United States Department of Labor
Employees' Compensation Appeals Board

D.J., Appellant	)	
and	)	**Docket No. 11-1611**
	)	**Issued: June 25, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Gothenburg, NE, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 29, 2011 appellant filed a timely appeal from a January 11, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) concerning 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 merits of this case.

ISSUE

The issue is whether appellant established that she has more than five percent impairment of the right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On May 22, 2008 appellant, then a 42-year-old clerk, filed an occupational disease claim for right shoulder injury as a result of her job duties. She first became aware of her right shoulder condition on November 9, 2007, but did not realize the relationship to her employment until May 8, 2008. OWCP accepted the claim for superior labrum from anterior to posterior

[1] 5 U.S.C. § 8101 *et seq.*

(SLAP) tear; aggravation of right shoulder; aggravation of right shoulder impingement; right superior glenoid labrum lesion sprain; and right shoulder and upper arm supraspinatus sprain. It authorized right shoulder arthroscopic surgery, which took place on November 4, 2008 and right shoulder fixation surgery, which occurred on February 24, 2009.

On January 21, 2010 Dr. Michael E. Hebrard, a treating Board-certified physiatrist, diagnosed superior glenoid labrum lesion; supraspinatus sprain and possible mild thoracic outlet syndrome. Using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), he found appellant had an eight percent impairment of the right arm. Dr. Hebrard found a *Quick*DASH score of 59 and a grade modifier of 2 for functional history due to moderate problem.[2] He reported a physical examination revealed surgical scars on the shoulder and right side atrophy. Dr. Hebrard found a net adjustment of +2 which resulted in a grade E or eight percent right upper extremity impairment.

On March 15, 2010 appellant filed a claim for a schedule award.

On April 23, 2010 Dr. David D. Zimmerman, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed Dr. Hebrard's January 21, 2010 report and medical reports. He explained that shoulder range of motion was not preferred over a diagnosis-based impairment rating. Dr. Zimmerman advised that the sixth edition of the A.M.A., *Guides*, discouraged use of range of motion as a rating method and that it was used as a grade modifier. Under Table 15-5, Shoulder Regional Grid, pages 401 to 405 of the A.M.A., *Guides*, appellant had several alternative ratable conditions which could be used. Page 387 of the A.M.A., *Guides* indicated that, if there were three significant diagnoses, the diagnosis with the highest impairment rating should be used. Under Table 15-5, page 404, a complete rotator cuff tear with normal motion equaled a default impairment of five percent; a labral tear and degenerative SLAP lesion with normal motion equaled a default impairment of three percent; and an impingement syndrome with residual loss and normal motion equaled a default impairment of three percent. Dr. Zimmerman found that the shoulder range of motion measurements were not valid as Dr. Hebrard weighed the impairment rating to a grade E which was not supported by the *Quick*DASH score of 59 and the lack of an activities of daily living questionnaire.[3] He explained that the impairment rating of five percent based on the diagnosis of rotator cuff complete tear was the most advantageous for appellant.

By decision dated May 4, 2010, OWCP granted appellant a schedule award for a five percent impairment of the right upper extremity.

On August 12, 2010 Dr. M. Stephen Wilson, an examining physician, found appellant had a 14 percent right upper extremity impairment as a result of shoulder weakness, loss of range of motion and chronic recurrent shoulder pain. Using Table 15-34, he found a 3 percent impairment for 134 degrees of right shoulder flexion; a 1 percent impairment for 29 degrees right shoulder extension; a 3 percent impairment for 121 degrees right shoulder abduction; a 1 percent impairment for 31 degrees adduction; a 6 percent impairment for 22 degrees internal rotation; and a 0 percent impairment for 64 degrees right shoulder external rotation, resulting in a total 14

[2] A.M.A., *Guides* 406 (6th ed. 2009).

[3] *Id.* at 483, Table 15-37.

percent right upper extremity impairment. Next, using Table 15-35, Dr. Wilson found the impairment consistent with a grade modifier 2. Using Table 15-7, he found appellant's *Quick*DASH score of 52.3 or grade modifier 2 for functional history adjustment. Dr. Wilson found that, according to Table 15-36, functional history grade adjustment: Range of Motion, that there was no adjustment and she had a 14 percent right upper extremity impairment.

