United States Department of Labor
Employees' Compensation Appeals Board

R.N., Appellant	)	
and	)	**Docket No. 13-549**
	)	**Issued: November 7, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Albert Lea, MN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 8, 2013 appellant filed a timely appeal from an October 2, 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 this case.

ISSUE

The issue is whether appellant has more than five percent left upper extremity impairment, for which he received a schedule award.

On appeal, appellant asserts that, based on the opinion of the attending orthopedic surgeon, he is entitled to a greater award.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On October 2, 2009 appellant, then a 57-year-old letter carrier, filed an occupational disease claim alleging that work duties caused left shoulder bursitis and tendinitis. He did not stop work. OWCP accepted an affection of left shoulder region, not otherwise classified. A December 3, 2009 magnetic resonance imaging (MRI) scan study of the left shoulder demonstrated moderate supraspinatus tendinosis with partial thickness tears. On April 29, 2010 Dr. Mark Ciota, a Board-certified orthopedic surgeon, performed left shoulder arthroscopic repair of a small full supraspinatus thickness tear. Appellant received wage-loss compensation and returned to modified duty on May 12, 2010. He continued to receive intermittent compensation for medical and therapy appointments. On August 16, 2010 appellant filed a recurrence of disability claim. The employing establishment noted that the work stoppage was due to withdrawal of limited duty under the National Reassessment Process. Appellant received wage-loss compensation. He returned to full duty on January 5, 2011.

On January 7, 2011 appellant filed a schedule award claim. In letters dated January 11 and March 2, 2011, OWCP informed him of the evidence needed to support his claim. In a January 5, 2011 report, Dr. Ciota advised that appellant had reached maximum medical improvement. He found that appellant could passively forward flex and abduct his left shoulder to 160 degrees, actively forward flex and abduct about 145 degrees, with external rotation limited passively to 20 degrees and full internal rotation. Dr. Ciota advised that appellant had excellent strength testing of the supraspinatus and was neurologically and vascularly intact. He released appellant without restriction and rated seven percent impairment, based on the State of Minnesota disability schedule.

In reports dated April 27, 2011, Dr. Robert A. Wengler, Board-certified in orthopedic surgery, advised that appellant had reached maximum medical improvement. He noted appellant's subjective complaints of persistent left shoulder stiffness and pain. Dr. Wengler stated that appellant still had a partially frozen left shoulder with limited external rotation, weakness in abduction against resistance and obvious compromise of rotator cuff function. He saw no visible atrophy of the deltoid muscle and no demonstrable sensory changes. Dr. Wengler advised that under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[2] Table 15-5, Shoulder Regional Grid, appellant had a class 1 rotator cuff injury. He found modifiers of two each for Functional History (GMFH) and Physical Examination (GMPE), stating that appellant had a moderate problem and also found a modifier of two for Clinical Studies (GMCS), based on appellant's MRI scan study. Dr. Wengler enclosed an impairment worksheet and concluded that appellant had 13 percent left arm impairment.

On June 6, 2011 Dr. David H. Garelick, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed the medical record. He noted that, while Dr. Ciota found seven percent left upper extremity impairment, his conclusion was based on the State of Minnesota disability schedule and was therefore disregarded. While Dr. Wengler noted 13 percent impairment under Table 15-5 of the A.M.A., *Guides*, the table provided that seven percent was

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

the largest impairment allowable for a rotator cuff repair, which was appellant's diagnosis. Dr. Garelick stated that, Dr. Wengler did not explain the methodology used to find 13 percent impairment. Therefore, the rating was disregarded. Dr. Wengler noted that Dr. Ciota found that appellant had done well following his rotator cuff repair; that strength in the rotator cuff musculature was described as excellent; shoulder range of motion was only mildly diminished and appellant was neurologically and vascularly intact. Based on Dr. Ciota's findings, appellant had a very good result following his surgery, who Dr. Gorelick rated five percent left arm impairment for a full thickness rotator cuff repair with residual mild motion loss. He noted that there was no change in the rating with use of the net adjustment formula. Dr. Garelick found that the date of maximum medical improvement was January 5, 2011, when appellant was last seen by Dr. Ciota.

By decision dated July 8, 2011, appellant was granted a schedule award for five percent loss of use of the left arm, for a period of 15.6 weeks, to run from January 5 to April 24, 2011. On July 30, 2011 he requested a review of the written record. Appellant submitted evidence previously of record and a July 21, 2011 report from Dr. Wengler, who reviewed Dr. Garelick's report and disagreed with his opinion that appellant, had a very good result from the surgical repair of the rotator cuff tear. Dr. Wengler indicated that appellant only had 80 degrees of abduction of the shoulder joint with persistent subjective complaints of stiffness, pain and an inability to sleep on the left side, which he did not find to be a good result. He asserted that Table 15-5 allowed a range of 1 to 13 percent impairment for a full-thickness tear of the rotator cuff. Dr. Wengler referenced his April 27, 2011 report regarding allowable modifiers and reiterated that appellant had 13 percent left upper extremity impairment.

On November 10, 2011 OWCP's hearing representative affirmed the July 8, 2011 schedule award decision.

On March 21, 2012 appellant requested reconsideration. He submitted evidence previously of record and a December 26, 2011 report from Dr. Wengler, who disagreed with Dr. Garelick's opinion that he had not adequately explained how he assigned the grade modifiers. Dr. Wengler stated that, pursuant to Table 15-7 regarding the functional history adjustment, appellant had a modifier of 2 because he had pain symptoms with normal activity and required medication to control these symptoms. Further, appellant was not able to perform self-care activities without modification. Dr. Wengler stated that, pursuant to Table 15-8 regarding the physical examination adjustment, appellant had a moderate problem due to tenderness on examination and limited motion, including passive abduction at the glenohumeral joint of the shoulder to 85 degrees and also limited external rotation and limited forward elevation. He noted that this met the criteria for a grade 2 modifier under Table 15-8. Dr. Wengler further advised that, in accordance with Table 15-9 which addressed clinical studies, appellant's MRI scan study documented a rotator cuff tear. With grade modifiers totaling six under the net adjustment formula, appellant was placed in grade E under Table 15-5, for a maximum upper extremity impairment of 13 percent.

