

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

S.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Washington, DC, Employer**

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**Docket No. 13-864
Issued: August 6, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 28, 2013 appellant filed a timely appeal of a January 4, 2013 Office of Workers' Compensation Programs' (OWCP) merit decision granting a schedule award. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has established permanent impairment of her right upper extremity for which she received a schedule award.

FACTUAL HISTORY

On June 28, 2007 appellant, then a 57-year-old window counter clerk, filed a traumatic injury claim alleging that she injured her right arm and upper shoulder pulling a bag onto a scale. She underwent a magnetic resonance imaging (MRI) scan of the right shoulder on July 18, 2007

¹ 5 U.S.C. § 8101 *et seq.*

which demonstrated rotator cuff tear in the anterior fibers of the supraspinatus and moderate tendinosis as well as bursitis and hypertrophic arthropathy involving the acromioclavicular joint. Appellant's attending physician, Dr. Peter S. Trent, a Board-certified orthopedic surgeon, reviewed the MRI scan report on July 30, 2007 and found a retracted tear of the supraspinatus and degenerative changes of the acromioclavicular joint. OWCP accepted appellant's claim on September 17, 2007 for sprain of the right shoulder and upper arm.

On March 6, 2008 Dr. Trent performed a repair of the rotator cuff, right shoulder and subacromial decompression and repair of the subacromial bursa. In a report dated April 13, 2009, he stated that appellant's surgical scar was healed. Dr. Trent found 140 degrees of flexion, 80 degrees of abduction, 90 degrees of internal rotation and 10 degrees of external rotation. He further found one grade of manual muscle testing weakness as well as pain at the extremes of motion. Dr. Trent opined that appellant had permanent impairment and provided work restrictions.

On July 12, 2012 appellant filed a claim for a schedule award. In a letter dated July 16, 2012, OWCP requested additional evidence in support of her claim for permanent impairment of a scheduled member. Dr. Trent applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² to appellant's right shoulder condition on August 6, 2012. He noted that appellant's history of injury and the July 18, 2007 MRI scan which demonstrated rotator cuff tear with a 1.5 gap in the tendon as well as subacromial and subdeltoid bursitis and hypertrophic arthropathy involving the acromioclavicular joint. Dr. Trent provided appellant's range of motion as 30 degrees of extension, 90 degrees of internal rotation, 20 degrees of external rotation and 180 degrees of range of motion. He stated that manual muscle testing of the rotator cuff showed one-half grade of weakness of the supraspinatus. Dr. Trent determined that page 403, Table 15-5 of the A.M.A., *Guides*³ provided that rotator cuff injury with full thickness tear and residual loss of function and normal motion was class 1, grade D or six percent impairment of the right shoulder. In a note dated August 7, 2012, he stated that appellant had reached maximum medical improvement. Dr. Trent noted that appellant had pain with overhead activity but no evidence subluxation or dislocation. He found mild discomfort with resisted internal rotation and discomfort anterolaterally with abduction and external rotation. Dr. Trent found that appellant had a rotator cuff injury, full thickness tear with residual loss of function with essentially normal motion under Table 15-5 of the A.M.A., *Guides* or class 1 grade C.

OWCP's medical adviser reviewed these reports on December 7, 2012 and stated that there are some reports that the claimant has residual loss of function with essentially normal motion and some reports that appellant has grade D or five percent impairment of the right upper extremity. He stated, "In summary, permanent partial impairment of the right upper extremity is five percent based on placing the claimant in a class 1 grade C category as was advised by Dr. Trent. A one percent discrepancy is because six percent as advised by Dr. Trent is actually under grade D category. The date of [maximum medical improvement] is March 6, 2009 one year from the date of shoulder surgery."

² A.M.A., *Guides* (6th ed. 2009).

³ *Id.* at 403, Table 15.5.

By decision dated January 4, 2013, OWCP granted appellant a schedule award for five percent impairment of her right upper extremity.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing regulations⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁶

In addressing upper extremity impairments, the sixth edition requires identification of 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). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁷

ANALYSIS

OWCP accepted appellant's claim for sprain of the shoulder and upper right arm. Appellant underwent a right shoulder MRI scan on July 18, 2007 which demonstrated rotator cuff tear in the anterior fibers of the supraspinatus and moderate tendinosis as well as bursitis and hypertrophic arthropathy involving the acromioclavicular joint. Dr. Trent performed a repair of the rotator cuff, right shoulder and subacromial decompression and repair of the subacromial bursa on March 6, 2008.

In two reports dated August 6 and 7, 2012, Dr. Trent noted appellant's history of injury and reviewed the July 18, 2007 MRI scan. He provided appellant's range of motion as 30 degrees of extension, 90 degrees of internal rotation, 20 degrees of external rotation and 180 degrees of range of motion. Dr. Trent stated that manual muscle testing of the rotator cuff showed one half grade of weakness of the supraspinatus. He determined that page 403, Table 15-5 of the A.M.A., *Guides*⁸ provided that rotator cuff injury with full-thickness tear and residual loss of function and normal motion was class 1, grade D or six percent impairment of the right

⁴ 5 U.S.C. §§ 8101-8193, 8107.

⁵ 20 C.F.R. § 10.404.

⁶ For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁷ A.M.A., *Guides* 411.

⁸ *Id.* at 403, Table 15.5.

shoulder in his August 6, 2012 note. In a note dated August 7, 2012, Dr. Trent found that appellant had a rotator cuff injury, full-thickness tear with residual loss of function with essentially normal motion under Table 15-5 of the A.M.A., *Guides* or class 1 grade C.

Table 15-5 of the shoulder regional grid provides that a rotator cuff injury, full thickness tear with residual loss with normal motion was a default grade C or five percent impairment. Grade D impairment of a rotator cuff injury results in six percent award.⁹

OWCP's medical adviser reviewed reports on December 7, 2012 and noted the discrepancy between Dr. Trent's impairment ratings. He concluded that appellant had five percent impairment based on class 1 grade C rather than grade D or six percent impairment.

The Board finds that this case is not in posture for decision as neither Dr. Trent nor OWCP's medical adviser properly explained the impairment rating in accordance with the A.M.A., *Guides*. Neither physician determined the functional history, physical examination and clinical studies grade modifiers within the net adjustment formula to reach appellant's value to determine the value either C or D for appellant's impairment rating. Dr. Trent provided two different values, but did not provide an explanation of how he reached these varying conclusions. OWCP's medical adviser determined that value C or five percent was the appropriate impairment rating. The medical adviser also failed to explain the basis for his determination. As the medical evidence has not been properly correlated to the applicable provisions of the A.M.A., *Guides*, the case must be remanded for additional development of the medical evidence.¹⁰

CONCLUSION

The Board finds that this case is not in posture for decision. On remand, OWCP should develop the medical evidence in accordance with the A.M.A., *Guides* to determine appellant's permanent impairment for schedule award purposes.

⁹ *Id.*

¹⁰ *T.T.*, Docket No. 10-880 (issued November 9, 2010).

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2013 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: August 6, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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