On November 4, 2010 appellant's counsel requested reconsideration.

On December 9, 2010 Dr. Zimmerman reviewed the medical evidence and stated the range of motion findings should be rejected as Dr. Wilson failed to consider the credibility of these findings. He noted that shoulder range of motion could be manipulated by the claimant so that passive range of motion and active range of the left shoulder should have been considered.

By decision dated January 11, 2011, OWCP found the medical evidence insufficient to establish greater permanent impairment.

LEGAL PRECEDENT

Under section 8107 of FECA[4] and section 10.404 of the implementing federal regulations,[5] schedule awards are payable for permanent impairment of specified body members, functions or organs. FECA does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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.[6]

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).[7] Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[8] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[9]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed through OWCP's medical adviser for an opinion concerning the nature and

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *D.J.*, 59 ECAB 620 (2008); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[7] A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[8] A.M.A., *Guides* (6th ed. 2009), pp. 383-419.

[9] *Id.* at 411.

percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[10]

ANALYSIS

OWCP accepted that appellant sustained SLAP tear, aggravation of right shoulder; aggravation of right shoulder impingement; right superior glenoid labrum lesion sprain; and right shoulder and upper arm supraspinatus sprain due to her job duties. Appellant requested a schedule award and submitted a January 21, 2010 report from Dr. Hebrard, who advised that she reached maximum medical improvement with an eight percent permanent impairment of the right arm based the A.M.A., *Guides*. Dr. Hebrard did not cite to any of the tables or figures of the A.M.A., *Guides* to support his rating of appellant's impairment. As he did not explain in his January 21, 2010 report how his impairment rating comported with the A.M.A., *Guides*, it is of limited probative value.[11]

Appellant also submitted a report from Dr. Wilson, who determined that she had a 14 percent right upper extremity impairment due to motion loss, which was consistent with a grade modifier of 2. Dr. Wilson did not follow the A.M.A., *Guides* and compare the loss to the opposite extremity.[12]

In reports dated April 23 and December 9, 2010, Dr. Zimmerman, the medical adviser, reviewed the medical reports from Drs. Hebrard and Wilson and explained how their impairment ratings did not properly follow the A.M.A., *Guides*. He explained diagnosis-based impairment rating was the preferred rating method. The A.M.A., *Guides*, specifically discouraged use of range of motion as a rating method since it was used as a grade modifier. Dr. Zimmerman determined the diagnosis of complete rotator cuff tear represented the highest impairment rating. Using Table 15-5, page 404, he found a five percent impairment for complete rotator cuff tear with normal motion. Dr. Zimmerman did not identify any modifiers based on functional history, physical examination or clinical studies that warranted adjustment of the default rating.[13] The Board finds that he properly applied these standards to reach his conclusion about appellant's

[10] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010). *See C.K.*, Docket No. 09-2371 (issued August 18, 2010); *L.H.*, 58 ECAB 561 (2007); *Frantz Ghassan*, 57 ECAB 349 (2006) (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*).

[11] *I.F.*, Docket No. 08-2321 (issued May 21, 2009) (an opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of diminished probative value in determining the extent of permanent impairment); *Linda Beale*, 57 ECAB 429 (2006) (when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of permanent impairment); *Tommy R. Martin*, 56 ECAB 273 (2005) (where the Board found that a physician's impairment calculation not sufficiently supported by the A.M.A., *Guides* is of diminished probative value).

[12] If the opposite extremity is neither involved nor previously injured, it must be used to define normal for the individual. Any losses should be made in comparison to the opposite normal extremity. A.M.A., *Guides* 461.

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

permanent right shoulder impairment.[14] There is no other medical evidence of record showing that appellant had more than five percent permanent impairment of the right shoulder, for which she already received a schedule award.

The Board finds that the medical adviser applied the appropriate portions of the A.M.A., *Guides* to the clinical findings of record. Therefore, OWCP's January 11, 2011 decision denying modification of the April 4, 2010 schedule award is proper.

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 established entitlement to greater than a five percent impairment of the right upper extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 11, 2011 is affirmed.

Issued: June 25, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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

[14] *See P.B.*, Docket No. 10-103 (issued July 23, 2010); *Linda Beale*, 57 ECAB 429 (2006); *Linda R. Sherman*, 56 ECAB 127 (2004).