



## **FACTUAL HISTORY**

On February 11, 2009 appellant, then a 53-year-old city letter carrier, filed a claim for a traumatic injury alleging that on February 10, 2009, while making deliveries on his route, he fell on his left side of his body injuring his left shoulder. OWCP accepted his claim for left shoulder sprain, acromioclavicular and left rotator cuff tear. On May 15, 2009 appellant had a left shoulder arthroscopy with arthroscopic debridement of subscapularis and labrum, anterior subacromial decompression and arthroscopic rotator cuff repair. He was released to full-duty work on October 1, 2009.

On November 10, 2009 appellant filed a claim for a schedule award.

In a December 24, 2009 report, Dr. Laura Kaufman, a physician Board-certified in both family and occupational medicine, discussed appellant's history and her physical examination of him. She listed his assessment as left shoulder fixed and stable with left upper extremity impairment of five percent. In reaching this conclusion, Dr. Kaufman noted that appellant had an acromioclavicular sprain and strain (primary diagnosis) along with rotator cuff rupture and rotator cuff sprain and strain. She found that the diagnosis for the purpose of the impairment rating was rotator cuff rupture. Dr. Kaufman then determined that pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6<sup>th</sup> ed. 2009), appellant had a class 1 impairment, grade C.<sup>2</sup> She referred to the adjustment grid and found that he had a Functional History (GMFH) grade modifier of one<sup>3</sup> and a Physical Examination (GMPE) grade modifier of one.<sup>4</sup> Dr. Kaufman noted that there was no grade modifier for Clinical Studies (GMCS) because that was used for the diagnosis. She noted that the grade modifier net adjustment resulted in no adjustment to the five percent impairment rating.<sup>5</sup>

On October 1, 2010 OWCP referred appellant's case to its medical adviser. In a report dated October 12, 2010, OWCP's medical adviser noted that Dr. Kaufman provided an excellent rating report on December 24, 2009, complete with excellent and detailed examination findings with range of motion determinations times three for the left shoulder and comparables for the right shoulder. He noted that she appropriately applied the sixth edition of the A.M.A., *Guides* and determined that pursuant to Table 15-5 on page 403 of the A.M.A., *Guides*, appellant had a class 1 impairment with a grade C default value of five percent. OWCP's medical adviser noted that Dr. Kaufman correctly applied grade modifiers in reaching appellant's calculation that he had an impairment rating of five percent to the left upper extremity.

On January 19, 2011 OWCP issued a schedule award for a five percent impairment of the left arm (left upper extremity). The award was for 15.6 weeks of compensation to run during the period November 9, 2009 to February 26, 2010.

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<sup>2</sup> A.M.A., *Guides* 403, Table 15-5.

<sup>3</sup> *Id.* at page 406, Table 15-7.

<sup>4</sup> *Id.* at page 408, Table 15-8.

<sup>5</sup> (GMFH 1 minus class 1) plus (GMPE 1 minus class 1) plus (GMCS not factor) equals 0 plus 0.

## LEGAL PRECEDENT

The schedule award provision of FECA<sup>6</sup> and its implementing regulations<sup>7</sup> 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.<sup>8</sup> For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6<sup>th</sup> ed. 2009) is used for evaluating permanent impairment.<sup>9</sup>

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 arm for the present case, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the class of diagnosis (CDX) is determined from the shoulder regional grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for GMFH, grade modifier for GMPE and grade modifier for GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>10</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to its medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*.<sup>11</sup>

## ANALYSIS

In the present case, OWCP accepted appellant's claim for left shoulder sprain, acromioclavicular and left rotator cuff tear and he had surgery on May 15, 2009. The Board finds that he has no more than a five percent impairment of the left upper extremity for which he received a schedule award based on the opinions of Dr. Kaufman and OWCP's medical adviser.

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Id.*

<sup>9</sup> See Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.77, Exhibit 1 (January 2010). For OWCP decisions issued before May 1, 2009, the fifth edition of the A.M.A., *Guides* (5<sup>th</sup> ed.) is used.

<sup>10</sup> See A.M.A., *Guides* 411 (6<sup>th</sup> ed. 2009).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

Dr. Kaufman properly utilized Table 15-5 of the A.M.A., *Guides* and found that appellant had a class 1 impairment, grade C, which is described by the A.M.A., *Guides* as a history of a rotator cuff injury with residual loss, functional with normal range of motion.<sup>12</sup> She applied the grade modifiers and determined that the grade modifiers' net adjustment did not change the impairment rating. OWCP's medical adviser agreed with Dr. Kaufman's assessment, noting that she provided an excellent rating report. Appellant has not provided any medical report indicating that he is entitled to a greater schedule award.

Appellant contends on appeal that he had the same injury before and that he received a greater award encompassing a greater number of weeks. However, as discussed above, OWCP no longer applies the fifth edition of the A.M.A., *Guides*. For decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used for determining impairment ratings.<sup>13</sup> Moreover, section 8107(c)(1) of FECA<sup>14</sup> provides that for a 100 percent loss of use of the arm, a claimant is entitled to 312 weeks' of compensation. As appellant has a five percent loss of use of his left arm, he is entitled to five percent of 312 weeks or 15.6 weeks' of compensation, which was provided to him in the schedule award decision. He is entitled to no more under FECA.

For these reasons, appellant did not show that he has more than a five percent impairment of his left upper extremity.

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 not met his burden of proof to establish that he has more than a five percent impairment to his arm, for which he received a schedule award.

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<sup>12</sup> *Supra* note 2.

<sup>13</sup> *See supra* note 9.

<sup>14</sup> 5 U.S.C. § 8107(c)(1).

**ORDER**

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

Issued: January 23, 2012  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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