

felt a popping and pulling sensation in his lower left bicep area when he lifted a washing machine to look under it during a shakedown at work.

In a decision dated September 25, 2007, OWCP granted appellant a schedule award for nine percent impairment of the left arm.

On September 5, 2012 appellant filed a claim for an additional schedule award for impairment to his left upper extremity.

In a clinical evaluation note dated August 10, 2012, Dr. Ralph Touma, an attending Board-certified orthopedic surgeon, listed a history that appellant sustained a biceps tendon rupture five years prior. Appellant's condition had worsened as he was unable to use his upper extremity and experienced pain. He developed carpal tunnel syndrome and ulnar nerve entrapment at the elbow level, which showed atrophy of the hyperthenar eminence. Appellant had numbness and tingling to the index and little fingers and to a lesser extent to the remaining three fingers. He also had a positive Tinel's sign at the wrist and elbow. Appellant's biceps muscle weakened the whole upper arm. In an August 22, 2012 note, Dr. Touma advised that a magnetic resonance imaging scan revealed a biceps tendon rupture at the distal attachment that happened five years prior and was never treated. Appellant subsequently lost complete function of the biceps muscle and had no biceps at the present time. Flexion was relying on his brachioradialis. Appellant had very poor flexion and resistance to flexion, yet he could bend his elbow to 120 degrees and fully extend. Dr. Touma concluded that his carpal and ulnar tunnel release was not related to his biceps tendon, but acquired from using his arm. In an attending physician's report dated August 21, 2012, Dr. Touma referenced his office notes regarding a history of the March 11, 2007 employment injury, his examination findings and appellant's diagnosis. He indicated with a checkmark "yes" that appellant sustained a condition caused or aggravated by an employment activity.

By letter dated September 17, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish greater impairment. It requested that he submit additional medical evidence, including an impairment evaluation from his attending physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Appellant was afforded 30 days to submit the requested evidence. He did not respond.

In an October 30, 2012 decision, OWCP denied appellant's claim for an additional schedule award, finding that the medical evidence of record was insufficient to establish that he had more than nine percent impairment of the left upper extremity.

LEGAL PRECEDENT

The schedule award provision of FECA,² and its implementing federal regulations,³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member,

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁴ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵ Effective May 1, 2009, FECA adopted the sixth edition of the A.M.A., *Guides*⁶ as the appropriate edition for all awards issued after that date.⁷

The sixth edition requires identifying 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).⁸ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁹

ANALYSIS

OWCP accepted that on March 11, 2007 appellant sustained a ruptured left biceps tendon. By decision dated September 25, 2007, it granted him a schedule award for nine percent permanent impairment to the left arm. Appellant requested an increased award. In an October 30, 2012 decision, OWCP found that he was not entitled to an additional schedule award for the left upper extremity. The Board finds that appellant did not meet his burden of proof to establish that he sustained greater impairment.

In an August 21, 2012 report, Dr. Touma, an attending physician, indicated that the date of injury was March 11, 2007. He noted with a checkmark “yes” that appellant sustained a condition caused or aggravated by an employment activity. Dr. Touma’s report did not provide any opinion as to whether appellant sustained permanent impairment due to the accepted injury. It is of limited probative value and insufficient to establish appellant’s schedule award claim. Dr. Touma’s clinical evaluation notes do not provide an opinion on whether appellant sustained permanent impairment due to the accepted employment injury, are also insufficient to establish his claim.

On September 17, 2012 OWCP requested that appellant provide a report from his attending physician addressing permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*; however, no additional evidence was submitted. The Board finds that there is no probative medical evidence establishing that appellant has more than nine percent impairment of his left upper extremity causally related to the March 11, 2007 accepted employment injury. Appellant is not entitled to an increased schedule award.

⁴ *Ausbon N. Johnson*, 50 ECAB 304 (1999).

⁵ 20 C.F.R. § 10.404; *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

⁶ A.M.A., *Guides* (6th ed. 2008).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁸ A.M.A., *Guides* at 494-531.

⁹ *Id.* at 521.

On appeal, appellant contended that Dr. Touma's clinical evaluation notes are sufficient to establish his entitlement to an additional schedule award. For the reasons stated, Dr. Touma's clinical notes are of diminished probative value and not sufficient to establish greater impairment than that previously granted.

Appellant may request a 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.

CONCLUSION

The Board finds that appellant did not establish that he sustained greater than nine percent impairment of his left upper extremity impairment for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2013
Washington, DC

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

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

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