United States Department of Labor
Employees' Compensation Appeals Board

M.R., Appellant	)	
and	)	**Docket No. 13-1216**
	)	**Issued: September 24, 2013**
DEPARTMENT OF THE NAVY, NAVAL FACILITIES ENGINEER COMMAND -- STATIONS, Philadelphia, PA, 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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 23, 2013 appellant filed a timely appeal from a March 7, 2013 merit award 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 sustained more than a seven percent permanent impairment of the left upper extremity for which he received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 17, 2012 appellant, then a 50-year-old high voltage electrician, sustained a traumatic injury to his left arm when he was attempting to raise a ladder. By decision dated January 26, 2012, OWCP accepted the claim for complete rupture of the left bicep.

Appellant was initially treated at Jefferson University Hospital on January 18, 2012. A January 19, 2012 magnetic resonance imaging (MRI) scan revealed a complete tear of the biceps tendon ruptured distally and mild enlargement of the ulnar nerve with cubital tunnel. On February 8, 2012 appellant underwent left distal biceps repair under the care of Dr. Luke Austin, a Board-certified orthopedic surgeon. Postsurgery, he received conservative treatment consisting of physical therapy.

In a June 1, 2012 medical report, Dr. Austin reported that appellant was doing well four months after left distal biceps repair. Henoted that appellant had functional range of motion, good strength, no pain and some loss of supination which he believed would likely improve with time. Dr. Austin stated that appellant would reach maximum medical improvement (MMI) on June 6, 2012 and could return to work full duty with restrictions.

On July 26, 2012 appellant submitted a claim for a schedule award (Form CA-7).

In support of his claim, appellant submitted a July 3, 2012 medical report from Dr. David Weiss,Board-citified in osteopathic medicine. In his report, Dr. Weiss provided a history of appellant's injury, reviewed prior medical reports and provided findings on physical examination. A July 3, 2012 *Quick*DASH(QD) worksheet rating the disabilities of the left arm, shoulder and hand provided appellant with a QD disability/symptom score of 36 percent. Dr. Weiss used appellant's postoperative history, examination findings, diagnostic studies and QD scores to process an impairment rating of the left upper extremity using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[2] According to theElbow Regional Diagnostic Grid,Table 15-4,he identified the left distal biceps tendon rupture as class 1 with a default value (DV) of five percent.[3] Using the QD score of 36 percent, Functional History (GMFH)equated to a grade modifier of 1;[4]Physical Examination (GMPE) of 2due tomoderate problems to the left upper extremity[5] and Clinical Studies (GMCS) of 2due to moderate problems.[6]

Applying the net adjustment formula at section 15-3, pages 409 and 411 of the A.M.A., *Guides*,[7] Dr. Weiss subtracted 1, the numerical value of the class, from the numerical value of

[2] A.M.A., *Guides* (2009).

[3] *Id.* at 399.

[4] *Id*. at 406, Table 15-7.

[5] *Id.* at 408, Table 15-8.

[6] *Id*. at 410, Table 15-9.

[7] *Id.* at 409, 411.

the grade modifier for each component (functional history, physical examination and clinical studies) and then added those values, resulting in a net adjustment of 2 ((1-1) + (2-1) + (2-1)).[8] Using Table 15-10, the net adjustment value of 2 moved the grade within the class 2 positions to the right of the DV at 5 to 7, grade E.[9] This resulted in a seven percent left upper extremity impairment.[10]

For appellant's mild sensory deficit of the left ulnar nerve above the mid forearm, Dr. Weiss indicated that appellant fell within class 1 of the Peripheral Nerve Impairment Diagnostic Grid at one percent using Table 15-21.[11]He found a grade modifier of 1 for functional history due to mild problems and a grade modifier of 0 for asymptomatic clinical studies.[12] As physical examination was not applicable, the net modifier adjustment formula was a negative 1 which shifted the DV of 1 to the left for zero percent left ulnar peripheral nerve impairment.[13] Thus, Dr. Weiss concluded that appellant had a total seven percent permanent impairment of his left upper extremity under the sixth edition of the A.M.A., *Guides*. He found that appellant reached MMI on July 3, 2012.

