United States Department of Labor
Employees' Compensation Appeals Board

S.A., Appellant	)	
and	)	**Docket No. 13-1251**
	)	**Issued: December 6, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Coppell, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 2, 2013 appellant filed a timely appeal from a November 19, 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 merits of the case.

ISSUE

The issue is whether appellant established that she has more than 41 percent impairment of the left upper arm for which she received schedule awards.

FACTUAL HISTORY

Appellant, a 43-year-old mail processor, has an accepted occupational disease claim for right elbow synovitis and tenosynovitis, displacement of a cervical intervertebral disc without myelopathy, degeneration of a cervical intervertebral disc; spinal stenosis in the cervical region;

[1] 5 U.S.C. § 8101 *et seq.*

lesion of a left ulnar nerve, disorder and bursae and tendons in left shoulder, other affections of the left shoulder and brachial neuritis or radiculitis. The record reflects that she underwent a February 6, 2004 arthroscopic acromioplasty of left shoulder, an August 23, 2005 left shoulder surgery; and a C5-6 and C6-7 discectomy on August 20, 2009.

By decision dated December 18, 2006, OWCP granted schedule awards for 37 percent left upper extremity impairment and 4 percent right upper extremity impairment. By decision dated December 13, 2007, it reissued the December 18, 2006 schedule awards to reflect a corrected pay rate. The period of the awards ran from September 12, 2006 through February 23, 2009.[2] By decision dated March 8, 2011, OWCP granted an additional schedule award for three percent impairment of the left upper extremity. The award ran 9.36 weeks of compensation during the period January 4 to February 13, 2011.

On October 15, 2012 appellant requested an increased schedule award. In a June 14, 2012 report, Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon, noted the history of injury, provided findings on examination and opined that appellant reached maximum medical improvement on February 18, 2010. Under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), he found that there was no ratable impairment of the right or left upper extremity due to cervical impairment. The left shoulder had 12 percent upper extremity impairment and the left elbow had 2 percent upper extremity impairment, or a total 14 percent left upper extremity impairment. For the cervical area, Dr. Shade noted normal motor and sensory examination of the right arm with radiculopathy of the left upper extremity was not accepted, it was not ratable. For the left shoulder acromioclavicular joint arthritis distal clavical resection, he found class 1 or 10 percent default impairment under Table 15-5, page 403 of the A.M.A., *Guides*. Dr. Shade applied grade modifier Functional History (GMFH) of 2; grade modifier Physical Examination (GMPE) of 2 and grade modifier Clinical Studies (GMCS) was not applicable. He applied the net adjustment formula, (GMFH-CDX)(2-1) + (GMPE-CDX)(2-1) + (GMCS-CDX)(n/a), and found a net adjustment of 2 for a final impairment of 12 percent. For the left epicondylitis condition, Dr. Shade found class 1 under Table 15-4, page 399. He found grade modifier functional history of 2; grade modifier clinical studies of 1; and grade modifier physical examination not applicable. Dr. Shade applied the net adjustment formula (GMFH-CDX)(2-1) + (GMPE-CDX)(n/a) + (GMCS-CDX)(1-1); and found a net adjustment of 2 for an impairment of 2 percent. He combined the 12 and 2 percent impairments for a final left upper extremity impairment of 14 percent.

In a November 8, 2012 report, Dr. Michael M. Katz, an OWCP medical adviser, reviewed the statement of accepted facts and noted that appellant previously received schedule awards totaling 40 percent for left upper extremity and 8 percent for right upper extremity. He found the date of maximum medical improvement was June 14, 2012. Dr. Katz noted that Dr. Shade found no ratable impairment of the left or right upper extremity under Proposed Table 1, Cervical Spinal Nerve Impairment, and reported a normal motor and sensory of both upper

[2] While a November 5, 2012 memorandum to the medical adviser notes four percent impairment to the right upper extremity was issued in 2009, the case record does not contain such a decision. The Board notes that the total amount of right upper extremity impairment is irrelevant to the issue on appeal which pertains to left upper extremity impairment.

extremities. Utilizing Dr. Shade's examination findings in conjunction with the A.M.A., *Guides*, Dr. Katz agreed with the 13 percent final left upper extremity impairment. He concurred with Dr. Shade's rating under the A.M.A., *Guides*. The left shoulder impairment under Table 15-5, page 403, for acromioclavicular joint arthritis distal clavicle resection was a 12 percent impairment. However, Dr. Shade found for left elbow epicondylitis, under Table 15-4, page 399, that appellant had one percent impairment. Dr. Katz noted that, while appellant had GMFH 2, page 516 of the A.M.A., *Guides* provided that the functional grade modifier should be applied only to the single, highest diagnosis-based impairment (DBI). As the functional grade modifier had been considered in the left extremity (shoulder), he excluded it from the left elbow impairment. Dr. Katz found GMFH n/a; GMPE 1 and GMCS n/a n/1. Under the net adjustment formula, he found (GMPE-CDX) (1-1) equaled zero net adjustment. Dr. Katz found final impairment was one percent for the elbow. He combined the 12 percent and 1 percent impairment for a total left upper extremity impairment of 13 percent. As the prior cumulative awards for the left upper extremity (40 percent) included 13 percent impairment of shoulder, no additional award was supported by the medical evidence. As no award had been previously made for the elbow, Dr. Katz combined, per Appendix A, page 604, the prior schedule award of 40 percent with the 1 percent elbow impairment to yield 41 percent total left upper extremity impairment. The prior 40 percent schedule award was subtracted from the 41 percent impairment to find an additional 1 percent impairment.

By decision dated November 19, 2012, OWCP granted a schedule award for 1 percent impairment of the left upper extremity, or a total impairment of 41 percent. The award ran 3.12 weeks of compensation for the period June 14 to July 5, 2012.

