United States Department of Labor
Employees' Compensation Appeals Board

J.W, Appellant	)	
and	)	**Docket No. 12-1595**
	)	**Issued: April 10, 2013**
U.S. POSTAL SERVICE, AIRPORT POST OFFICE, Tampa, FL, 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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 19, 2012 appellant filed a timely appeal of an April 9, 2012 merit 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 five percent permanent impairment of the left upper extremity and five percent permanent impairment of the right upper extremity, for which he received a schedule award.

FACTUAL HISTORY

On August 20, 2008 appellant, then a 59-year-old mail handler, sustained a traumatic injury while in the performance of duty. OWCP accepted his claim for head contusion, cervical

[1] 5 U.S.C. § 8101 *et seq.*

strain and bilateral adhesive capsulitis and paid disability compensation accordingly through November 5, 2009.[2] Appellant retired on October 31, 2009.

An October 8, 2009 cervical magnetic resonance imaging (MRI) scan obtained by Dr. Chunilal P. Shah, a Board-certified diagnostic radiologist, exhibited loss of lordosis, spondylosis and central stenosis at C4-5 and C5-6. An accompanying October 8, 2009 left shoulder MRI scan was negative for rotator cuff tear. In an October 14, 2009 electromyogram (EMG) and nerve conduction study, Dr. Kenneth P. Botwin, a Board-certified physiatrist, found no evidence of bilateral upper extremity radiculopathy, neuropathy or plexopathy.[3]

An October 26, 2011 cervical MRI scan from Dr. Raul R. Otero, a Board-certified diagnostic radiologist, showed prominent right C4-5 and C5-6 spondylosis and right C5-6 foraminal compromise. Left and right shoulder MRI scans dated October 26, 2011 from Dr. Neelesh S. Prakash, a Board-certified diagnostic radiologist, revealed bilateral acromioclavicular (AC) joint osteoarthritis.

Appellant filed a claim for a schedule award on December 21, 2011.

In a January 12, 2012 report, Dr. Botwin related that appellant experienced neck, shoulder and arm pain. On examination, he observed cervical and bilateral shoulder tenderness, limited range of motion, positive left Hawkins-Kennedy and impingement signs and positive right crossover adduction and impingement signs. After reviewing the medical file, Dr. Botwin diagnosed cervical spinal stenosis, neuritis and myofascial pain as well as bilateral adhesive capsulitis, AC joint syndrome and rotator cuff syndrome, *inter alia*. Applying Table 15-5 (Shoulder Regional Grid) of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[4] Dr. Botwin calculated impairment ratings of five percent for the left shoulder and five percent for the right shoulder.[5]

On February 2, 2012 Dr. James W. Dyer, an OWCP medical adviser and Board-certified orthopedic surgeon, reviewed Dr. Botwin's January 12, 2012 report and agreed with the ratings. He pointed out that appellant's upper extremity symptoms indicated residual loss, which was compatible with either impingement syndrome or rotator cuff syndrome. Based on Table 15-5 of the A.M.A., *Guides*, Dr. Dyer assigned an impairment class for the diagnosed condition (CDX) of 1 with a default grade C, or a three percent impairment rating, for each shoulder. He selected grade modifier values of 1 for Functional History (GMFH), 2 for Physical Examination (GMPE) and 2 for Clinical Studies (GMCS). Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) or (1 – 1) + (2 - 1) + (2 - 1), Dr. Dyer calculated a net adjustment of 2 and concluded that appellant sustained five percent permanent impairment of the

[2] OWCP used $939.33, appellant's weekly pay rate at the time of his injury, as the basis for his disability compensation.

[3] A subsequent October 26, 2011 EMG and nerve conduction study from Dr. Botwin reiterated the same findings.

[4] A.M.A., *Guides* (6th ed. 2008) at 401-05.

[5] In the alternative, Dr. Botwin opined that appellant sustained 13 percent whole-person impairment based on Table 15-11 and Table 17-2. *See id.*

left shoulder and five percent permanent impairment of the right shoulder. He listed January 12, 2012 as the date of maximum medical improvement.

