

**United States Department of Labor
Employees' Compensation Appeals Board**

B.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dallas, TX, Employer**

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**Docket No. 11-1557
Issued: March 5, 2012**

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 21, 2011 appellant filed a timely appeal from a March 28, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for an increased schedule award.¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has more than 16 percent permanent impairment of the left upper extremity.

¹ The March 28, 2011 OWCP decision is a corrected version of the March 24, 2011 decision appellant appealed.

² 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On July 13, 2004 appellant, then a 52-year-old distribution window clerk, filed an occupational disease claim for shoulder pain he had been experiencing since October 1, 2003, which he attributed to the repetitive nature of his federal duties. OWCP accepted the claim for other affections of the left shoulder region and sprain/strain of left rotator cuff and paid benefits. Appellant underwent a May 8, 2006 left shoulder surgery with rotator cuff repair and distal clavicle resection. By decision dated January 9, 2008, OWCP granted a schedule award for 16 percent permanent impairment of the left arm. Appellant retired from the employing establishment on October 2003.

On March 1, 2011 appellant requested an increased schedule award for his left arm. In a December 16, 2010 report, Dr. Mike Shah, a Board-certified internist, noted the history of injury, reviewed the medical records and presented findings on examination. He stated that appellant reached maximum medical improvement on December 16, 2010. Under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), Dr. Shah found that appellant had 11 percent left arm impairment. Ten percent impairment was due to shoulder range of motion deficit. Under Table 15-34, page 475, Dr. Shah found 160 degrees flexion equaled three percent impairment; 58 degrees extension equaled zero percent impairment; 60 degrees internal rotation equaled two percent impairment; 54 degrees external rotation equaled two percent impairment; 120 degrees abduction equaled three percent impairment; and 45 degrees adduction equaled zero percent impairment. Under Table 15-35, page 477, he found that the grade modifier resulting from the 10 percent upper extremity impairment was consistent with grade modifier 1. Under Table 15-7, page 406, Dr. Shah found both the functional history adjustment for both the symptoms and *QuickDASH* (with a total score of 61.4) was consistent with grade modifier 3. Utilizing Table 15-36, page 477, he found that the functional history grade adjustment resulted in a difference of 2 for a total range of motion impairment, which when multiplied by 10 percent (10 percent times 10 percent) equaled 1 percent net modifier. Thus, Dr. Shah found that appellant had a total upper extremity impairment of 11 percent.

On March 22, 2011 an OWCP medical adviser reviewed appellant's medical record, a statement of accepted facts and Dr. Shah's December 15, 2010 report. The medical adviser agreed with Dr. Shah's rating under the A.M.A., *Guides* that appellant had 11 percent left arm impairment. The medical adviser further determined that since appellant previously received 16 percent permanent impairment for the left upper extremity based on abnormality in the left shoulder, that amount should be subtracted from the current determination of 11 percent (11 percent minus 16 percent), which totaled no additional impairment.

By decision dated March 28, 2011, OWCP denied an additional schedule award.³

³ As previously noted, the March 28, 2011 decision corrects a March 24, 2011 decision.

LEGAL PRECEDENT

A claim for an increased schedule award may be based on new exposure.⁴ Absent any new exposure to employment factors, a claim for an increased schedule award may also be based on medical evidence indicating that the progression of an employment-related condition has resulted in a greater permanent impairment than previously calculated.⁵

In determining entitlement to a schedule award, preexisting impairment to the scheduled member should be included.⁶ Any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.⁷

The schedule award provision of FECA and its implementing regulations⁸ 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.⁹ 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.¹⁰ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹¹

OWCP procedures provide 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*, with the medical adviser providing rationale for the percentage of impairment specified.¹²

⁴ A.A., 59 ECAB 726 (2008); *Tommy R. Martin*, 56 ECAB 273 (2005); *Rose V. Ford*, 55 ECAB 449 (2004).

⁵ *James R. Hentz*, 56 ECAB 573 (2005); *Linda T. Brown*, 51 ECAB 115 (1999).

⁶ *Carol A. Smart*, 57 ECAB 340 (2006); *Michael C. Milner*, 53 ECAB 446 (2002).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7(a)(2) (January 2010).

⁸ 20 C.F.R. § 10.404.

⁹ *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

¹⁰ *Ronald R. Kraynak*, 53 ECAB 130 (2001).

¹¹ Federal (FECA) Procedure Manual, *supra* note 7, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹² *See supra* note 7, Chapter 2.808.6(d) (August 2002).

ANALYSIS

OWCP accepted that appellant sustained right shoulder strain, right rotator cuff tear, unspecified disorder of left shoulder region due to his October 1, 2003 employment injury. On January 9, 2008 appellant received a schedule award for a 16 percent permanent impairment of the left upper extremity. By decision dated March 28, 2011, OWCP found that he was not entitled to an additional schedule award. The issue is whether the medical evidence establishes that appellant sustained an increased impairment of his left upper extremity.

In a December 16, 2010 report, Dr. Shah opined that appellant reached maximum medical improvement and that he had 11 percent permanent impairment of the left arm as calculated under the sixth edition of the A.M.A., *Guides*. He found that appellant had 10 percent impairment due to shoulder range of motion deficit under Table 15-34, page 475. This was comprised of 160 degrees flexion or three percent impairment; 58 degrees extension or zero percent impairment; 60 degrees internal rotation or two percent impairment; 54 degrees external rotation or two percent impairment; 120 degrees abduction or three percent impairment; and 45 degrees adduction or zero percent impairment. Under Table 15-35, page 477, the grade modifier resulting from the 10 percent upper extremity impairment was consistent with grade modifier 1. Under Table 15-7, page 406, the functional history adjustment for both the symptoms and *QuickDASH* (with a total score of 61.4) was consistent with grade modifier 3. Under Table 15-36, page 477, the functional history grade adjustment resulted in a difference of 2 for a total range of motion impairment, which when multiplied by 10 percent (10 percent times 10 percent) equaled 1 percent net modifier. Thus, appellant's total upper extremity impairment is 11 percent (10 percent plus 1 percent). The Board finds that Dr. Shah properly utilized the A.M.A., *Guides* in determining appellant's impairment of the left upper extremity. The Board notes that Dr. Shah's 11 percent impairment of the left upper extremity due to appellant's shoulder condition is less than the 16 percent impairment rating for which he received a schedule award on January 9, 2008, also for his shoulder condition.

OWCP's medical adviser reviewed Dr. Shah's impairment evaluation on March 22, 2011. He concurred with Dr. Shah's impairment rating, as noted above. The medical adviser also properly subtracted the 11 percent impairment from the previously awarded 16 percent impairment of the left arm as both impairment ratings pertained to the same shoulder injury, to find that appellant did not establish more than the 16 percent impairment of the left arm, as was previously awarded.¹³ Consequently, the weight of the medical evidence establishes that appellant has no more than 16 percent impairment of the left arm, as was previously awarded.

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.

¹³ See *supra* note 7.

CONCLUSION

The Board finds that appellant did not establish entitlement to an additional award in this case.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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