United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 12-1900**
	)	**Issued: June 26, 2013**
DEPARTMENT OF HOMELAND SECURITY, TSA-FEDERAL MARSHAL SERVICE, Chantilly, VA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 16, 2012 appellant, through his attorney, filed a timely appeal from a September 14, 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 the case.

ISSUE

The issue is whether OWCP properly found that appellant had no more than 10 percent permanent impairment of the left upper extremity, for which he received a schedule award.

FACTUAL HISTORY

On December 28, 2009 appellant, then a 32-year-old federal air marshal, filed a traumatic injury claim alleging that on December 27, 2009 his left shoulder and arm were injured during a physical altercation with a passenger in which he fell to the floor, landing on his left arm and left

[1] 5 U.S.C. §§ 8101-8193.

shoulder. He was out of work from December 27, 2009 until January 18, 2010, when he returned to full-time, limited duty. OWCP accepted the claim for sprain of the left shoulder and upper arm and ruptured left biceps tendon.

A March 16, 2010 electromyogram (EMG) was interpreted as showing mild left-sided ulnar neuropathy across the elbow, purely demyelinating, with essentially normal nerve conduction studies for sensory and motor functions of the left median and left ulnar nerves. An April 5, 2010 magnetic resonance imaging scan showed an age-indeterminate acromioclavicular (AC) joint separation consistent with the December 27, 2009 injury. Appellant underwent an authorized left shoulder arthroscopy and acromioplasty with distal clavicle excision and open biceps tenodesis on November 19, 2010. OWCP also accepted a July 6, 2011 recurrence.

On August 31, 2012 appellant requested a schedule award. In a July 17, 2012 report, Dr. Robert W. Macht, a general surgeon, noted the history of injury, appellant's treatment and diagnostic tests, which showed left ulnar neuropathy at the elbow and AC joint separation. On examination, he found appellant to have pain with range of motion (ROM) of 110 degrees flexion, backward elevation 20 degrees, abduction 70 degrees, adduction 30 degrees and negative Tinel's test. Dr. Macht noted that appellant's claim was accepted for left shoulder sprain. Under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[2] he opined that appellant had 14 percent permanent impairment of the left arm, comprised of 10 percent impairment of his left arm due to his shoulder condition and 4 percent impairment of the left arm for ulnar nerve entrapment. Under Table 15-7, page 406, Dr. Macht found a *Quick*DASH score of 64 out of 100 to be a grade modifier 3 functional history adjustment score. Under Table 15-34, page 475, three percent impairment was assigned for loss of forward elevation; one percent for loss of extension, six percent for loss of abduction and one percent for loss of adduction. Dr. Macht added the impairments for a total 11 percent impairment. Following the procedure outlined for total shoulder impairment based on ROM loss on page 473, he determined under Table 15-35, page 477, a grade modifier 1 ROM loss. Using the physical studies adjustment score, Table 15-8, page 408, a grade modifier 1 physical examination adjustment score was found based on appellant's ROM loss. As Dr. Macht's clinical studies confirmed his diagnosis, under Table 15-9, page 410, he found grade modifier 1 for clinical studies. He noted that, under Table 15-5, page 403, appellant had class 1 impairment of his shoulder due to clavicle resection. Since appellant's functional history was score two points higher, it was not used in the impairment evaluation. As his physical examination and clinical studies were class 1, Dr. Macht selected the default position and assigned 10 percent impairment of left upper extremity due to shoulder condition. He noted that appellant stated that there was soreness to touch and pain about his left elbow immediately after the work injury. Based on medical probability, Dr. Macht concluded that the ulnar nerve entrapment found on two EMG and nerve condition studies was causally related to the work injury. He assigned four percent impairment citing appropriate sections of the A.M.A., *Guides*. Dr. Macht opined that maximum medical improvement was reached by June 30, 2012.

In a September 10, 2012 report, an OWCP medical adviser reviewed the medical records of file along with Dr. Macht's July 17, 2012 report. He opined that appellant reached maximum

[2] A.M.A., *Guides* (6th ed. 2008).

