United States Department of Labor
Employees' Compensation Appeals Board

S.E., Appellant	)	
and	)	**Docket No. 12-953**
	)	**Issued: October 12, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Mobile, AL, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 26, 2012 appellant filed a timely appeal from a February 23, 2012 decision of the Office of Workers' Compensation Programs (OWCP) that denied an additional schedule award. 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 decision.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than 14 percent impairment of the left arm for which he previously received a schedule award.

FACTUAL HISTORY

On July 7, 2003 appellant, then a 39-year-old clerk, filed an occupational disease claim alleging that his federal job duties caused a left shoulder injury. OWCP accepted left shoulder tendinitis and impingement. On February 12, 2004 appellant underwent arthroscopic repair of a

[1] 5 U.S.C. §§ 8101-8193.

labral tear of the left shoulder. He returned to modified duty on January 6, 2005. On February 1, 2005 appellant was granted a schedule award for 14 percent loss of use of the left arm, for a total of 43.68 weeks to run from January 6 to November 7, 2005. He continued to work modified duty.

On March 18, 2011 Dr. Andre J. Fontana, a Board-certified orthopedic surgeon, performed a second arthroscopic procedure on appellant's left shoulder, shaving of frayed labrum and decompression acromioplasty. Appellant was placed on the periodic compensation rolls. He returned to full-time modified duty on July 15, 2011. In a June 10, 2011 report, Dr. Fontana stated that appellant was at maximum medical improvement. He advised that appellant had 10 percent impairment of his shoulder in the past and as a result of his recent surgery, had an additional 10 percent impairment.

On November 3, 2011 appellant filed a schedule award claim. In a September 22, 2011 report, Dr. Fontana noted that appellant reported that he still had some discomfort, especially with overhead activities. He advised that on physical examination appellant was neurovascularly intact. As a result of appellant's employment injury, Dr. Fontana had 10 percent impairment but now had another five percent, or a total 15 percent impairment. On October 27, 2011 he reiterated that appellant had a five percent increase in left shoulder impairment. Dr. Fontana diagnosed a history of impingement syndrome and work-related injury to the left shoulder.

In a November 16, 2011 report, Dr. Howard P. Hogshead, an OWCP medical adviser Board-certified in orthopedic surgery, stated that maximum medical improvement was reached on October 27, 2011. He noted that in a June 10, 2011 report, Dr. Fontana stated that appellant had an additional 10 percent impairment, but in his later reports, he found only five percent impairment. Dr. Hogshead stated that Dr. Fontana did not explain his impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).[2] He provided a worksheet with an impairment analysis under Table 15-5, Shoulder Regional Grid and found a class 1 impairment for functional residual loss due to impingement syndrome, with a default impairment of three percent. Dr. Hogshead applied the net adjustment formula, finding zero adjustment. He concluded that, as appellant had previously received a schedule award for 14 percent impairment of the left arm and now had 3 percent impairment, he was not entitled to an additional schedule award.

By letter dated November 23, 2011, OWCP asked that Dr. Fontana provide an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*. In a December 8, 2011 report, Dr. Fontana advised that maximum medical improvement was reached as of July 11, 2011. He reported that appellant continued to experience pain and had loss of range of motion. In accordance with Table 15-5 of the sixth edition of the A.M.A., *Guides*, appellant had four percent impairment as a result of shoulder pain, muscle or tendon. Since he could only forward flex to about 155 degrees, he had an additional one percent impairment under Table 15-34, for a total five percent impairment of the left upper extremity.

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

In a February 17, 2011 report, Dr. James W. Dyer, an OWCP medical adviser and Board-certified orthopedic surgeon, reviewed the record including Dr. Fontana's December 8, 2011 report. He advised that, since appellant had previously received a schedule award for 14 percent impairment of the left arm, the medical evidence did not establish greater impairment than that previously awarded.

In a February 23, 2012 decision, OWCP found that appellant was not entitled to an additional schedule award because the medical evidence did not establish a greater impairment to his left arm.

LEGAL PRECEDENT

The schedule award provision of FECA,[3] 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* was used to calculate schedule awards.[6] For decisions issued after May 1, 2009, the sixth edition is to 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]

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

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[3] 5 U.S.C. § 8107.

[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 (January 2010).

[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.

percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[11]

ANALYSIS

The Board finds that appellant has not established that he is entitled to an additional schedule award for left upper extremity impairment. He was granted a schedule award for a 14 percent impairment of the left arm on February 1, 2005. By decision dated February 23, 2012, OWCP found that appellant did not have left arm impairment greater than 14 percent, for which he had received a schedule award.

Dr. Fontana, an attending orthopedic surgeon, advised on December 8, 2011 that, under Table 15-5, appellant had four percent impairment as a result of shoulder pain, muscle or tendon. He further indicated that, since appellant could only forward flex to about 155 degrees, he had an additional one percent impairment under Table 15-34, for a total five percent impairment of the left upper extremity. While the sixth edition of the A.M.A., *Guides* provides for an impairment rating for loss of range of motion, under section 15.7, 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.[12] Table 15-5, marks the shoulder impairment diagnosis used by Dr. Fontana, "Muscle/Tendon," with an asterisk. This indicates that, if motion loss is present, the shoulder impairment may alternatively be assessed using loss of range of motion.[13] Dr. Fontana noted that appellant had four percent impairment for shoulder pain under Table 15-5 for the Muscle/Tendon diagnosis. A review of Table 15-5, Muscle/Tendon, history of painful injury, indicates that the maximum impairment allowed is one percent, less than the four percent indicated by the physician.[14] Dr. Fontana did not address the grade modifiers found in section 15.3 of the A.M.A., *Guides* or apply the Net Adjustment Formula to his impairment rating under Table 15-5. Regarding his analysis for loss of forward shoulder flexion, a review of Table 15-34 indicates that forward flexion of 155 degrees yields three percent impairment. Dr. Fontana did not discuss the modifiers found in Table 15-35 or Table 15-36. The three percent left upper extremity impairment due to loss of forward flexion is more favorable to appellant than the diagnosis-based impairment found under Table 15-5 of one percent. However, as 3 percent is less than the 14 percent previously awarded, OWCP properly found that appellant is not entitled to an increased schedule award.

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.

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

[12] A.M.A., *Guides, supra* note 2 at 461.

[13] *Id*. at 401.

[14] *Id*.

CONCLUSION

The Board finds that appellant has not established entitlement to a left upper extremity schedule award greater than the 14 percent previously awarded.

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2012
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board