United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 13-1360**
	)	**Issued: December 20, 2013**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, North Reading, MA, 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
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 20, 2013 appellant filed a timely appeal of a February 20, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) concerning a schedule award. 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 this case.

ISSUE

The issue is whether appellant has established that she has greater than six percent impairment of her left arm, for which she received a schedule award.

FACTUAL HISTORY

On July 19, 1999 appellant, then a 50-year-old mail processor, filed a traumatic injury claim alleging that she injured her left shoulder on that day in the performance of duty. OWCP

[1] 5 U.S.C. § 8101 *et seq.*

accepted the claim for a left shoulder sprain and an August 29, 2002 claim for a recurrence of disability.

In a January 12, 2012 report, Dr. Daniel W. Bienkowski, a treating Board-certified orthopedic surgeon, noted a history of the employment injury and medical treatment and provided physical examination findings. He diagnosed chronic left shoulder tendinitis associated with a long thoracic nerve palsy as a result of the accepted July 19, 1999 employment injury. Dr. Bienkowski stated that appellant had reached maximum medical improvement and had a 25 percent impairment of her left arm. Appellant subsequently filed a claim for a schedule award.

On April 23, 2012 Dr. Bienkowski responded to OWCP's February 24, 2012 letter requesting that he provide an impairment rating based upon the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Using Table 1-5 "the generic template" of the A.M.A., *Guides,* he found that appellant had a moderate or class 2 impairment due to her shoulder tendinitis and impingement of the long thoracic nerve palsy. Dr. Bienkowski stated that the shoulder impairment rating was based on Table 15-2, Table 15-5 and Table 15-7. He also used Table 16-4 to determine appellant's long thoracic nerve injury as mild.

On November 5 and 11, 2012 Dr. David I. Krohn, an OWCP medical adviser, reviewed Dr. Bienkowski's reports. He concluded that appellant had a six percent left upper extremity impairment. Using Table 15-5, page 402, Dr. Krohn assigned grade C with a default value of three percent for the diagnosis of chronic tendinitis. He found that the grade modifier at Table 15-7, page 406, for Functional History (GMFH) was zero, noting pain with strenuous activity. The grade modifier for Physical Examination (GMPE) at Table 15-8, page 408 was one, noting history of acute trauma. The grade modifier for Clinical Studies (GMCS) at Table 15-9, page 410 was zero. Pursuant to the formula set forth at Table 15-21, page 411, Dr. Krohn added the grade modifiers which resulted in grade D or four percent left upper extremity impairment. Citing to Table 15-21, page 437, he assigned class 1 to appellant's long thoracic nerve which corresponded to a grade C or two percent left upper extremity impairment. Dr. Krohn found that the grade modifier at Table 15-7, page 406, for functional history was zero, noting a mild problem. The grade modifier for physical examination at Table 15-8, page 408 was zero. The grade modifier for clinical studies at Table 15-9, page 410 was also zero. Dr. Krohn then combined the four percent impairment for left shoulder tendinitis with the two percent long thoracic nerve palsy to total a six percent left arm impairment. He stated that Dr. Bienkowski did not describe how he used Table 15-5 and Table 15-7 to determine an impairment rating for tendinitis and that the use of Table 16-4 was not appropriate in determining a long thoracic nerve impairment.

By decision dated February 20, 2013, OWCP granted a schedule award for a six percent left upper extremity impairment. The period of the award was for 18.72 weeks and ran from January 12 to May 22, 2012.

LEGAL PRECEDENT

The schedule award provision of FECA[2] and its implementing 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 or functions of the body. 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.[4]

Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.[5] The sixth edition of 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 (ICF).[6] Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.[7] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[8]

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 percentage of impairment using the A.M.A., *Guides*.[9]

ANALYSIS

OWCP accepted appellant's claim for left shoulder sprain. By decision dated February 20, 2013, it granted her a schedule award for a six percent left arm permanent impairment, based on Dr. Krohn's opinion. The Board finds that OWCP properly relied upon Dr. Krohn's opinion to find that appellant had a six percent left upper extremity impairment.

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[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Id. See C.M.*, Docket No. 09-1268 (issued January 22, 2010); *Billy B. Scoles*, 57 ECAB 258 (2005).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[6] A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[7] *Id.* at pp. 383-419.

[8] *Id.* at 411.

[9] *Tommy R. Martin*, 56 ECAB 273 (2005).

In reports dated January 12 and April 23, 2012, Dr. Bienkowski, a treating Board-certified orthopedic surgeon, concluded that appellant had a 25 percent impairment of her left arm. He cited to "the generic table" Table 1-5, in finding a moderate or class 2 impairment due to appellant's shoulder tendinitis and impingement of the long thoracic nerve palsy. Dr. Bienkowski then related generally that his impairment rating was based on Table 15-2, Table 15-5, Table 15-7 and Table 16-4. The Board notes that he failed to explain how he arrived at the impairment rating using the tables he specified. There is no explanation as to how Dr. Bienkowski diagnosed the impairment, the grade of the impairment, how he determined the grade modifiers or how the grade modifier were applied in reaching the final impairment. It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides,* his opinion is of diminished probative value. OWCP may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings of the attending physician.[10]

On November 5 and 12, 2012 Dr. Krohn reviewed Dr. Bienkowski's reports and found that appellant had six percent left upper extremity impairment under the sixth edition of the A.M.A., *Guides*. Under Table 15-5, page 403, he properly classified appellant's condition as a grade C based on her left shoulder clinical findings. Dr. Krohn found that at Table 15-7, page 406, GMFH was zero. The GMPE at Table 15-8, page 408 was one. The GMCS at Table 15-9, page 410 was zero. Pursuant to the formula set forth at Table 15-21, page 411, Dr. Krohn added the grade modifiers which resulted in grade D or four percent left upper extremity impairment. Citing to Table 15-21, page 437, he assigned a class 1 to appellant's long thoracic nerve which corresponded to a grade C or two percent left upper extremity impairment. Dr. Krohn found that the GMFH at Table 15-7, page 406 was zero. The GMPE at Table 15-8, page 408 was also zero. The GMCS at Table 15-9, page 410. Dr. Krohn combined the four percent impairment for left shoulder tendinitis with the two percent impairment for long thoracic nerve palsy, using the Combined Values Chart at page 604. This resulted in a six percent left upper extremity impairment. Dr. Krohn provided the only impairment rating of record in accordance with the applicable protocols and tables. OWCP properly granted a schedule award for a six percent left upper extremity in its February 20, 2013 decision.

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 is entitled to a greater than six percent permanent impairment, for which she received a schedule award.

[10] A.M.A., *Guides* 521. *J.B.*, Docket No. 09-2191 (issued May 14, 2010); *Linda Beale*, 57 ECAB 429 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 20, 2013 is affirmed.

Issued: December 20, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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