United States Department of Labor
Employees' Compensation Appeals Board

S.O., Appellant	)	
and	)	**Docket No. 12-161**
	)	**Issued: June 4, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Brookfield, WI, 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
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 31, 2011 appellant filed a timely appeal from a June 21, 2011 decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for an additional schedule award and an August 22, 2011 decision that denied his request for reconsideration. 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 the schedule award decision.

ISSUES

The issues are: (1) whether appellant has more than a 16 percent impairment of the left upper extremity for which he received a schedule award; and (2) whether OWCP properly refused to reopen his claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant requests that the schedule award be reviewed because he received a greater award for his right upper extremity.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On August 6, 2010 appellant, then a 54-year-old city letter carrier, filed an occupational disease claim alleging that his job duties caused a left rotator cuff tear. He stopped work on August 5, 2010. OWCP accepted a sprain of the left rotator cuff and disorder of bursae and tendons in the left shoulder. On September 10, 2010 Dr. Hongheng Zhu, a Board-certified orthopedic surgeon, performed left shoulder arthroscopy with subacromial decompression, distal clavicle excision, debridement of a subscapularis tear and open repair of a left shoulder rotator cuff tear. Appellant returned to part-time modified duty on December 27, 2010 and to full duty on April 5, 2011. On April 11, 2011 he filed a schedule award claim.

In an April 4, 2011 report, Dr. Zhu noted that appellant had residual complaints of left shoulder pain and stiffness. Physical examination of the left shoulder revealed no deformity. Forward flexion was measured at 100 degrees, abduction at 90 degrees and internal rotation to the lower lumbar spine. Supraspinatus and infraspinatus muscle strength were 4/5, and sensation to touch was intact at the median, radial and ulnar nerve distributions. Dr. Zhu advised that appellant had reached the end of healing, and diagnosed status post left shoulder arthroscopy with subacromial decompression and distal clavicle excision and open rotator cuff repair.

By letter dated April 19, 2011, OWCP advised appellant that to establish his schedule award claim he should provide a physician's assessment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*)[2] and provide a permanent impairment worksheet. On a Form WKC-16, dated April 29, 2011, Dr. Zhu repeated his diagnosis. He advised that the healing period had ended and that appellant had a 20 percent impairment relative to his left shoulder. On the permanent impairment worksheet provided by OWCP, Dr. Zhu stated, "see attached WKC 16."

On May 13, 2011 OWCP asked its medical adviser to review the record. It noted that left lateral epicondylitis was also an accepted condition under a separate claim.[3] In a May 18, 2011 report, Dr. Neil Ghodadra, an orthopedic surgeon and OWCP medical adviser, advised that he had reviewed Dr. Zhu's reports. He found that, in accordance with the sixth edition of the A.M.A., *Guides*, under Table 15-5 a rotator cuff tear corresponded to a grade C default rating of 5 percent, the history of distal clavicle excision corresponded to a 10 percent impairment under Table 15-5 and a history of left lateral epicondylitis corresponded to a 1 percent impairment, for a total left upper extremity impairment of 16 percent, with April 4, 2011 the date of maximum medical improvement.

On June 21, 2011 appellant was granted a schedule award for a 16 percent loss of use of the left upper extremity, for 49.92 weeks, to run from April 9, 2011 to March 23, 2012. On July 26, 2011 he requested reconsideration, stating that he had received a greater schedule award

[2] A.M.A., *Guides* (6th ed. 2008).

[3] The instant claim is adjudicated under OWCP File No. xxxxxx647 and the left lateral epicondylitis claim under File No. xxxxxx911.

for his right upper extremity when his range of motion for his left upper extremity was more restricted. Appellant also resubmitted Dr. Zhu's April 4 and 29, 2011 reports.

In a nonmerit decision dated August 22, 2011, OWCP denied appellant's reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA and its implementing federal 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[5] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[6] For decisions issued after May 1, 2009, the sixth edition will be used.[7]

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).[8] Under the sixth edition, for upper extremity impairments 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).[9] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10]

ANALYSIS -- ISSUE 1

The Board finds this case is not in posture for decision as to the degree of appellant's left upper extremity impairment and thus the case will be remanded to OWCP for further development. The accepted conditions relevant to this claim are left rotator cuff tear and disorder of bursae and tendons of the left shoulder. Left lateral epicondylitis has been accepted under a separate claim.[11] On July 21, 2011 appellant was granted a schedule award for a 16 percent impairment of the left upper extremity.

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[4] 20 C.F.R. § 10.404.

[5] *Id*. at § 10.404(a).

[6] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[7] FECA Bulletin No. 09-03 (issued March 15, 2009).

[8] A.M.A., *Guides*, *supra* note 2 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

[9] *Id*. at 385-419.

