

FACTUAL HISTORY

This case has previously been on appeal before the Board.² In a July 26, 2011 decision, the Board affirmed the March 22, 2010 schedule award decision, which found that appellant had not established more than nine percent impairment of her left upper extremity. It also affirmed the June 22, 2010 denial of appellant's request for a hearing. The facts and history contained in the prior appeal are incorporated by reference.

The facts and history germane to the present issue have been reiterated and include that OWCP accepted appellant's claim for left shoulder tenosynovitis and she underwent left shoulder arthroscopic acromioplasty in 2002. On March 22, 2010 appellant received a schedule award for nine percent permanent impairment of the left upper extremity.³

On May 29, 2012 appellant filed a Form CA-7 claim for a schedule award.

By letter dated June 7, 2012, OWCP requested an opinion from appellant's treating physician, Dr. Steven Bowman, a Board-certified internist, regarding appellant's work-related condition and any resulting work-related impairment. It noted that appellant previously received a schedule award for a nine percent left upper extremity impairment.

OWCP received a copy of Dr. Bowman's January 5, 2010 impairment rating in which he opined that appellant had a nine percent impairment of the left upper extremity or five percent whole person impairment.

In a June 18, 2012 report, Dr. Bowman opined that he "did not see any reason to change her rating, especially based on her history." He advised that his previous rating was "fair" and came "directly" from the American Medical Association guidelines.

On June 20, 2012 OWCP requested that OWCP's medical adviser provide an impairment rating utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6th ed. 2009) (*hereinafter*, A.M.A., *Guides*).

In a June 25, 2012 report, OWCP's medical adviser noted that he previously determined that appellant had a nine percent impairment of the left upper extremity. He advised that there was no new medical evidence to support an additional impairment.

By decision dated July 2, 2012, OWCP denied appellant's claim for an increased schedule award. It found that the evidence was not sufficient to establish entitlement to an increase in the schedule award that was previously awarded.

² Docket No. 04-546 (issued June 7, 2004).

³ On November 2, 2011 OWCP determined that a prior March 29, 2005 loss in wage-earning decision was in error as it did not reflect lost premium pay. It modified the prior decision to reflect this change and sent appellant a check for the lost premium pay.

LEGAL PRECEDENT

The schedule award provision of FECA 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 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

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).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 nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.⁹

ANALYSIS

In this case, appellant received a schedule award for nine percent permanent impairment of the left upper extremity which the Board affirmed on the prior appeal. On May 29, 2012 she filed a Form CA-7 for an increase in her schedule award. On June 7, 2012 OWCP contacted appellant's treating physician, Dr. Bowman and requested his opinion with regard to whether further impairment was warranted.

In a June 18, 2012 report, Dr. Bowman opined that he "did not see any reason to change appellant's rating, especially based on her history." He explained that he thought that his prior rating was fair and consistent with the A.M.A., *Guides*. In a June 25, 2012 report, OWCP's medical adviser opined that there was no new medical evidence to support an additional impairment. He found no basis on which to attribute any greater left arm impairment than that which OWCP had previously accepted.

⁴ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁷ A.M.A., *Guides* 494-531; *see J.B.*, Docket No. 09-2191(issued May 14, 2010).

⁸ A.M.A., *Guides* 521.

⁹ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

The Board finds that both the treating physician and OWCP's medical adviser were in agreement that appellant has nine percent impairment of the left upper extremity. There is no medical evidence consistent with the A.M.A., *Guides* supporting higher impairment. Appellant has not established entitlement to more than the nine percent impairment of the left upper extremity, for which she previously received an award, under the sixth edition of the A.M.A., *Guides*.

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 met her burden of proof to establish that she has more than a nine percent permanent impairment of her left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board