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

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| **K.T., Appellant** | ) | |
| **and** | ) | **Docket No. 13-1473** |
| | ) | **Issued: December 17, 2013** |
| **U.S. POSTAL SERVICE, POST OFFICE, San Diego, CA, 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 June 7, 2013 appellant filed a timely appeal from the December 13, 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 this case.

### *ISSUE*

The issue is whether appellant met her burden of proof to establish that she has more than 12 percent permanent impairment of her right arm, for which she received a schedule award.

### *FACTUAL HISTORY*

OWCP accepted that prior to January 3, 2011 appellant, then a 59-year-old letter carrier, sustained an occupational disease in the form of rotator cuff syndrome of her right shoulder with allied disorders.

[1] 5 U.S.C. §§ 8101-8193.

Appellant received treatment for her right arm condition from Dr. Patrick St. Pierre, an attending Board-certified orthopedic surgeon. In February 2011, Dr. St. Pierre noted that she had a large rotator cuff tear with osteoarthritis, biceps tendon tear and subacromial impairment.[2] On July 15, 2011 he performed arthroscopic right shoulder surgery, including rotator cuff repair, biceps tenodesis, subacromial decompression and distal clavicle excision. The procedures were authorized by OWCP.

In a September 20, 2012 report, Dr. St. Pierre provided a detailed description of appellant's medical history and reported the findings of the physical examination of her right shoulder that he conducted on September 19, 2010.[3] On examination, the portal sites of her right shoulder portal sites were healed. There was no evidence of infection, swelling, warmth, erythema or ecchymosis. Dr. St. Pierre stated that appellant had full range of motion of her right elbow, wrist and hand. For the right shoulder, appellant had active forward elevation to 120 degrees, abduction to 120 degrees, external rotation to 10 degrees and internal rotation to 10 degrees. Dr. St. Pierre noted that she had 5/5 internal rotation strength, but only had 4/5 external rotation strength and 3/5 strength of her supraspinatus tendon. Appellant's sensation was intact to light touch and distal pulses were intact. Dr. St. Pierre diagnosed partial healing of a large to massive rotator cuff tear of the right shoulder. Appellant was released to full-time work on permanent restrictions with no lifting greater more 25 pounds or engaging in overhead lifting with her right arm.

Dr. St. Pierre provided an impairment rating worksheet that he completed based on his September 19, 2012 examination findings. His rating was based on Figure 16-38 through Figure 16-46 (range of shoulder motion) on pages 474 through 479 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001). Dr. St. Pierre determined that appellant had 14 percent permanent impairment of her right arm.

On December 1, 2012 Dr. Ellen Pichey, a Board-certified occupational medicine physician serving as an OWCP medical adviser, reviewed Dr. St. Pierre's report. She concluded that appellant had 12 percent permanent impairment of her right arm under the standards of the sixth edition of the A.M.A., *Guides.* Under Table 15-5 (Shoulder Regional Grid) on page 403, Dr. Pichey applied a diagnosis-based rating for acromioclavicular joint injury or disease which had a class 1, default value of 10 percent. She stated that appellant's functional history modifier fell under grade modifier 2 per Table 15-7 on page 406; her physical examination modifier was grade modifier 2 per Table 15-8 on page 408; and her clinical studies fell under grade modifier 4 per Table 15-9 on page 410. Dr. Pichey applied the net adjustment formula, found on page 411, which resulted in a modification value of +2. This caused movement two spaces to the right of the default 10 percent value found in Table 15-5 and resulted in a total right arm impairment of 12 percent.[4]

[2] Dr. St. Pierre first started treating appellant for right shoulder problems in 2009.

[3] Dr. St. Pierre noted that clinical studies confirmed a large to massive rotator cuff tear.

[4] Dr. Pichey indicated that appellant reached maximum medical improvement on September 19, 2012.

Dr. Pichey related that Dr. St. Pierre's impairment rating was calculated under the standards of the fifth edition of the A.M.A., *Guides,* but noted that the sixth edition of the A.M.A., *Guides,* was to be used to determine appellant's impairment. She pointed out that Dr. St. Pierre used the range of motion method for impairment rating, but it was not the preferred method as explained in section 15.2 on pages 461 through 464 of the sixth edition of the A.M.A., *Guides.*

In a decision dated December 13, 2012, OWCP granted appellant a schedule award for a 12 percent permanent impairment of her right arm. The award ran for 37.44 weeks from September 19, 2012 to June 8, 2013. The award was based on the impairment rating evaluation of Dr. Pichey.

