

FACTUAL HISTORY

This case has previously been before the Board.² By decision dated May 2, 2006, the Board found that appellant was required to make an election of benefits between the 20 percent increase in benefits he received from the Department of Veterans Affairs and compensation benefits he received under FECA for his accepted major depression. The Board further found that appellant failed to establish that dysphagia or any other corticospinal condition was causally related to the February 6, 2001 employment injury but that a conflict in medical evidence remained regarding whether his erectile dysfunction condition was causally related to the employment injury.³ In an April 25, 2007 decision, the Board found that appellant did not establish that his erectile dysfunction was causally related to his February 6, 2001 employment injury.⁴ In a February 9, 2011 decision, the Board found that on December 22, 2009 Dr. Robert Franklin Draper, Jr., a Board-certified orthopedic surgeon who provided a second-opinion evaluation for OWCP, properly analyzed appellant's left upper extremity due to C7 neuropathy, finding a two percent impairment. The Board, however, found the case not in posture for decision as to the extent of appellant's total left upper extremity impairment because Dr. Draper did not address appellant's left shoulder impairment. As appellant had an accepted left shoulder injury, the physician's opinion was deficient.⁵ The law and the facts of the previous Board decisions are incorporated herein by reference.

By letter dated February 16, 2011, OWCP requested that Dr. Draper provide an impairment evaluation of appellant's left shoulder, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).⁶ OWCP provided appropriate worksheets. On August 25, 2011 it referred appellant to Dr. Draper for a physical examination and impairment evaluation.⁷

In a September 30, 2011 report, Dr. Draper noted his review of an amended statement of accepted facts and the medical record. He provided physical examination findings regarding the left shoulder and cervical spine, including shoulder range of motion. Dr. Draper diagnosed left

² Appellant, then a 42-year-old letter carrier, slipped and fell on ice and snow on February 6, 2001 while in the performance of his federal duties. The accepted conditions are cervical strain, left shoulder strain, herniated disc at C6-7 with discectomy and fusion on September 19, 2001 and major depressive disorder. On March 22, 2004 OWCP granted appellant a schedule award for a three percent left upper extremity impairment, and an additional two percent on October 29, 2004.

³ Docket No. 05-1984 (issued May 2, 2006).

⁴ Docket No. 07-80 (issued April 25, 2007).

⁵ Docket No. 10-894 (issued February 9, 2011). On August 10, 2011 the Board denied appellant's petition for reconsideration regarding the validity of the sixth edition of the A.M.A., *Guides*.

⁶ A.M.A., *Guides* (6th ed. 2008).

⁷ OWCP initially referred appellant on July 15, 2011. Appellant did not attend an examination scheduled on August 18, 2011. He maintained that he did not receive notice of the examination, and the examination was rescheduled. Appellant also submitted a January 27, 2011 attending physician's report dated January 27, 2011 in which Dr. James Weiss, an attending Board-certified orthopedic surgeon, discussed appellant's lower back, not at issue in the instant case.

shoulder strain and degenerative cervical disc disease and advised that maximum medical improvement was reached on February 6, 2002, one year following surgery. He provided an impairment rating for the left shoulder only and advised that, in accordance with the sixth edition of the A.M.A., *Guides*, under Table 15-5, Shoulder Regional Grid, appellant had a class 1 impairment due to shoulder pain with a default rating of one percent. Dr. Draper found modifiers of one percent each for functional history, physical examination and clinical studies, and applied the net adjustment formula. He found that appellant had one percent upper extremity impairment under Table 15-5. With regard to appellant's impairment due to C7 radiculopathy, he advised that his calculation on the December 22, 2009 report was unchanged.

In an October 24, 2011 report, Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed the medical record, including Dr. Draper's September 30, 2011 report. He noted that in December 2009 Dr. Draper recommended two percent impairment based on C7 radiculopathy and now recommended one percent impairment due to left shoulder impairment, for a total left upper extremity impairment of three percent. OWCP's medical adviser found that, as appellant had previously received a left upper extremity impairment of five percent, he was not entitled to an additional award.

By decision dated October 26, 2011, OWCP denied appellant's claim for an additional schedule award on the grounds that the medical evidence did not establish that he was entitled to an impairment rating greater than the five percent previously received.

LEGAL PRECEDENT

The schedule award provision of FECA,⁸ and its implementing federal regulations,⁹ 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.¹⁰ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.¹¹ For decisions issued after May 1, 2009, the sixth edition is used.¹²

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).¹³ Under the sixth edition, for upper extremity impairments the evaluator

⁸ 5 U.S.C. § 8107.

⁹ 20 C.F.R. § 10.404.

¹⁰ *Id.* at § 10.404(a).

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

¹² FECA Bulletin No. 09-03 (issued March 15, 2009).

¹³ A.M.A., *Guides*, *supra* note 6 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

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).¹⁴ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹⁵

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.¹⁶

ANALYSIS

The Board finds that appellant is not entitled to an additional schedule award for a left upper extremity impairment. Appellant has received schedule awards for left upper extremity impairments totaling five percent.

The Board finds that the weight of the medical evidence rests with the December 22, 2009 and September 30, 2011 reports of Dr. Draper, a Board-certified orthopedic surgeon and OWCP referral physician, who found that appellant had a two percent left upper extremity impairment, under Table 15-21 due to a peripheral nerve impairment, and a one percent impairment under Table 15-5 for left shoulder pain.

As noted in the Board's February 9, 2011 decision, Dr. Draper properly found that appellant had two percent impairment for a peripheral nerve injury under Table 15-18 in his December 22, 2009 evaluation. Following the Board's remand for review of appellant's left shoulder impairment,¹⁷ Dr. Draper reexamined appellant and addressed his left shoulder impairment in a September 30, 2011 report. He selected a diagnosis of shoulder pain under Table 15-5, Shoulder Regional Grid. Dr. Draper determined that appellant had a class 1, grade C, impairment which had a default value of one percent.¹⁸ He found modifiers of one each for functional history, physical examination and clinical studies. Dr. Draper then properly applied the net adjustment formula, which yielded a zero net adjustment, and concluded that appellant had one percent arm impairment due to left shoulder pain. He also noted that his calculation regarding C7 radiculopathy was unchanged.

On October 24, 2011 Dr. Berman reviewed Dr. Draper's September 30, 2011 report. He noted that in December 2009 Dr. Draper recommended a two percent impairment based on C7 radiculopathy and now recommended an additional one percent impairment due to a left shoulder

¹⁴ *Id.* at 385-419.

¹⁵ *Id.* at 411.

¹⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹⁷ *Supra* note 5.

¹⁸ A.M.A., *Guides*, *supra* note 6 at 401.

impairment, for a total left upper extremity impairment of three percent. OWCP's medical adviser determined that, as appellant was previously rated with left upper extremity impairment totaling five percent, he was not entitled to an additional award.

The Board finds that appellant is not entitled to an additional schedule award. There is no other probative medical evidence of record to establish greater permanent impairment under the appropriate edition of the A.M.A., *Guides*.

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 an additional schedule award for his left upper extremity impairment.

ORDER

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

Issued: June 7, 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