United States Department of Labor
Employees' Compensation Appeals Board

L.B., Appellant **and** **U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Palatine, IL, Employer**	)	**Docket No. 12-910** **Issued: October 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
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 14, 2012 appellant filed a timely appeal of a December 5, 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 schedule award issue.

ISSUE

The issue is whether appellant sustained more than 8 percent permanent impairment of the left upper extremity and more than 24 percent permanent impairment of the right upper extremity for which she received schedule awards.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 19, 2005 appellant, then a 47-year-old manual distribution clerk, filed an occupational disease claim alleging that she sustained bilateral shoulder pain while in the performance of duty. OWCP accepted her claim for bilateral shoulder impingement syndrome. By decision dated September 7, 2007, it granted a schedule award for eight percent permanent impairment of the left upper extremity and an additional nine percent permanent impairment of the right upper extremity.[2]

A February 8, 2011 left shoulder magnetic resonance imaging (MRI) scan obtained by Dr. Amjad A. Safvi, a Board-certified diagnostic radiologist, exhibited mild acromioclavicular joint degeneration, supraspinatus tendinosis and small humeral subchondral geodes. A February 8, 2011 right shoulder MRI scan from Dr. Safvi showed similar findings as well as lobulated high T2 and low T1 signal areas along the inferior aspect of the glenoid labrum.

In a February 9, 2011 report, Dr. Jacob Salomon, a surgeon and family practitioner, related that appellant retired effective November 30, 2010, but remained symptomatic. Based on the MRI scan results, he diagnosed recurrence and aggravation of bilateral shoulder disease secondary to activities of daily living, including dressing, grooming and preparing food. In a June 8, 2011 impairment rating report, Dr. Salomon reviewed the history of injury and medical file. On physical examination, he observed bilateral acromioclavicular joint tenderness, pain and decreased range of motion (ROM). For the left shoulder, Dr. Salomon detailed 145-degree flexion, 30-degree extension, 58-degree internal rotation, 47-degree external rotation, 110-degree abduction and 30-degree adduction. For the right shoulder, he noted 145-degree flexion, 34-degree extension, 51-degree internal rotation, 54-degree external rotation, 124-degree abduction and 31-degree adduction. Applying Table 15-34 (Shoulder Range of Motion) on page 475 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[3] (hereinafter A.M.A., *Guides*), Dr. Salomon calculated impairment ratings of 11 percent for the left upper extremity and 10 percent for the right upper extremity secondary to bilateral impingement syndrome. He listed November 13, 2008 as the date of maximum medical improvement.

Appellant filed a claim for a schedule award on June 15, 2011.

On November 7, 2011 Dr. David H Garelick, OWCP's medical adviser and Board-certified orthopedic surgeon, reviewed Dr. Salomon's June 8, 2011 report and disagreed with his ratings. He pointed out that the primary method of evaluation for the upper limb was diagnosis-based impairment. Applying Table 15-5 (Shoulder Regional Grid) on page 402 of the A.M.A., *Guides*, Dr. Garelick assigned an impairment class for the diagnosed condition (CDX) of 1 with a default grade of C for the left and right shoulders, respectively. Citing Dr. Salomon's findings of diminished ROM, he selected a grade modifier value of 2 for Physical Examination (GMPE). Using the net adjustment formula of (GMPE - CDX) or (2 - 1), Dr. Garelick calculated

[2] Appellant previously received a schedule award in 2006 for 15 percent permanent impairment of the right upper extremity due to carpal tunnel syndrome. OWCP File No. xxxxxx209.

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

a net adjustment of 1. He determined that while appellant sustained four percent permanent impairment of the left arm and four percent permanent impairment of the right arm due to impingement syndrome, appellant was not entitled to an additional schedule award because he received earlier awards. Dr. Garelick identified May 1, 2006 as the date of maximum medical improvement.

By decision dated December 5, 2011, OWCP denied appellant's claim for a schedule award, finding that the medical evidence did not establish that her employment-related condition resulted in a greater permanent impairment than previously calculated.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations 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.[4] 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 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 regulation as the appropriate standard for evaluating schedule losses.[5]

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). 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), GMPE and Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[6] Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[7]

The sixth edition of the A.M.A., *Guides* also provides that ROM may be selected as an alternative approach in rating impairment under certain circumstances. A rating that is calculated using ROM may not be combined with a diagnosis-based impairment and stands alone as a rating.[8]

[4] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[5] *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

[6] *R.Z.*, Docket No. 10-1915 (issued May 19, 2011).

[7] *J.W.*, Docket No. 11-289 (issued September 12, 2011).

[8] *W.T.*, Docket No. 11-1994 (issued May 22, 2012).

ANALYSIS

The Board finds that this case is not in posture for decision.

The sixth edition of the A.M.A., *Guides* states that "[d]iagnosis-based impairment is the primary method of evaluation for the upper limb" and "the method of choice for calculating impairment."[9] On the other hand, ROM-based impairment may be used "as a stand-alone rating when other grids refer [the evaluator] to this [method] *or* when no other diagnosis-based sections ... are applicable for impairment rating of a condition."[10] With respect to shoulder impingement syndrome diagnoses, Table 15-5 on page 402 of the A.M.A., *Guides* contains an asterisk footnote that directs the evaluator to the following postscript: "If motion loss is present, this impairment *may* alternatively be assessed using section 15.7, ROM impairment. A range of motion impairment stands alone and is not combined with diagnosis impairment."[11]

In his June 8, 2011 report, Dr. Salomon utilized the ROM-based method for evaluating shoulder impairments and calculated ratings of 11 percent for the left shoulder and 10 percent for the right shoulder. By contrast, Dr. Garelick used the diagnosis-based method in a November 7, 2011 report and determined that appellant's right and left shoulders sustained 4 percent permanent impairment apiece. According to the relevant A.M.A., *Guides* provisions, either approach is permissible. Moreover, the choice "rests within the sound discretion of the evaluating physician...."[12] Therefore, the Board finds that a conflict in medical opinion exists between Dr. Salomon and Dr. Garelick regarding the proper method by which to rate appellant's bilateral upper extremity impairment.[13]

Where there is a conflict in medical opinion between the employee's physician and the physician making the examination for the United States, OWCP shall appoint a third physician, known as a referee physician or impartial medical specialist, to make what is called a referee examination.[14] To resolve the present matter, OWCP shall remand the case and refer appellant, together with the medical evidence of record and a statement of accepted facts, to a Board-certified specialist for a referee examination. The specialist shall determine which evaluation method is appropriate and provide sound reasoning to support both the choice of method and the calculation of impairment under specific tables in the A.M.A., *Guides*. After

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[9] A.M.A., *Guides*, *supra* note 3 at 387 and 461.

[10] *Id.* at 461. (Emphasis added). *See also id.* at 387 ("Range of motion is used primarily as a physical examination adjustment factor and only to determine actual impairment values when a grid permits its use as an option....").

[11] *Id.* at 405 (emphasis added).

[12] *C.M.*, Docket No. 11-1283 (issued December 20, 2011).

[13] *Id.*

[14] *See* 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321. *See also R.A.*, Docket No. 09-552 (issued November 13, 2009).

conducting such further development as deemed necessary, OWCP shall render an appropriate decision on appellant's entitlement to an additional award.[15]

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2011 schedule award decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 5, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

[15] *C.M.*, Docket No. 11-1283 (issued December 20, 2011).