On January 15, 2013 OWCP routed Dr. Weiss' report, a statement of accepted facts and the case file to an OWCP district medical adviser (DMA). In a January 15, 2013 report, the DMA stated that appellant reached MMI of the upper left extremity on July 3, 2012. He noted appellant's January 19, 2012 MRI scan of the left upper extremity and his February 8, 2012 left distal biceps repair. The DMA provided calculations regarding the left distal biceps tendon rupture using Table 15-4 of the Elbow Regional Diagnostic Grid sixth edition of the A.M.A., *Guides*.[14]Using the net modifier adjustment formula, he calculated a seven percent impairment of the distal biceps tendon rupture. Using Table 15-21, the DMA calculated zero percent impairment of the mild sensory deficit of the left ulnar nerve above the mid forearm.[15] Thus, he concluded that appellant had a seven percent permanent impairment of the left upper extremity, consistent with the findings and calculations of Dr. Weiss.

By decision dated March 7, 2013, OWCP granted appellant a schedule award claim for seven percent permanent impairment of the left upper extremity. The date of MMI was noted as July 3, 2012. The award covered a period 21.84 weeks from July 3, to December 2, 2012.

[8] *Id.*

[9] *Id.* at 412, Table 15-10.

[10] *Supra* note 3.

[11] *Id.* at 443, Table 15-21

[12] *Supra* note 4, note 6.

[13] *Supra* note 11.

[14] *Supra* note 3.

[15] *Supra* note 11.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations 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.[16] 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.[17]

The A.M.A., *Guides* provide a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[18] 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 elbow, the relevant portion of the arm for the present case, reference is made to Table 15-4 (Elbow Regional Grid) on page 399.Reference is also made to Table 15-21 (Peripheral Nerve Impairment) on page 443 with respect to the left ulnar nerve above the mid forearm. After the class of diagnosis (CDX) is determined from the Elbow Regional Grid (including identification of a default grade value), the Net Adjustment Formula is applied using the grade modifier for GMFH, grade modifier for GMPE and grade modifier for GMCS.[19] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[20] 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.[21]

ANALYSIS

OWCP accepted appellant's claim for complete rupture of the left bicep. The issue is whether he sustained more than a seven percent permanent impairment of the left upper extremity for which he received schedule awards. The Board finds that appellant has not met his burden of proof to establish a greater impairment of the upper left extremity than theseven percent already awarded.

The Board notes that Dr. Weiss properly determined appellant's left arm impairment under the relevant standards of the sixth edition of the A.M.A., *Guides*. According to Table 15-4 on page 399, appellant fell under the diagnosis-based category of distal biceps tendon rupture,

[16] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[17] *K.H.*, Docket No. 09-341 (issued December 30, 2011).For decisions issued after May 1, 2009, the sixth edition will be applied.*B.M.*, Docket No. 09-2231 (issued May 14, 2010).

[18] *Supra* note 2 at 3, section 1.3, ICF: A Contemporary Model of Disablement.

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

[20] *Id.* at 411.

[21] *Id.* at 23-28.

which has a DV of five percent when residual loss of strength and function with normal motion are present.[22] Dr. Weiss further found that, under the grade modifier scheme, appellant's diagnosis rating was increased by two percent on Table 15-4 which demonstrated a seven percent impairment of the left arm. Using Table 15-21 on page 443 of the Peripheral Nerve Impairment Diagnostic Grid for the ulnar nerve above mid forearm, and the grade modifiers OWCP properly found zero percent left ulnar peripheral nerve impairment.[23] Thus, Dr. Weiss concluded that appellant had seven percent total permanent impairment of the left upper extremity.

The Board finds that the DMA properly reviewed Dr. Weiss' report and applied the appropriate tables and grading schemes of the A.M.A., *Guides* in determining that appellant had no more than seven percent permanent impairment of the left upper extremity.[24] Moreover, the date of MMI was correctly noted as July 3, 2012 as the determination of the date ultimately rests with the medical evidence[25] and is usually considered to be the date of the evaluation by the physician which is accepted as definitive by OWCP.[26] Appellant did not submit any additional medical evidence on appeal which would establish that he has more than seven percent impairment to the left upper extremity.

On appeal, appellant argues that he was disabled at least 10 to 15 percent and that he should be awarded an increased schedule award. Both Dr. Weiss and the DMA provided findings and calculations which supported the seven percent impairment of the left upper extremity. Appellant may request an 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 not established that he has more than a seven percent permanent impairment of the left upper extremity for which he received a schedule award.

[22] *Supra* note 3.

[23] *Supra* note 11.

[24] *W.M.*, Docket No. 11-1156 (issued January 27, 2012).

[25] *L.H.*, 58 ECAB 561 (2007).

[26] *Mark Holloway*, 55 ECAB 321, 325 (2004).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated March 7, 2013 is affirmed.

Issued: September 24, 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