[10] *Id*. at 411.

[11] *Supra* note 3.

In an April 4, 2011 report, Dr. Zhu, an attending orthopedist, advised that appellant had reached the end of healing. He noted appellant's complaint of residual left shoulder pain and stiffness and provided left shoulder physical examination findings. Range of motion indicated forward flexion of 100 degrees, abduction of 90 degrees and internal rotation to the lower lumbar spine. Supraspinatus and infraspinatus muscle strength were 4/5, and sensation to touch was intact at the median, radial and ulnar nerve distributions. Dr. Zhu diagnosed status post left shoulder arthroscopy with subacromial decompression and distal clavicle excision and open rotator cuff repair. Following a request by OWCP that he provide an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*, on a Form WKC-16 dated April 29, 2011, he merely advised that appellant had a 20 percent impairment relative to his left shoulder.

OWCP asked that Dr. Ghodadra, an orthopedic surgeon and OWCP medical adviser, review the medical record and informed him that appellant also had an accepted left lateral epicondylitis under a separate claim. On May 18, 2011 OWCP's medical adviser noted that he had reviewed Dr. Zhu's reports. He found that, in accordance with the sixth edition of the A.M.A., *Guides*, under Table 15-5, a rotator cuff tear corresponded to a grade C default rating of 5 percent, the history of distal clavicle excision corresponded to a 10 percent impairment under Table 15-5 and a history of left lateral epicondylitis corresponded to a 1 percent impairment, for a total left upper extremity impairment of 16 percent, with April 4, 2011 as the date of maximum medical improvement.

As noted above, under the sixth edition, for upper extremity impairments the evaluator identifies the impairment class for the diagnosed condition, which is then adjusted by grade modifiers.[12] Dr. Zhu merely provided a conclusory impairment rating of 20 percent without mentioning how he arrived at that figure nor did he mention the sixth edition. There was no evidence or physical findings. Dr. Zhu did not address how he rated impairment based on the appropriate formula and grade modifiers described above. The sixth edition of the A.M.A., *Guides* also provides for an impairment rating for loss of range of motion. Section 15.7 of the sixth edition states that range of motion is to be used as a stand-alone rating when other grids refer to this section or when no other diagnosis-based sections for the upper extremity are applicable for impairment rating of a condition.[13] The sixth edition also requires evaluation of six ranges of shoulder motion flexion, extension, abduction, adduction, external rotation and internal rotation.[14] Dr. Zhu did not provide sufficient findings to evaluate appellant's shoulder impairment using range of motion as he only provided measures for forward flexion, abduction and internal rotation. Accordingly, his reports are insufficient to establish that appellant is entitled to a left upper extremity schedule award.

The Board also finds the report of Dr. Ghodadra, OWCP's medical adviser, insufficient, as he did not adequately explain how he reached his conclusions. While he identified a grade of C for a rotator cuff tear, Dr. Ghodadra did not explain how he identified the ratings for distal clavicle excision or lateral epicondylitis. Moreover, the sixth edition of the A.M.A., *Guides*

[12] *Supra* note 9.

[13] *Id*. at 461.

[14] *Id*. at 475.

requires that, after identifying the impairment class for the diagnosed condition, this is then adjusted by grade modifiers based on GMFH, GMPE and GMCS,[15] to be followed by application of the net adjustment formula.[16] OWCP's medical adviser merely identified the tables used without providing sufficient explanation of each diagnosis category, class or evaluation of the grade modifiers. As discussed, grade modifiers should be considered for GMFH, GMPE and GMCS and these grade modifiers can change the extent of a given impairment rating.[17] Lastly, it is unclear whether Dr. Ghodadra reviewed the case file for the accepted lateral epicondylitis condition since he merely advised that appellant had a history of the condition. Consequently, the Board finds that the opinion of the medical adviser requires further clarification on the issue of appellant's left upper extremity impairment.

Accordingly, as there is no medical evidence of record that fully comports with the A.M.A., *Guides* or provides a complete analysis of appellant's left upper extremity impairment, the Board finds that the case is not in posture for decision. The case is remanded to OWCP for further development on the extent of impairment of appellant's left upper extremity in accordance with the sixth edition of the A.M.A., *Guides*. On remand, OWCP should double appellant's case file regarding his accepted left shoulder conditions with that of the left lateral epicondylitis. Following such further development as OWCP deems necessary, it should issue a *de novo* decision.

In light of the Board's findings regarding Issue 1, Issue 2 is rendered moot.

CONCLUSION

The Board finds that the case is not in posture for decision as to the extent of appellant's left upper extremity impairment.

[15] *Supra* note 9.

[16] *Supra* note 10.

[17] Federal (FECA) Procedure Manual, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 22 and June 21, 2011 be set aside and the case remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: June 4, 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