

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

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**S.D., Appellant**

**and**

**U.S. POSTAL SERVICE, TEUTONIA  
STATION, Milwaukee, WI, Employer**

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**Docket No. 12-1847  
Issued: June 14, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On August 30, 2012 appellant filed a timely appeal from a March 20, 2012 merit decision and a July 9, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). 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 and nonmerits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has more than an eight percent permanent impairment in her left upper extremity and an eight percent permanent impairment in her right upper extremity, for which she received a schedule award and; (2) whether OWCP properly denied her request for an oral hearing before an OWCP hearing representative, as untimely filed.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the July 9, 2012 nonmerit decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

## **FACTUAL HISTORY**

On February 10, 2009 appellant, then a 37-year-old mail carrier, filed a traumatic injury claim alleging that on January 24, 2009 she sustained left shoulder strain due to casing mail and streeting.<sup>3</sup> OWCP accepted the claim for left shoulder and upper arm sprain, which was subsequently expanded to include the conditions of left shoulder adhesive capsulitis; cervical degenerative disc disease at C7-T1 and cervical spondylosis without myelopathy and authorized surgery for the left shoulder, which occurred on June 4, 2009. By letter dated February 7, 2011, it placed appellant on the periodic rolls for temporary total disability.

On March 11, 2009 appellant filed an occupational disease claim alleging that on November 18, 2004 she first became aware of her right shoulder condition. She stated that she did not realize until February 24, 2009 that she had also aggravated her right shoulder at the same time she had aggravated her left shoulder from lifting tubs and casing mail.<sup>4</sup> OWCP accepted the claim for right shoulder affections not otherwise classified and authorized right shoulder surgery, which occurred on June 10, 2010.<sup>5</sup>

In a January 9, 2012 report, Brian Bartz, a certified physician's assistant, dictated a report which was signed by Dr. William T. Pennington, a treating Board-certified orthopedic surgeon. A diagnosis of bilateral shoulder pain was noted and a physical examination reported loss of bilateral shoulder range of motion and mild tenderness in the anterior superior region of the shoulder. Range of motion included 90 degrees abduction and marked loss in external and internal rotation.

Appellant filed a claim for a schedule award on March 5, 2012.

On March 14, 2012 OWCP referred appellant and the case record to OWCP's medical adviser for a permanent impairment determination using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a March 18, 2012 report, OWCP's medical adviser determined that appellant had an eight percent permanent impairment of the right upper extremity and an eight percent permanent impairment of the left upper extremity. In reaching this determination, the medical adviser found that the range of motion method was the most appropriate to utilize. Using Table 15-34, page 475 the medical adviser found a moderate impairment based on the findings of a marked decrease in internal and external shoulder rotation which resulted in a four percent impairment for external rotation and a four percent impairment for internal rotation or a total eight percent impairment in each shoulder. In concluding, the medical adviser stated that appellant should be referred for an independent evaluation if there was disagreement with the rating for a more exact measurement of her bilateral shoulder range of motion loss.

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<sup>3</sup> This was assigned claim File No. xxxxxx745.

<sup>4</sup> This was assigned claim File No. xxxxxx792.

<sup>5</sup> On April 30, 2009 OWCP combined claim File No. xxxxxx792 with claim File No. xxxxxx745, with the latter claim number as the master file number.

On March 20, 2012 OWCP granted appellant a schedule award for an eight percent right upper extremity impairment and eight percent left upper extremity impairment. The award ran for 49.92 weeks for the period March 11, 2012 to February 23, 2013.

In a letter dated April 9, 2012, appellant disagreed with the March 20, 2012 schedule award and requested that she be referred for an evaluation of her bilateral shoulder range of motion.

On April 20, 2012 appellant requested a telephonic hearing before an OWCP hearing representative.<sup>6</sup>

By decision dated July 9, 2012, OWCP denied appellant's request for a telephonic hearing on the grounds that her request was filed untimely.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of FECA<sup>7</sup> and its implementing regulations<sup>8</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>9</sup> 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.<sup>10</sup> 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).<sup>11</sup> Under the sixth edition, the evaluator identifies 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).<sup>12</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>13</sup>

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<sup>6</sup> The attached envelope contained a postmark of April 30, 2012.

<sup>7</sup> 5 U.S.C. § 8107.

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> *Id.* See *C.M.*, Docket No. 09-1268 (issued January 22, 2010); *Billy B. Scoles*, 57 ECAB 258 (2005).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claim*, 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).

<sup>11</sup> A.M.A., *Guides* 3 (6<sup>th</sup> ed., 2009), section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

<sup>12</sup> *Id.* at 383-419.

<sup>13</sup> *Id.* at 411.

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to its medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*.<sup>14</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that this case is not in posture for decision. OWCP accepted appellant's claims for conditions of left shoulder and upper arm sprain, left shoulder adhesive capsulitis; cervical degenerative disc disease at C7-T1, cervical spondylosis without myelopathy and right shoulder affections not otherwise classified. The issue is whether appellant sustained more than an eight percent permanent impairment of the left upper extremity and an eight percent permanent impairment of the right upper extremity, for which she received a schedule award. OWCP's medical adviser's report, however, is insufficient to form the basis for a schedule award determination as he failed to adequately explain how his calculations were reached. Therefore, the March 20, 2012 decision will be set aside and the case remanded for further development.

In the March 18, 2012 report, OWCP's medical adviser applied the sixth edition of the A.M.A., *Guides* and found that, under Table 15-34, appellant had a four percent permanent impairment of the left upper extremity and a four percent permanent impairment due to loss of range of motion in internal and external rotation. The medical adviser based his range of motion rating on the finding of Dr. Pennington of marked decrease in internal and external shoulder rotation. The A.M.A., *Guides* requires evaluation of six ranges of motion for the shoulder: flexion, extension, abduction, adduction, external rotation and internal rotation.<sup>15</sup> Dr. Pennington's report thus provides insufficient clinical findings to evaluate appellant's shoulder impairment using range of motion.<sup>16</sup> Additionally, the medical adviser recommended appellant be referred for an independent evaluation if there was disagreement with the rating for a more exact measurement of her bilateral shoulder range of motion. Accordingly, the Board finds that the case must be remanded to OWCP for a clarification of the medical adviser's analysis on the issue of appellant's bilateral upper extremity impairment. Following this and any necessary further development, OWCP shall issue a *de novo* decision regarding the extent and degree of appellant's employment-related impairment.

### **CONCLUSION**

The Board finds that this case is not in posture for a decision.<sup>17</sup>

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<sup>14</sup> *Tommy R. Martin*, 56 ECAB 273 (2005).

<sup>15</sup> A.M.A., *Guides* 475.

<sup>16</sup> *See W.F.*, Docket No. 11-440 (issued October 27, 2011).

<sup>17</sup> In light of the Board's disposition on the first issue, the second issue is moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 9 and March 20, 2012 are set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: June 14, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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