revised impairment rating report dated October 10, 2010, Dr. Lowry applied Table 15-20 (Brachial Plexus Impairment: Upper Extremity Impairments) of the A.M.A., *Guides*, in particular the rating scheme for the middle trunk (C7).[11] He assigned a CDX of 2 with a default grade of C, amounting to a 22 percent impairment rating for severe bilateral upper extremity motor deficits. In view of appellant's PDQ score, Dr. Lowry designated a GMFH of 3.[12] Citing Table 15-6 (Adjustment Grid: Summary), he selected values of 2 and 4 for GMPE and GMCS, respectively.[13] Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (3 - 2) + (2 - 2) + (4 - 2), Dr. Lowry calculated a net adjustment of 4 and concluded that each of appellant's upper extremities had a permanent impairment of 25 percent.[14]

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[8] *Id*. of Table 17-9 (Clinical Studies Adjustment: Spine). *Id.* at 581.

[9] A December 20, 2010 cervical x-ray obtained by Dr. Parra contained identical findings.

[10] Christopher R. Brigham, M.D., "Rating Spinal Nerve Extremity Impairment Using the Sixth Edition," *The Guides Newsletter* (July and August 2009).

[11] A.M.A., *Guides*, *supra* note 4 at 435.

[12] Dr. Lowry attached photocopies of Tables 15-7 (Functional History Adjustment: Upper Extremities) and 17-A (PDQ Scoring). *Id.* at 406, 599.

[13] *Id.* at 406.

[14] The net adjustment should have been 3. According to the A.M.A., *Guides*, however, Dr. Lowry's mathematical error would not have affected the final rating. *See id.* at 14 ("[i]f adjustment of the impairment rating otherwise moves the rating to a higher or lower impairment class, the examiner should stop at the highest or lowest grade in the impairment class initially determined by the key factor").

On December 13, 2010 OWCP's medical adviser reviewed the December 1, 2010 statement of accepted facts[15] and the medical file. He commented that Dr. Lowry did not utilize the A.M.A., *Guides Newsletter* standard for rating spinal nerve extremity impairment in either of his impairment rating reports and recommended a second opinion examination.

OWCP referred appellant to Dr. Sofia M. Weigel, a Board-certified physiatrist, for a second opinion examination. In a January 28, 2011 report, Dr. Weigel conducted a physical evaluation and observed moderate to severe motor strength weakness, diminished sensation and decreased muscle tone and bulk of the left upper extremity. She also noted symmetrically-depressed reflexes of the bilateral biceps, triceps and brachioradialis tendons on examination. Following a review of the December 1, 2010 statement of accepted facts and the medical file, Dr. Weigel diagnosed moderate sensory and severe motor deficits of the C7 nerve root affecting solely the left upper extremity. Applying Proposed Table 1 (Spinal Nerve Impairment: Upper Extremity Impairments) of the A.M.A., *Guides Newsletter*, she assigned a CDX of 1 with a default grade of C, amounting to a two percent rating for moderate sensory deficit and a nine percent rating for severe motor deficit. Dr. Weigel scored 1 for both GMFH and GMCS based on the results of appellant's functional disability questionnaires and electrodiagnostic testing. Using the net adjustment formula of (GMFH - CDX) + (GMCS - CDX) or (1 - 1) + (1 - 1), she calculated a net adjustment of 0 and concluded that appellant sustained a combined 11 percent permanent impairment of the left upper extremity. Dr. Weigel listed October 10, 2010 as the date of maximum medical improvement.

On February 24, 2011 OWCP's medical adviser reviewed the January 28, 2011 report and pointed out that appellant previously sustained a work-related impairment of the left upper extremity. He then combined Dr. Weigel's impairment rating with the 10 percent left arm impairment previously awarded to determine that appellant had 20 percent total impairment.[16] Thus, he recommended that appellant had an additional 10 percent impairment of the left arm.

By decision dated March 9, 2011, OWCP granted a schedule award for an additional 10 percent permanent impairment of the left upper extremity for the period October 10, 2010 to May 16, 2011.

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 loss of or loss of use of scheduled members or functions of the body.[17] 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

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[15] The factual history of this decision has incorporated the contents of the statement of accepted facts.

[16] *See* A.M.A., *Guides* at 604 (Combined Values Chart).

[17] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[18]

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 GMFH, GMPE and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[19] Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[20]

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, the A.M.A., *Guides Newsletter* offers an approach to rating spinal nerve impairments consistent with sixth edition methodology.[21] OWCP has adopted this approach for rating impairment to the upper or lower extremities caused by a spinal injury.[22]

ANALYSIS

OWCP accepted appellant's traumatic injury claim for left ligamentous laxity, neck sprain, cervical intervertebral disc degeneration and cervical intervertebral disc displacement without myelopathy. Appellant subsequently filed a claim for a schedule award on account of Dr. Lowry's December 30, 2009 report. In this report, Dr. Lowry applied Table 17-2 of the A.M.A., *Guides* and assigned a 19 percent whole person impairment rating for cervical disc herniations with radiculopathy affecting both arms. FECA, though, does not authorize schedule awards for loss of use of the spine or the body as a whole.[23] OWCP and its medical adviser informed Dr. Lowry, who diagnosed a spinal injury resulting in bilateral upper extremity radiculopathy, that he should have calculated appellant's impairment using the A.M.A., *Guides Newsletter* standard for spinal nerve root injuries involving the extremities. However, he failed to do so in a revised October 10, 2010 report. Thereafter, the case was referred to Dr. Weigel for a second opinion examination.

The Board finds that Dr. Weigel's January 28, 2011 report constitutes the weight of the medical evidence. The weight of the medical evidence is determined by its reliability, its

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[18] *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).

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

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

[21] *L.J.*, Docket No. 10-1263 (issued March 3, 2011).

[22] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

[23] *D.A.*, Docket No. 10-2172 (issued August 3, 2011); *J.Q.*, 59 ECAB 366 (2008).

probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[24] Dr. Weigel reviewed the December 1, 2010 statement of accepted facts, inspected the medical record and performed a comprehensive physical evaluation. She properly applied Proposed Table 1 of the A.M.A., *Guides Newsletter*, identified moderate sensory and severe motor deficits of the C7 nerve root affecting solely the left upper extremity, adjusted the default percentages for GMFH and GMCS and combined the sensory and motor impairment ratings to arrive at a rating of 11 percent.[25]

OWCP's medical adviser thereafter concurred in Dr. Weigel's calculation and properly combined appellant's current left arm impairment, 11 percent, with previously awarded left arm impairment, 10 percent, to determine that he had 20 percent total left arm impairment.[26] Thus, OWCP properly determined that he was entitled to a schedule award for an additional 10 percent impairment of the left arm. In view of this rationalized medical opinion, the Board finds that OWCP properly granted a schedule award for 10 percent permanent impairment of the left upper extremity.

The Board notes that appellant submitted new evidence after issuance of the March 9, 2011 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.[27] 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 10 percent permanent impairment of the left upper extremity attributable to his August 23, 2008 work injury.

[24] *James Mack*, 43 ECAB 321, 329 (1991); *I.R.*, Docket No. 09-1229 (issued February 24, 2010).

[25] *See Guides Newsletter*, *supra* note 10 at 3-4.

[26] *See* A.M.A., *Guides* at 22-23 (provides that multiple impairments should be combined to account for the effects of multiple impairments with a summary value).

[27] 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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