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, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, 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.[5] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[6] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

A claim for an increased schedule award may be based on new exposure or, absent any new exposure to employment factors, medical evidence indicating that the progression of an

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Ausbon N. Johnson*, 50 ECAB 304 (1999).

[6] *Supra* note 4.

[7] FECA Bulletin No. 09-03 (issued March 15, 2009).

employment-related condition has resulted in a greater permanent impairment than previously calculated.[8] In determining entitlement to a schedule award, preexisting impairment to the scheduled member should be included.[9] Any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.[10]

The sixth edition requires identifying the impairment class for the diagnosed condition, which is then adjusted by grade modifiers based on functional history, physical examination and clinical studies.[11] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.[12]

ANALYSIS

OWCP accepted appellant's occupational disease claim for right elbow synovitis and tenosynovitis; displacement of cervical intervertebral disc without myelopathy; degeneration of cervical intervertebral disc; spinal stenosis in cervical region; lesion of left ulnar nerve, disorder and bursae and tendons in left shoulder; other affections of left shoulder; and brachial neuritis or radiculitis. On December 13, 2007 OWCP awarded 37 percent left upper extremity impairment and 4 percent right upper extremity impairment. On March 8, 2011 it awarded an additional three percent impairment to left upper extremity, for a total impairment of 40 percent. Appellant filed a claim for an increased schedule award, which OWCP awarded an additional 1 percent impairment to left upper extremity, for a total impairment of 41 percent. The Board finds that the medical evidence does not support permanent impairment greater than 41 percent total left upper extremity impairment.

Appellant submitted a September 21, 2012 report from Dr. Shade, who found 14 percent left upper extremity impairment, which was comprised of 12 left shoulder impairment and 2 percent left elbow impairment. The medical adviser reviewed Dr. Shade's medical report and found 13 percent left upper extremity impairment, which was comprised of 12 percent left shoulder impairment and 1 percent left elbow impairment.

---

[8] *See James R. Hentz*, 56 ECAB 573 (2005).

[9] *See Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b. (June 1993). This portion of OWCP's procedures provide that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

[10] *See Carol A. Smart*, 57 ECAB 340 (2006); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(a)(2) (March 2011).

[11] A.M.A., *Guides* 494-531.

[12] *See* Federal (FECA) Procedure *id*. at Chapter 2.808.6(d) (August 2002).

Under Table 15-5, page 403, Dr. Shade found class 1 or 10 percent default impairment for acromioclavicular joint arthritis s/p distal clavicle resection. He found grade modifier functional history of 2; grade modifier physical examination of 2 and grade modifier clinical studies was not applicable. Dr. Shade applied the net adjustment formula, (GMFH-CDX)(2-1)+ (GMPE-CDX)(2-1) + (GMCS-CDX)(n/a), and found a net adjustment of 2 for a final impairment of 12 percent. Dr. Katz concurred with this result and the Board finds it is proper under the A.M.A., *Guides*. Under Table 15-4, page 399, Dr. Shade found class 1 or one percent default impairment for left elbow epicondylitis. While Dr. Shade found GMFH 1, GMPE n/a; and GMCS 1, Dr. Katz properly utilized the A.M.A., *Guides* to find GMFH n/a; GMPE n/a; and GMCS 1.[13] Page 516 of the A.M.A., *Guides* states the functional grade modifier should be applied only to the single, highest diagnosis based impairment. Appellant has both a shoulder and elbow impairment. As the functional grade modifier was considered for the shoulder impairment, the medical adviser properly excluded it from the left elbow impairment. Under the net adjustment formula, (GMFH – CDX) (n/a) + (GMPE – CDX) (n/a) + (GMCS – CDX) (1-1) equals zero net adjustment for final impairment of one percent. Under Appendix A, page 604, 12 percent combined with 1 percent equals 13 percent left upper extremity impairment. The medical adviser noted since the prior cumulative award of 40 percent included 13 percent impairment of the shoulder, the 12 percent shoulder impairment was less than that previously awarded and thus no additional award could be given. However, since no award has been previously made for the elbow, the medical adviser properly combined under Appendix A, page 604, the 1 percent elbow impairment with the prior schedule award of 40 percent, which yield 41 percent left upper extremity impairment. As the 41 percent left upper extremity impairment is more than the previous award 40 percent, appellant is entitled to an additional award for 1 percent left upper extremity impairment. When an examining physician does not apply or properly apply the A.M.A., *Guides* to determine an impairment rating, OWCP may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.[14] OWCP properly found appellant was entitled to an additional one percent impairment to the left upper extremity.

On appeal, appellant contends that she has additional impairment based on all the medical evidence. The Board notes, however, that OWCP's medical adviser provided the only impairment rating that conformed to the A.M.A., *Guides*. The medical adviser's opinion constitutes the weight of the medical evidence.[15] Appellant has not provided any probative medical evidence to establish that she has more than 41 percent left upper extremity impairment. As noted, she previously received awards for 37 percent and 3 percent left upper extremity impairments. While appellant submitted new evidence on appeal, the Board lacks jurisdiction to review such evidence for the first time on appeal.[16]

[13] While the medical adviser noted GMPE 1 and GMCS n/a; he indicated that he used Dr. Shade's estimates which were GMPE n/a and GMCS 1. Thus, it appears the medical adviser transposed the grade modifiers for physical examination and clinical studies.

[14] *See J.G.*, Docket No. 09-1714 (issued April 7, 2010).

[15] *See also H.B.*, Docket No. 09-2240 (issued June 18, 2010); *E.V.*, Docket No. 06-1989 (issued May 21, 2007); *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

[16] *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

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.

CONCLUSION

The Board finds that appellant has not established that she has more than 41 percent impairment of the left upper extremity for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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