## ***LEGAL PRECEDENT***

The schedule award provision of FECA[5] and its implementing regulations[6] 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.[7] For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6th ed. 2009) is used for evaluating permanent impairment.[8]

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the shoulder, the relevant portion of the arm for the present case, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the Class of Diagnosis (CDX) is determined from the Shoulder Regional Grid (including identification of a default grade value), the Net Adjustment Formula is applied using the grade modifier for Functional History (GMFH), grade modifier for Physical Examination (GMPE) and grade modifier for Clinical Studies (GMCS). The Net Adjustment Formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[9] Under Chapter 2.3, evaluators are directed to provide

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404 (1999).

[7] *Id*.

[8] *See* FECA Bulletin No. 9-03 (issued March 15, 2009). For OWCP decisions issued before May 1, 2009, the fifth edition of the A.M.A., *Guides* (5th ed. 2001) is used.

[9] *See* A.M.A., *Guides* (6th ed. 2009) 401-11. Table 15-5 also provides that, if motion loss is present for a claimant who has undergone a shoulder arthroplasty, impairment may alternatively be assessed using section 15.7 (range of motion impairment). Such a range of motion impairment stands alone and is not combined with a diagnosis impairment. *Id.* at 405, 475-78.

reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[10]

## ***ANALYSIS***

OWCP accepted that appellant sustained rotator cuff syndrome of her right shoulder with allied disorders. In a decision dated December 13, 2012, it granted her a schedule award for 12 percent permanent impairment of her right arm. The award was based on a December 1, 2012 impairment rating by Dr. Pichey, a Board-certified occupational medicine physician serving as an OWCP medical adviser. She applied the standards of the sixth edition of the A.M.A., *Guides* to the examination findings obtained on September 19, 2012 by Dr. St. Pierre, an attending Board-certified orthopedic surgeon.

The Board finds that Dr. Pichey properly applied the sixth edition of the A.M.A., *Guides* to determine that appellant has a 12 percent permanent impairment of her right arm. Under Table 15-5 on page 403, Dr. Pichey properly applied a diagnosis-based rating for acromioclavicular joint injury or disease which had a class 1, default value of 10 percent.[11] She found that appellant's functional history modifier fell under grade modifier 2 per Table 15-7 on page 406 (moderate problem including pain/symptoms with normal activity); her physical examination modifier was grade modifier 2 per Table 15-8 on page 408 (moderate problem including instability); and her clinical studies fell under grade modifier 4 per Table 15-9 on page 410 (very severe problem confirmed by clinical studies). The Board notes that the grade modifier values derived by Dr. Pichey were proper given the examination and diagnostic findings of record. Dr. Pichey properly applied the net adjustment formula which resulted in a modification value of +2.[12] This caused movement two spaces to the right of the default 10 percent value found in Table 15-5 and resulted in a total right arm impairment of 12 percent.

Dr. St. Pierre provided an impairment rating worksheet in which he calculated that appellant had 14 percent permanent impairment of her right arm under the standards of the fifth edition of the A.M.A., *Guides.* However, this impairment rating cannot be accepted as it was calculated under the wrong edition of the A.M.A., *Guides.* Appellant's schedule award decision was issued on December 12, 2012. For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* provides the appropriate standards for evaluating permanent impairment.[13] Dr. Pichey's rating is the only impairment evaluation of record which properly applies the relevant standards to calculate appellant's right arm impairment.

On appeal, appellant argued that she should have received additional schedule award compensation given that her right shoulder condition involved pain, strength loss and motion limitation, which necessitated significant lifestyle changes. The Board notes, however, that her

[10] *Id.* at 23-28.

[11] Dr. Pichey explained that a diagnosis-based rating method was preferred as explained in section 15.2 on pages 461 through 464 of the sixth edition of the A.M.A., *Guides.*

[12] *See supra* note 9.

[13] *See supra* note 8.

right arm impairment was properly calculated by applying the relevant standards for evaluating such impairments under FECA.

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 did not meet her burden of proof to establish that she has more than a 12 percent permanent impairment of her right arm, for which she received a schedule award.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 13, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 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