United States Department of Labor
Employees' Compensation Appeals Board

R.K., Appellant	)	
and	)	**Docket No. 11-2074**
	)	**Issued: June 25, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Cranbury, NJ, Employer	)	

Appearances:
Robert D. Campbell, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 28, 2011 appellant, through her attorney, filed a timely appeal from an August 2, 2011 schedule award decision of the Office of Workers' Compensation Programs (OWCP). 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.[2]

ISSUE

The issue is whether appellant has established that she sustained greater than a 12 percent impairment of the right upper extremity and 18 percent impairment of the left upper extremity, for which she received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

[2] In a March 17, 2011 letter imaged into the case record on March 21, 2011, counsel requested reconsideration of OWCP's March 19, 2010 decision under File No. xxxxxx313. File No. xxxxxx313 is not before the Board on the present appeal. Counsel appealed the March 19, 2010 decision under File No. xxxxxx313 to the Board, docketed under No. 11-2125. On May 16, 2012 the Board issued an Order Dismissing Appeal under Docket No. 11-2125 on the grounds that the appeal was not timely filed.

On appeal, counsel contends that OWCP erred by denying a claimed recurrence of disability and a subsequent request for reconsideration after it accepted right shoulder tendinitis.

FACTUAL HISTORY

OWCP accepted that on October 7, 2004 appellant, then a 40-year-old distribution clerk, sustained left rotator cuff tendinitis when she lifted a tub of mail.

Dr. Mohnish Ramani, an attending Board-certified orthopedic surgeon submitted reports from January 11, 2005 through September 25, 2006 diagnosing occupationally-related left rotator cuff tendinitis with a partial thickness rotator cuff tear. In reports from April 30, 2007 through February 22, 2009, Dr. Ramani diagnosed bilateral rotator cuff tendinitis.[3] He limited lifting to five pounds.

On September 16, 2008 appellant accepted a light-duty position with lifting limited to five pounds.

On December 30, 2008 appellant filed a Form CA-2a claiming that she sustained a recurrence of total disability commencing November 13, 2008 as she was forced to perform work exceeding her medical restrictions.[4] She remained off work. By decision dated April 10, 2009, OWCP denied the recurrence claim on the grounds that appellant failed to establish a change in her accepted condition or in her light-duty job assignment. Following an August 12, 2009 telephonic hearing, it issued a November 16, 2009 decision affirming its April 10, 2009 decision.

On August 17, 2010 appellant claimed a schedule award. She submitted an impairment rating from Dr. Arthur Becan, an attending orthopedic surgeon.[5] In an April 5, 2010 report revised on February 28, 2011,[6] Dr. Becan opined that appellant had reached maximum medical improvement. He diagnosed bilateral rotator cuff tears and subacromial impingement. Regarding the right shoulder, Dr. Becan measured forward elevation at 150/180 degrees, abduction at 110/180 degrees, cross-over adduction at 60/75 degrees, external rotation at 70/90 degrees and internal rotation at 50/90 degrees. Regarding the left shoulder, he found forward elevation of 90/180 degrees, abduction of 80/180 degrees, cross-over adduction of 40/75 degrees, external rotation of 40/90 degrees and internal rotation of 20/90 degrees. Dr. Becan noted muscle weakness in both arms, with the supraspinatus graded at 2/5 on the left and 3/5 on the

[3] Dr. Ramani submitted periodic reports from July 10, 2009 to July 25, 2011 newly diagnosing bilateral acromioclavicular joint synovitis. Appellant also submitted records regarding a herniated cervical disc. There is no claim of record for a herniated cervical disc.

[4] A January 20, 2009 functional capacity evaluation demonstrated that appellant could perform full-time work at the light physical demand level, with upper extremity restrictions.

[5] An October 18, 2010 MRI scan of left shoulder showed acromioclavicular degeneration with impingement, a small full thickness tear of the supraspinatus tendon and a small tear of the posterior-inferior labrum.

[6] In a September 12, 2010 report, an OWCP medical adviser noted a mathematical error in Dr. Becan's original April 5, 2010 report. In response to OWCP's October 20, 2010 and February 3, 2011 requests, Dr. Becan submitted revised calculations, culminating in the April 5, 2010 report.

right, and the deltoids, triceps and biceps at 3/5 on the left and 4/5 on the right. Referring to Table 15-34, page 475[7] of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, the A.M.A., *Guides*) to assess the right arm, he found three percent impairment for flexion limited to 150 degrees, three percent impairment for abduction limited to 110 degrees and two percent impairment for internal rotation limited to 50 degrees. Dr. Becan found a grade modifier of 1 according to Table 15-35, page 477,[8] equaling 11 percent impairment. He found that the *Quick*DASH score of 45 percent warranted a grade modifier of 2 according to Table 15-7, page 406,[9] increasing the right upper extremity impairment by five percent under Table 15-36, page 477.[10] Dr. Becan combined these impairments to equal 12 percent impairment of the right arm. Regarding the left arm, he found that, according to Table 15-34, appellant had three percent impairment for flexion limited to 90 degrees, six percent impairment for abduction limited to 80 degrees, two percent impairment for external rotation limited to 40 degrees, and six percent impairment for internal rotation limited to 20 degrees, totaling 17 percent. Dr. Becan noted that the *Quick*DASH score of 75 percent equaled a grade modifier of 3, increasing the left upper extremity impairment by 5 percent, resulting in a combined 18 percent impairment to the left arm.

