

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

F.F., Appellant

and

**DEPARTMENT OF THE ARMY,
COMMISSARY, Fort Meyer, MD, Employer**

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**Docket No. 12-1092
Issued: October 11, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 23, 2012 appellant filed a timely appeal from the April 12, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a 10 percent impairment of his right upper extremity, for which he received a schedule award.

FACTUAL HISTORY

On June 23, 2010 appellant, a 45-year-old meat cutter, sustained a traumatic injury in the performance of duty when a u-boat full of box meat rolled into his right shoulder. OWCP accepted his claim for a complete right rotator cuff rupture and right shoulder impingement.

¹ 5 U.S.C. § 8101 *et seq.*

Appellant filed a claim for a schedule award. On May 31, 2011 Dr. Easton L. Manderson, a Board-certified orthopedic surgeon and OWCP referral physician, examined appellant and diagnosed right rotator cuff, rotator cuff tear and impingement with an abnormal hypertrophic arthritic acromiovascular joint contributing to the rotator cuff syndrome.

Findings on physical examination of the right shoulder showed 100 degrees of flexion, 100 degrees of abduction, 54 degrees of internal rotation and 54 degrees of external rotation. Dr. Manderson determined that these represented upper extremity impairments of 3, 3, 2 and 2 respectively, for a total upper extremity impairment of 10 percent due to loss of shoulder motion.

An OWCP medical adviser agreed with Dr. Manderson's method of evaluation and determination of impairment.

On July 7, 2011 OWCP issued a schedule award for a 10 percent impairment of appellant's right upper extremity.

Appellant requested reconsideration. Noting that the number of weeks of compensation continues when the loss has worsened, he requested a continuation of the schedule award for his loss. "The [permanent partial impairment] rating has increased and the number of weeks of compensation must continue."

A November 30, 2011 preoperative examination of appellant's right shoulder showed that forward flexion was 180 degrees and abduction was 180 degrees. This was the same range of motion found in a September 9, 2011 treatment note.

In an April 12, 2012 decision, OWCP reviewed the merits of appellant's case and denied modification of his schedule award. It found that the additional medical evidence submitted had no probative value on the extent of his impairment rating, as it did not discuss impairment or schedule award calculations.

On appeal, appellant argues that the number of weeks of compensation continue when the loss of a member worsens.

LEGAL PRECEDENT

FECA authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.² Such loss or loss of use is known as permanent impairment. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.³

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

ANALYSIS

The sixth edition of the A.M.A., *Guides*, Table 15-34, page 475, shows upper extremity impairment due to loss of shoulder motion. As Dr. Manderson, the Board-certified orthopedic surgeon and OWCP referral physician, found that flexion to 100 degrees represents three percent impairment of the upper extremity. Abduction to 100 degrees also represents three percent impairment. Internal rotation to 54 degrees and external rotation to 54 degrees both represent two percent impairment.⁴ As all values for the joint are added,⁵ appellant's total impairment is 10 percent, which OWCP awarded.

This entitled appellant to 31.2 weeks of compensation. Appellant seeks a continuation of his schedule award, or additional weeks of compensation, because his impairment has worsened. The medical evidence, however, does not support this assertion. Indeed, the findings on physical examination obtained during appellant's November 30, 2011 preoperative examination showed full range of motion in both flexion and abduction, both having improved considerably from 100 degrees to 180 degrees six months after Dr. Manderson's evaluation.

As the record supports that OWCP properly calculated appellant's July 7, 2011 schedule award, and as the medical evidence does not show a worsening of his impairment, the Board finds that OWCP properly denied an increased schedule award. The Board will affirm OWCP's April 12, 2012 decision.

Appellant argues that the number of weeks of compensation continue when the loss of a member worsens. He has not shown that he has more than a 10 percent impairment of his right upper extremity. If anything, the record indicates that appellant has less.

CONCLUSION

The Board finds that appellant has no more than a 10 percent impairment of his right upper extremity.

⁴ Measurements should be rounded up or down to the nearest number ending in zero. A.M.A., *Guides* 464.

⁵ *Id.* at 473.

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 11, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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