United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant **and** **DEPARTMENT OF THE AIR FORCE, TRAVIS AIR FORCE BASE, CA, Employer**	)	**Docket No. 11-1605** **Issued: February 21, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 28, 2011 appellant filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) merit decision dated May 26, 2011. 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 merits of this case.

ISSUE

The issue is whether appellant has more than a nine percent permanent impairment to his right arm.

FACTUAL HISTORY

On March 3, 2009 appellant, then a 56-year-old hazardous cargo inspector/forklift operator, slipped and fell on his right shoulder while adjusting restraints on an aircraft pallet. He filed a claim for benefits on March 4, 2009, which OWCP accepted for contusion of right

[1] 5 U.S.C. § 8101 *et seq.*

shoulder and upper arm. The claim was subsequently expanded to include right rotator cuff tear and biceps tear. On December 18, 2009 Dr. Douglas A. Dennis, Board-certified in orthopedic surgery, performed arthroscopic surgery to ameliorate these conditions.

On March 23, 2011 appellant filed a Form CA-7, claim for a schedule award, based on a partial loss of use of his right upper extremity.

In a March 27, 2011 report, Dr. Dennis stated that appellant was experiencing subjective complaints of right shoulder pain and muscle cramps, with loss of range of motion and weakness in the right upper extremity. Appellant had a residual loss of range of motion in his right shoulder due to his work-related condition. Dr. Dennis listed the loss in range of motion for the right shoulder as: limitation of extension, 30 to 45 degrees; limitation of abduction, 140 degrees; limitation of adduction, 90 degrees and limitation of external rotation, 45 degrees.

In a report dated May 3, 2011, OWCP's medical adviser found that appellant had a nine percent right upper extremity impairment pursuant to the American Medical Association*, Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th edition). He took the range of motion findings and applied them to the shoulder range of motion grid at Table 15-34, page 475 of the A.M.A., *Guides*.[2] Forty-five degrees of shoulder extension yielded a one percent upper extremity impairment; 140 degrees of abduction yielded a three percent upper extremity impairment; 90 degrees of shoulder adduction yielded a three percent upper extremity impairment; and 45 degrees of external rotation yielded a two percent upper extremity or a total of nine percent. The medical adviser found that appellant had reached maximum medical improvement on March 27, 2011, the date that Dr. Dennis determined appellant's condition was permanent and stationary.

On May 26, 2011 OWCP granted appellant a schedule award for a nine percent permanent impairment of the right arm for the period March 27 to October 9, 2011, a total of 28.08 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of FECA[3] and its implementing 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 or functions of the body. 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 claimant has the burden of proving

[2] A.M.A., *Guides* 475.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

[5] *Id.*

that the condition for which a schedule award is sought is causally related to his or her employment.[6]

ANALYSIS

OWCP accepted the conditions of right shoulder and upper arm contusions and right rotator cuff and right biceps tears. Dr. Dennis performed surgery on December 18, 2009 to repair these conditions. In a March 27, 2011 report, he examined appellant and found loss of range of motion in his right shoulder.

As explained by the A.M.A., *Guides* at Table 15-5,[7] if loss of motion is present, this impairment may be assessed using range of motion impairment. A range of motion impairment stands alone and is not combined with diagnosis-based impairment. OWCP's medical adviser applied the findings of Dr. Dennis to the shoulder range of motion grid at Table 15-34, page 475 of the A.M.A., *Guides*. He found that appellant had reached maximum medical improvement on March 27, 2011. Appellant had a one percent upper extremity impairment for loss of extension, a three percent impairment due to loss of abduction, a three percent impairment due to loss of adduction and a two percent impairment due to loss of external rotation. The medical adviser added these findings to total nine percent right upper extremity impairment under the A.M.A., *Guides*. There is no medical evidence of greater right upper extremity impairment. The medical adviser relied on the applicable table of the sixth edition of the A.M.A., *Guides* in his impairment rating.[8] The Board finds that OWCP properly determined that appellant has a nine percent permanent impairment to his right upper extremity.

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

CONCLUSION

The Board finds that appellant has nine percent permanent impairment to his right arm.

[6] *Veronica Williams*, 56 ECAB 367, 370 (2005).

[7] A.M.A., *Guides* 405.

[8] The Board notes that a description of appellant's impairment must be obtained from his physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. *See Peter C. Belkind*, 56 ECAB 580, 585 (2005).

ORDER

IT IS HEREBY ORDERED THAT the May 26, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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