In a March 21, 2011 report, an OWCP medical adviser concurred with Dr. Becan's application of the A.M.A., *Guides* and impairment calculations.

By decision dated August 2, 2011, OWCP granted appellant a schedule award for an 18 percent impairment of the left upper extremity and a 12 percent impairment of the right upper extremity. It noted that it had expanded the claim to include a right shoulder condition. The period of the award ran from April 5, 2010 to July 2, 2011.

LEGAL PRECEDENT

The schedule award provisions of FECA[11] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, OWCP has authorized 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 OWCP as a standard for evaluation of schedule losses and the Board

[7] Table 15-34, page 475 of the A.M.A., *Guides* is entitled "Shoulder Range of Motion."

[8] Table 15-35, page 477 of the A.M.A., *Guides* is entitled "Range of Motion Grade Modifiers."

[9] Table 15-7 page 406 of the A.M.A., *Guides* is entitled "Adjustment Grid Summary."

[10] Table 15-36, page 477 of the A.M.A., *Guides* is entitled "Functional History Grade Adjustment: Range of Motion."

[11] 5 U.S.C. § 8107.

has concurred in such adoption.[12] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.[13]

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).[14] 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, 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 impairment class is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[15] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

ANALYSIS

OWCP accepted left rotator cuff tendinitis due to an October 7, 2004 lifting incident. On April 17, 2010 appellant claimed a schedule award for permanent impairment of both arms. In support of her claim, she submitted a February 28, 2011 report from Dr. Becan, an attending orthopedic surgeon, who diagnosed impingement syndrome and tendinitis of both shoulders, indicating a default class 1 diagnosis-based impairment (CDX) according to Table 15-5. Regarding the right arm, he used Table 15-34 to find three percent impairment for limited flexion, three percent impairment for limited abduction and two percent impairment for limited internal rotation, totaling eight percent. Dr. Becan applied a grade modifier of 1 for limited motion GMPE according to Table 15-35, equaling 11 percent impairment. Coupled with a GMFH of 2 for the *Quick*DASH score of 45 percent according to Table 15-7, this increased the right upper extremity impairment by 5 percent according to Table 15-36. Dr. Becan did not find a GMCS. Applying the net adjustment formula of (GMFH - CDX) + (GMPE - CDX), or (2-1) + (2-1), he calculated a 12 percent impairment of the right arm. Dr. Becan applied the same tables and grading schemes in evaluating the left arm. He found three percent impairment for flexion limited to 90 degrees, six percent impairment for abduction limited to 80 degrees, two percent impairment for external rotation limited to 40 degrees, and six percent impairment for internal rotation limited to 20 degrees, totaling 17 percent. Dr. Becan noted that the *Quick*DASH score of 75 percent equaled a grade modifier of 3, increasing the left upper extremity impairment by 5 percent, resulting in 18 percent impairment to the left arm. An OWCP medical adviser concurred with Dr. Becan's rating methodology and calculations.

[12] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[14] A.M.A., *Guides* (6th ed., 2008), page 3, Section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

[15] A.M.A., *Guides* 494-531 (6th ed., 2008).

The Board finds that Dr. Becan's impairment rating, as reviewed by OWCP's medical adviser, was thorough, detailed and properly applied the appropriate portions of the A.M.A., *Guides*. Therefore, OWCP's August 2, 2011 schedule award determination was proper under the law and facts of this case.

On appeal, counsel contends that OWCP erred by denying a claimed recurrence of disability, a subsequent request for reconsideration and periods of wage loss after it accepted her right shoulder condition. The recurrence and reconsideration issues are not before the Board on the present appeal. OWCP's April 10, 2009 and November 16, 2009 decisions denying a recurrence of disability were both issued more than 180 days before September 26, 2011, the date counsel filed his appeal with the Board. Therefore, the Board does not have jurisdiction over the recurrence of disability and wage-loss compensation issues. Insofar as counsel refers to a March 19, 2010 decision under File No. xxxxxx313 denying periods of wage-loss compensation, this decision is not before the Board on the present appeal.[16]

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 that she sustained greater than a 12 percent impairment of the right upper extremity and a 18 percent impairment of the left upper extremity, for which she received a schedule award.

[16] *See supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 2, 2011 is affirmed.

Issued: June 25, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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