medical improvement on July 17, 2012, the date of Dr. Macht's examination. The medical adviser agreed with Dr. Macht's overall calculation and conclusions regarding 10 percent impairment based on the left shoulder condition. He noted that the impairment calculation could either be based upon diagnostic rating utilizing distal clavicle resection under Table 15-5, page 403 or ROM calculation under Table 15-34, page 475. Under Table 15-34, page 475, the medical adviser found 3 percent impairment due to loss of forward flexion, 1 percent impairment due to loss of extension, 6 percent impairment due to loss of abduction and 1 percent impairment for loss of adduction, for a total of 11 percent left upper extremity impairment based upon the adjustment grid and grade modifiers, Table 15-35, page 477, grade modifier 1, ROM; grade modifier 1 for physical examination adjustment, Table 15-8, page 408 and grade modifier 1 for clinical studies adjustment, Table 16-9, page 410. Under Table 15-5, page 403, he found that an AC joint injury or disease, distal clavicle resection, was class 1, grade C with default value 10 percent impairment. The medical adviser, however, stated Dr. Macht's recommendation in regard to the ulnar nerve was not recommended because it was not an accepted condition and the mechanism of injury was not supported.

By decision dated September 14, 2012, OWCP granted appellant 10 percent permanent impairment of left upper extremity. The period of the award ran from July 17, 2012 to February 20, 2013, for a total of 31.2 weeks.

LEGAL PRECEDENT

The schedule award provision of FECA provides for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized 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 OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[3] Schedule award decisions issued between February 1, 2001 and April 30, 2009 utilize the fifth edition of the A.M.A., *Guides*.[4] Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides*,[5] published in 2008, as the appropriate edition for all awards issued after that date.[6]

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).[7] Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by

[3] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[4] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[5] FECA Bulletin No. 09-03 (issued March 15, 2009).

[6] *Supra* note 4, Chapter 3.700, Exhibit 1 (January 9, 2010).

[7] A.M.A., *Guides*, *supra* note 2 at 3, section 1.3, Disability and Health ICF: A Contemporary Model of Disablement.

grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[8] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[9] Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[10]

The sixth edition of the A.M.A., *Guides* also provides that ROM may be selected as an alternative approach in rating impairment under certain circumstances. A rating that is calculated using ROM may not be combined with a diagnosis-based impairment and stands alone as a rating.[11]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[12]

ANALYSIS

The accepted conditions in this case are sprain of left shoulder and upper arm and ruptured left biceps tendon, for which appellant underwent left shoulder arthroscopy and acromioplasty with distal clavicle excision and open biceps tenodesis on November 19, 2010. Appellant was granted a schedule award on September 14, 2012 for 10 percent impairment of the left upper extremity, based on the opinion of an OWCP medical adviser. The Board finds that OWCP properly relied on Dr. Macht's clinical findings, as interpreted by the medical adviser, to find that appellant had 10 percent left upper extremity impairment.

The medical adviser properly noted that the impairment calculation based on the accepted left shoulder condition could either be based upon diagnostic rating utilizing distal clavicle resection under Table 15-5, page 403 or ROM calculation under Table 15-34, page 475. The A.M.A., *Guides* recommend choosing the method which would provide the greater impairment estimate.[13] Utilizing Dr. Macht's clinical findings, the medical adviser properly found, under Table 15-34, page 475, that 110 degrees flexion equaled 3 percent impairment; 20 degrees extension equaled 1 percent impairment; abduction 70 degrees equaled 6 percent impairment and 30 degrees adduction equaled 1 percent impairment, which totaled 11 percent. Based on Table 15-35, page 477, a grade 1 modifier was assigned for ROM; under Table 15-35, page 477, a grade 1 modifier was assigned for physical examination; and under Table 16-9, page 410 a grade modifier 1 was assigned for clinical studies adjustment. As appellant's functional history was rated two points higher, pursuant the A.M.A., *Guides* it was not used in the impairment

[8] *Id*. at 385-419.

[9] *Id.* at 411.

[10] *J.W.*, Docket No. 11-289 (issued September 12, 2011).

[11] *W.T.*, Docket No. 11-1994 (issued May 22, 2012).

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

[13] A.M.A., *Guides* 84.

calculation. The medical adviser then properly noted that a distal clavicle resection under Table 15-5, page 403, was class 1, grade C with default value of 10 percent and concluded that, since the physical examination and clinical studies were class 1, the default position of 10 percent impairment of the left upper extremity due to his shoulder condition was properly selected. Under the diagnostic-based rating method for distal clavicle resection under Table 15-5, page 403, it is noted that a class 1, grade C has a range of 8 to 12 percent impairment value, with a default value of 10 percent. Due to appellant's grade modifiers, this calculation would yield 10 percent impairment. Thus, there is no evidence that appellant is entitled to greater than 10 percent left upper extremity impairment based upon his left shoulder**.**

CONCLUSION

The Board affirms that appellant has not established more than 10 percent impairment for his left shoulder condition.

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board