By decision dated April 9, 2012, OWCP granted a schedule award for five percent permanent impairment of the left upper extremity and five percent permanent impairment for the right upper extremity for the period January 12 to August 17, 2012.[6]

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 of or loss of use of scheduled members or functions of the body.[7] 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 regulations as the appropriate standard for evaluating schedule losses.[8]

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. For upper extremity impairments, the evaluator identifies the impairment class for CDX, which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[9] Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[10]

ANALYSIS

The Board finds that appellant did not establish that he sustained more than five percent permanent impairment of the left upper extremity and five percent permanent impairment of the right upper extremity.

OWCP accepted that appellant sustained head contusion, cervical strain and bilateral adhesive capsulitis while in the performance of duty on August 20, 2008. Thereafter, appellant saw Drs. Shah, Otero and Prakash who all diagnosed various upper extremity pathology. He filed a claim for a schedule award and furnished medical evidence. In a January 12, 2012 report, Dr. Botwin determined that appellant sustained five percent permanent impairment of the left

[6] OWCP used $939.33, appellant's weekly pay rate at the time of his injury, as the basis for his schedule award. *See supra* note 2.

[7] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[8] *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).

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

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

upper extremity and five percent permanent impairment of the right upper extremity based on the A.M.A., *Guides*.[11] On February 2, 2012 Dr. Dyer, an OWCP medical adviser, reviewed and agreed with Dr. Botwin's findings and detailed how he calculated the same ratings. Applying Table 15-5 of the A.M.A., *Guides*, he assigned a CDX of 1 with a default grade C for residual loss due to either impingement syndrome or rotator cuff syndrome. Dr. Dyer then selected grade modifier values of 1 for GMFH, 2 for GMPE and 2 for GMCS. Since the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (1 – 1) + (2 - 1) + (2 - 1), yielded a value of 2, he modified the default grade accordingly and established that appellant sustained five percent permanent impairment of each shoulder. The case record does not contain any other medical evidence that supports a greater percentage of impairment in conformance with the A.M.A., *Guides*. Thus, OWCP properly determined that appellant was entitled to a schedule award for five percent permanent impairment of the left upper extremity and five percent permanent impairment for the right upper extremity.

Appellant makes several contentions on appeal. First, he argues that he should have received a schedule award for 13 percent whole-person impairment. FECA, though, does not authorize schedule awards for loss of use of the body as a whole.[12] Second, appellant argues that Dr. Dyer did not "have the right to deny me benefits when he was not my treating physician or ... [to state] that my doctor did something wrong or is not credible." However, OWCP's procedures state 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*.[13]

Finally, appellant asserts that OWCP incorrectly calculated the schedule award because it applied the wrong compensation rate and deducted for cost of living. The Board finds that OWCP did not fully explain in its April 9, 2012 decision how it determined this rate or why any cost-of-living adjustment did not apply. The record further does not support the increase in the compensation rate from 66 2/3 percent to 75 percent. Therefore, the case will be remanded to OWCP for clarification on these outstanding matters.[14]

CONCLUSION

The Board finds that appellant did not sustain more than five percent permanent impairment of the left upper extremity and five percent permanent impairment of the right upper extremity.

[11] The Board notes that Dr. Botwin's opinion was not sufficiently detailed or rationalized. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6(a)-(c) (January 2010).

[12] *D.A.*, Docket No. 10-2172 (issued August 3, 2011); *J.Q.*, 59 ECAB 366 (2008).

[13] FECA Procedure Manual, *supra* note 11, Chapter 2.808.6(d).

[14] *See S.C.*, Docket No. 10-1290 (issued April 7, 2011) (a final decision issued by OWCP must include findings of fact and provide clear reasoning that allows a claimant to understand the precise defect of the claim and the kind of evidence that would tend to overcome it).

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed, in part, with regard to appellant's degree of permanent impairment. The case is remanded, in part, for further action consistent with this decision of the Board.

Issued: April 10, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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