

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

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**B.B., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
EMERGENCY PREPAREDNESS &  
RESPONSE, Alexandria, VA, Employer**

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**Docket No. 14-810  
Issued: August 1, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 28, 2014 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) decision dated February 14, 2014 which denied his claim for an additional schedule award. 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 of the case.

**ISSUE**

The issue is whether appellant has more than 39 percent permanent impairment of the left upper extremity for which he previously received a schedule award.

**FACTUAL HISTORY**

This is the second appeal in the present case. In a decision dated December 23, 2010, the Board reversed OWCP's May 6, 2009 decision finding that OWCP improperly found the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

position of yard foreman represented appellant's wage-earning capacity as of May 6, 2009.<sup>2</sup> The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.

There was evidence submitted in the prior appeal which is relevant to the current appeal before the Board. Appellant was treated by Dr. James R. Gosey, Jr., a Board-certified orthopedic surgeon, who on December 28, 2006 performed an open acromioclavicular joint repair of the left shoulder and diagnosed third-degree acromioclavicular separation of the left shoulder. On March 26, 2007 he removed the hardware from appellant's left shoulder. Appellant came under the treatment of Dr. Jeffrey Noblin, a Board-certified orthopedic surgeon, from January 8 to February 14, 2008, for persistent left shoulder pain. Dr. Noblin noted a computerized tomography (CT) scan of the left shoulder performed on January 17, 2008 revealed a coracoid fracture and recommended surgery. On February 14, 2008 he performed arthroscopy of the left shoulder with subacromial decompression followed by open excision of bony coracoid. Appellant requested a schedule award. On December 10, 2008 OWCP's medical adviser opined that appellant sustained a 39 percent impairment of the left arm based on loss of range of shoulder motion and acromioclavicular joint arthroplasty pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). In a decision dated January 21, 2009, OWCP granted appellant 37 percent impairment of the left leg and 39 percent impairment of the left arm due to his left shoulder condition. The period of the award was from January 18, 2009 to June 3, 2013.

Appellant continued submitting medical reports noting the status of his left shoulder condition. In a July 2, 2012 report, Dr. Gosey noted that appellant presented with shoulder pain. In an April 1, 2013 report, he noted that appellant had a loss of deltoid muscle. Appellant underwent a functional capacity evaluation on September 18, 2012 which indicated that he could work in the medium demand category for eight hours per day. The physical therapist noted that range of motion for flexion for the right shoulder was 158 degrees and 80 degrees for the left shoulder, abduction was 136 degrees for the right shoulder and 70 degrees for the left shoulder, internal rotation was 30 degrees for the left shoulder and external rotation was 30 degrees for the left shoulder.

On September 13, 2013 OWCP referred appellant for a second opinion to Dr. Eric J. Letonoff, an osteopath and Board-certified orthopedist, to determine whether appellant had residuals of his work-related condition. In a November 1, 2013 report, Dr. Letonoff diagnosed chronic rotator cuff insufficiency of the left shoulder, chronic left arm biceps tendon rupture, glenohumeral arthritis of the left shoulder and history of total left knee replacement. He noted that appellant was status post left shoulder rotator cuff repair, left shoulder biceps tenodesis, left shoulder coracoid process and left shoulder irrigation and debridement. Dr. Letonoff noted left shoulder forward flexion/abduction was 89 degrees active, internal rotation was to S1 on the left and T10 on the right, external rotation was 15 degrees on the left and 20 degrees on the right. He

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<sup>2</sup> Docket No. 10-24 (issued December 23, 2010). On April 27, 2006 appellant, a temporary full-time public assistance project officer, injured his left knee while at work. OWCP accepted the claim for a left knee sprain, medial collateral ligament and temporary aggravation of left leg osteoarthritis. It subsequently accepted contusion and acromioclavicular sprain of the left shoulder and upper arm. Appellant worked intermittently thereafter. On July 6, 2007 he was placed on the periodic rolls and receipt of wage-loss compensation.

noted that appellant had residuals of the April 27, 2008 work injury with chronic rotator cuff tear of the left shoulder and residuals from multiple surgeries on the left shoulder which limited his return to full unrestricted activities. Dr. Letonoff opined that appellant was unable to return to his date-of-injury job but could return to a job which accommodates his left shoulder disability. He recommended a left total shoulder arthroplasty.

