

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

V.N., Appellant)
and) Docket No. 13-651
U.S. POSTAL SERVICE, POST OFFICE,) Issued: June 11, 2013
San Juan, PR, Employer)

)

Appearances: Case Submitted on the Record
Appellant, pro se
Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On January 17, 2013 appellant filed a timely appeal from a December 4, 2012 schedule award decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 has more than a four percent permanent impairment of the right arm, for which he received a schedule award.

FACTUAL HISTORY

On December 3, 2000 appellant, a 56-year-old mail carrier, injured his right shoulder while climbing a fence to evade two aggressive dogs. He filed a claim on December 4, 2000, which

¹5 U.S.C. § 8101 *et seq.*

OWCP accepted for sprain of the right shoulder/upper arm. On April 19, 2010 appellant filed a Form CA-7 claim for schedule award based on a partial loss of use of his right arm.

On January 31, 2012 appellant underwent a magnetic resonance imaging (MRI) scan of the right arm. The test results showed tendinitis and a partial tear and strain of the right biceps tendon.

In an April 6, 2010 report, Dr. Priscilla Mieses Liavat, Board-certified in family practice, found that appellant had a six percent permanent impairment of the right upper extremity pursuant to the American Medical Association's, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (sixth edition). She based this rating on the tear to the right biceps tendon and cited Table 15-5, Table 15-7, Table 15-8, Table 15-10 and Table 15-11 of the A.M.A., *Guides*.

By decision dated September 23, 2010, OWCP found that appellant had no ratable impairment causally related to his accepted condition and was not entitled to a schedule award.

In order to determine whether appellant sustained impairment due to his accepted right shoulder and arm conditions, OWCP referred him to Dr. Fernando Rojas, Board-certified in orthopedic surgery, for a second opinion examination. In a March 30, 2012 report, Dr. Rojas found that appellant had a four percent permanent impairment of the right upper extremity based on right shoulder tendinitis. He noted on examination that appellant had subjective complaints consistent with tendinitis of the right shoulder, although there was a discrepancy between the objective findings and the subjective complaints. Dr. Rojas found that appellant had moderate active loss of motion in the right shoulder and full passive motion.

Dr. Rojas also diagnosed a right biceps tendon rupture of the long head; but did not find that there was any functional incapacity or loss of strength stemming from this injury on examination. He utilized the diagnosis-based method of impairment Table 15-4, page 399 of the A.M.A., *Guides*, the Elbow Regional Grid, to find that appellant had a class 0 impairment for distal biceps tendon rupture, based on no residual findings and no need for surgical treatment. Applying the net adjustment formula at section 15.3, pages 406, 410 and 411 of the A.M.A., *Guides*,² Dr. Rojas found that the grade modifier at Table 15-7, page 406 for functional history was zero, for asymptomatic; the grade modifier for physical examination at Table 15-8, page 408 was one, for a mild problem, with slight instability; and the grade modifier for clinical studies at Table 15-9 was one, for a mild problem, for clinical studies which confirmed a diagnoses of biceps tendon pathology. Pursuant to the formula set forth at Table 15-21, page 411, Dr. Rojas then added the grade modifiers one and one for physical examination at Table 15-8 and clinical studies at Table 15-9, which yielded a net adjusted grade 2 or grade E, for a zero percent upper extremity impairment for biceps tendon rupture.

With regard to the right shoulder, Dr. Rojas relied on Table 15-5, page 402 of the A.M.A., *Guides*, the Shoulder Regional Grid, to find that appellant had a class 1 impairment for tendinitis. This corresponded to a history of painful injury, residual symptoms without consistent objective findings and residual loss, functional with normal motion. Applying the net adjustment

² A.M.A., *Guides* 406, 410-11.

formula at section 15.3, pages 406, 410 and 411 of the A.M.A., *Guides*,³ he found that the grade modifier at Table 15-7, page 406 for functional history was one, for a mild problem, pain/symptoms with strenuous/vigorous activity, plus medication to control symptoms; the grade modifier for physical examination at Table 15-8, page 408 was two, for a moderate instability; and the grade modifier for clinical studies at Table 15-9 was one, for a mild problem, for a postoperative diagnostic study, which confirmed mild degenerative changes. Pursuant to the formula at Table 15-21, page 411, Dr. Rojas then subtracted the grade modifier one from grade modifier two for both functional history at Table 15-7 and clinical studies at Table 15-9, which yielded a net adjusted grade zero plus one -- a total grade of plus one, which moved the default position to D, which equated to a four percent impairment of the right upper extremity at Table 15-5, page 402.⁴

In an amended statement of accepted facts dated May 23, 2012, OWCP noted that appellant's accepted conditions were sprain of right shoulder and upper arm, other specified sites, right, code 8408.

In a May 24, 2012 report, an OWCP medical adviser found that appellant had a four percent right upper extremity impairment under the A.M.A., *Guides*. He agreed with the findings of Dr. Rojas and stated that a diagnosis-based impairment based on shoulder tendinitis was consistent with the May 23, 2012 amended statement of accepted facts.

By decision dated December 4, 2012, OWCP granted appellant a schedule award for a four percent impairment of the right upper extremity. It ran for the period April 6 to July 2, 2010 or a total of 12.48 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing regulations⁶ 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 The claimant has the burden of proving

³*Id.*

⁴*Id.* at 402.

⁵5 U.S.C. § 8107.

⁶20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

⁷*Id.*

that the condition for which a schedule award is sought is causally related to his or her employment.⁸

ANALYSIS

OWCP accepted the conditions of sprain of the right shoulder/upper arm. On May 23, 2012 it expanded the accepted conditions to include other unspecified sites, right, under code 8408. The medical adviser reviewed Dr. Rojas' March 30, 2012 report and found that appellant had a four percent right upper extremity impairment for right shoulder tendinitis based on the diagnosis-based method outlined in the applicable tables of the sixth edition of the A.M.A., *Guides*. The Board notes that the A.M.A., *Guides* stipulate that the examiner should use the diagnosis with the highest impairment rating in that region that is causally related for the impairment calculation.⁹ Dr. Rojas, therefore, properly found that a diagnosis of right shoulder tendinitis, as noted by the January 31, 2012 MRI scan and based on his examination, was the appropriate method for rating appellant's right upper extremity impairment. The Board notes that Dr. Liavat's April 6, 2010 report, which rated a six percent right upper extremity impairment based on a ruptured right biceps tendon, did not contain an explanation or analysis of how the rating was calculated in conformance with the applicable tables of the A.M.A., *Guides*.¹⁰ Accordingly, as Dr. Rojas and the medical adviser provided the only impairment ratings of record rendered in accordance with the applicable protocols and tables of the A.M.A., *Guides*, it properly granted a schedule award for a four percent right upper extremity impairment in its December 4, 2012 decision.

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 no more than a four percent permanent impairment of the right upper extremity, for which he received a schedule award.

⁸Veronica Williams, 56 ECAB 367, 370 (2005).

⁹ A.M.A., *Guides* 387.

¹⁰ The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. See Peter C. Belkind, 56 ECAB 580, 585 (2005). In addition, OWCP never accepted a condition of ruptured biceps tendon.

ORDER

IT IS HEREBY ORDERED THAT the December 4, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 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