On September 17, 2012 Dr. Garelick reviewed the record. He noted that Dr. Wengler continued to recommend 13 percent left arm impairment based on a grade E impairment for a full thickness rotator cuff tear under Table 15-5 of the A.M.A., *Guides*. Dr. Garelick reiterated that under Table 15-5, the most allowed for a full thickness rotator cuff tear diagnosis was seven

percent. He checked the Clarifications and Corrections handout for the A.M.A., *Guides* and found no changes were made to Table 15-5. Dr. Garelick disagreed with Dr. Wengler's assignment of a grade 2 modifier for physical examination, based on range of motion loss, noting that on January 5, 2011 Dr. Ciota described 160 degrees of forward flexion, full internal rotation, some limited external rotation and near normal abduction at 110 degrees which, under Table 15-34, would be classified as a grade 1 modifier. Regarding the functional history modifier, he noted that Dr. Wengler assigned a grade 2 modifier based on appellant's report of pain with normal activity that required medication and required modification to perform self-care activities. Dr. Garelick again referenced Dr. Ciota's reports of October 13, 2010 and January 5, 2011, in which appellant reported minimal to no pain, stated that he was doing really well and expressed interest in returning to work without restrictions. He commented that appellant did not require medication to control pain or needed modification to perform self-care activities. Rather, Dr. Garelick qualified for a grade 1 modifier for functional history as noted in Table 15-7 of the A.M.A., *Guides*. He concluded that there was no evidence to support a change in appellant's five percent left upper extremity impairment rating with a date of maximum medical improvement of January 5, 2011.

In a merit decision dated October 2, 2012, OWCP denied modification of the prior decisions.

LEGAL PRECEDENT

The schedule award provision of FECA[3] 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] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.[6] For decisions issued after May 1, 2009, the sixth edition is used.[7]

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).[8] 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] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Id*. at § 10.404(a).

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

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

[8] *Supra* note 2 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

grade modifiers based on GMFH, GMPE and GMCS.[9] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10]

Although the diagnosis-based approach is the preferred method of evaluating permanent impairment under the sixth edition of the A.M.A., *Guides*,[11] Table 15-5, Shoulder Regional Grid, provides that, if loss of motion is present, the impairment may alternatively be assessed under section 17-7, range of motion impairment.[12] A range of motion impairment stands alone and is not combined with a diagnosis-based impairment.[13]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the 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.[14]

ANALYSIS

The Board finds that appellant has five percent impairment of the left upper extremity. The accepted condition in this case is affection of left shoulder region. On April 29, 2010 Dr. Ciota performed repair of a full thickness tear of the supraspinatus musculature. Appellant was granted a schedule award on July 8, 2011 for five percent impairment of the left arm, based on the opinion of the medical adviser, Dr. Garelick, who relied on Dr. Ciota's finding from physical examination.

While Dr. Ciota advised that appellant had seven percent left arm impairment, his evaluation was based on the State of Minnesota disability schedule. OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants in federal workers' compensation claims.[15] Therefore, this rating is of reduced probative value.

Under the sixth edition of the A.M.A., *Guides*, for upper extremity impairments the evaluator is to first identify an impairment class for the diagnosed condition which is then adjusted by grade modifiers based on functional history, physical examination and clinical studies.[16] The evaluator is to then apply the net adjustment formula.[17] Section 15.2a of the sixth

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

[10] *Id*. at 411.

[11] *Id*. at 461, section 15.7.

[12] *Id*. at 401-05.

[13] *Id.* at 405.

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

[15] *Supra* note 5.

[16] *Supra* note 9.

[17] *Supra* note 10.

edition provides that the first step in determining an impairment rating is to choose the diagnosis that is most applicable for the region being assessed, to be followed by assessment in accordance with Table 15-7 through Table 15-9.[18] It further provides that under specific circumstances, range of motion may be selected as an alternative approach in rating impairment and cautions that an impairment rating that is calculated using range-of-motion stands alone and may not be combined with a diagnosis-based impairment.[19] Section 15.2e provides that shoulder impairment is to be evaluated under Table 15-5, Shoulder Regional Grid, Table 15-6, Adjustment Grid, to be followed by the adjustment modifiers in Table 15-7 to Table 15-9.[20]

Contrary to the assertion of Dr. Wengler, an attending orthopedist, that the maximum allowable under Table 15-5 for a full thickness rotator cuff tear is 13 percent, the Board notes that the table provides that seven percent is the maximum allowed.[21] Dr. Wengler's rating failed to comport with a proper analysis under Table 15-5. It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of any permanent impairment. OWCP may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.[22] Dr. Garelick disagreed with Dr. Wengler's physical examination findings regarding the modifiers. He based his rating that appellant had five percent left arm impairment on the findings of Dr. Ciota who performed the surgery. The Board finds that the weight of the medical evidence rests with the opinion of Dr. Garelick and establishes that appellant has a five percent left arm impairment.

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 a five percent impairment of the left upper extremity impairment.

[18] *Id*. at 389-90.

[19] *Id*. at 390.

[20] *Id*.

[21] *Id*. at 403.

[22] *Linda Beale*, 57 ECAB 429 (2006).

ORDER

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

Issued: November 7, 2013
Washington, DC

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

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

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