

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

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**K.H., Appellant**

**and**

**U.S. POSTAL SERVICE, GREENSBORO  
PERFORMANCE CLUSTER, Greensboro, NC,  
Employer**

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**Docket No. 12-1785  
Issued: January 18, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 22, 2012 appellant filed a timely appeal from the February 29, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule award. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 a five percent permanent impairment of her right arm, for which she received a schedule award.

**FACTUAL HISTORY**

On November 1, 2010 OWCP accepted that on February 2, 2010 appellant, then a 52-year-old city letter carrier, sustained a right shoulder sprain, other affections of the right

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

shoulder, right wrist sprain and neoplasm of uncertain behavior when she slipped on ice at work and unsuccessfully tried to stop her fall with her right hand. Appellant stopped work on February 2, 2010 and she received compensation for periods of disability. On March 3, 2010 she underwent decompression and debridement surgery of her right shoulder due to right shoulder impingement syndrome and right superior labral tear.

Appellant returned to light-duty work for the employing establishment. In an October 27, 2011 report, Dr. Vincent E. Paul, an attending Board-certified orthopedic surgeon, advised that appellant could work eight hours per day with restrictions including no lifting more than 40 pounds, pushing more than 30 pounds or pulling more than 20 pounds.

On January 8, 2012 appellant filed a claim for a schedule award due to her accepted work injuries.

In a January 24, 2012 report, Dr. Paul stated that appellant could continue to work under the restrictions he delineated on October 27, 2011. Upon examination, appellant exhibited normal extraocular motions, no neck masses, no accessory breathing muscles, no shortness of breath, no skin rashes and no peripheral edema. Her right hand was much less tender to tapping over the radial index finger area and there were no dystrophic signs. Dr. Paul indicated that full wrist grip and extension was present with some hypersensitivity to touch and palpation. He prescribed medication and noted that he would see appellant as needed.

On February 22, 2012 OWCP requested that Dr. James W. Dyer, a Board-certified orthopedic surgeon serving as a medical adviser, review the reports of Dr. Paul and provide an opinion on appellant's permanent impairment under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009).

In a February 23, 2012 report, Dr. Dyer discussed appellant's medical history, including right shoulder surgery and examination findings related to her right shoulder and right hand. He indicated that appellant's right shoulder flexion was restricted to 140 degrees after her surgery.<sup>2</sup> Dr. Dyer indicated that, under Table 15-5 (Shoulder Regional Grid) on page 402 of the sixth edition of the A.M.A., *Guides*, appellant's primary diagnosis was impingement syndrome of the right shoulder (with residual loss) which fell under a three percent default value. He found that, under Table 15-7 through Table 15-9 on pages 406-11, appellant fell under grade modifier 1 for functional history, grade modifier 2 for physical examination and grade modifier 2 for clinical studies. Applying the net adjustment formula found on page 411 meant that movement two places to the right of the default value on Table 15-5 was warranted and that appellant's total right arm impairment was five percent.

In a February 29, 2012 decision, OWCP granted appellant a schedule award for a five percent permanent impairment of her right arm. The award ran for 15.6 weeks from January 24 to May 12, 2012. The award was based on Dr. Dyer's evaluation of the findings of Dr. Paul.

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<sup>2</sup> Dr. Dyer indicated that it was not proven that appellant had reflex sympathetic dystrophy in her right wrist.

## LEGAL PRECEDENT

The schedule award provision of FECA<sup>3</sup> and its implementing regulations<sup>4</sup> 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.<sup>5</sup> For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6<sup>th</sup> ed. 2009) is used for evaluating permanent impairment.<sup>6</sup>

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).<sup>7</sup> Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.<sup>8</sup>

## ANALYSIS

OWCP accepted that on February 2, 2010 appellant sustained a right shoulder sprain, other affections of the right shoulder, right wrist sprain and neoplasm of uncertain behavior when she slipped on ice at work and unsuccessfully tried to stop her fall with her right hand. On March 3, 2010 appellant underwent decompression and debridement surgery of her right shoulder due to right shoulder impingement syndrome and right superior labral tear. In a February 29, 2012 award of compensation, OWCP granted her a schedule award for a five percent permanent impairment of her right arm. The award was based on a February 23, 2012 impairment rating by Dr. Dyer, a Board-certified orthopedic surgeon serving as an OWCP

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> *Id.*

<sup>6</sup> 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* (5<sup>th</sup> ed. 2001) is used.

<sup>7</sup> See A.M.A., *Guides* (6<sup>th</sup> ed. 2009) 401-11.

<sup>8</sup> *Id.* at 23-28.

medical adviser, in which he evaluated the physical findings of Dr. Paul, an attending Board-certified orthopedic surgeon.

The Board finds that OWCP properly relied on the February 23, 2012 opinion of Dr. Dyer to find that appellant has a five percent permanent impairment of her right arm. Dr. Dyer correctly indicated that, under Table 15-5 (Shoulder Regional Grid) on page 402 of the sixth edition of the A.M.A., *Guides*, her primary diagnosis was impingement syndrome of the right shoulder (with residual loss) which fell under a three percent default value. His determination that appellant fell under grade modifier 1 for functional history, grade modifier 2 for physical examination and grade modifier 2 for clinical studies was supported by the medical evidence of record.<sup>9</sup> Dr. Dyer correctly applied the Net Adjustment Formula to find that movement two places to the right of the default value on Table 15-5 was warranted and that her total right arm impairment was five percent.<sup>10</sup>

On appeal, appellant alleged that the severity of her right wrist and shoulder conditions entitled her to additional schedule award compensation. However, she did not submit probative medical evidence showing that she was entitled to such compensation.

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 five percent permanent impairment of her right arm, for which she received a schedule award.

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<sup>9</sup> See A.M.A., *Guides* 406-11, Table 15-7, Table 15-8 and Table 15-9.

<sup>10</sup> See *id.* at 402, Table 15-5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 29, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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