On January 2, 2014 appellant filed a claim for a schedule award. He submitted a December 18, 2013 report from Dr. Gosey who noted that appellant had multiple left shoulder surgeries, a failed third degree acromioclavicular separation, a failed coronoid repair, and a scarred and weak anterior deltoid. Dr. Gosey noted decreased range of motion, weakness and an inability to lift the left arm except for eating and daily care. He opined that appellant was 50 percent disabled before his last set of operations, but his condition progressively worsened due to loss of the anterior deltoid. Dr. Gosey opined that appellant was currently 75 percent impaired of the left shoulder “which then computes to certain percentage of the arm.” He noted that appellant had some motion, chronic pain and weakness.

On January 13, 2014 OWCP asked its medical adviser to address whether appellant had additional left arm impairment due to his shoulder condition. In a January 13, 2014 report, an OWCP medical adviser noted maximum medical improvement occurred on January 2, 2014. He noted performing a complete and thorough review of the functional capacity evaluation of September 18, 2012 and Dr. Gosey’s December 18, 2013 report and Dr. Letonoff’s November 1, 2013 second opinion report. The medical adviser noted that there was no evidence which supports an additional schedule award of the left arm greater than the 39 percent previously awarded pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup> In an accompanying January 13, 2014 worksheet, the medical adviser used the left shoulder range of motion figures from the functional capacity evaluation dated September 18, 2012 to determine impairment, noting that forward elevation was 80 degrees for 9 percent impairment, abduction was 70 degrees for 6 percent impairment, internal rotation was 30 degrees for 6 percent impairment and external rotation was 30 degrees for 2 percent impairment for a total impairment of 21 percent of the left arm using the Combined Values Chart, page 604 of the A.M.A., *Guides*. The medical adviser indicated that because appellant was previously granted 39 percent impairment for the left upper extremity for loss of range of motion and arthroplasty, he was not entitled to an additional award.

In a decision dated February 14, 2014, OWCP denied appellant’s claim for a schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of the FECA<sup>4</sup> and its implementing regulations<sup>5</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

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*,<sup>6</sup> has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>7</sup>

### ANALYSIS

Appellant alleges that he is entitled to an additional schedule award for permanent impairment of the left arm. On December 28, 2006 he underwent an open acromioclavicular joint repair of the left shoulder. On March 26, 2007 appellant underwent removal of the hardware and on February 14, 2008 he underwent arthroscopy of the left shoulder with subacromial decompression followed by open excision of bony coracoid. On January 21, 2009 OWCP granted appellant a schedule award for 39 percent impairment of the left arm. Appellant requested an additional schedule award.

Appellant submitted a December 18, 2013 report from Dr. Gosey who noted that appellant underwent multiple surgeries on the left shoulder including, a failed third degree acromioclavicular separation and a failed coronoid repair. Dr. Gosey noted decreased range of motion, weakness, an inability to lift the left arm. He noted that appellant was 50 percent disabled before his last set of operations and his condition progressively worsened because he lost part of the anterior deltoid. Dr. Gosey opined that appellant currently had 75 percent impairment of the left shoulder which would convert to an arm percentage but which Dr. Gosey did not specify.

The Board has carefully reviewed Dr. Gosey's December 18, 2013 report and notes that, while he determined that appellant sustained 75 percent permanent impairment of the shoulder, it is not clear how he came to this conclusion in accordance with the relevant standards of the A.M.A., *Guides*.<sup>8</sup> Dr. Gosey also did not indicate a percentage for the arm.<sup>9</sup> His report failed to provide an adequate description of appellant's physical condition so that an impairment rating could be determined under the A.M.A., *Guides*. For instance, Dr. Gosey noted few findings and concluded that appellant had 75 percent shoulder impairment. However, he failed to clearly explain how he arrived at 75 percent impairment. Additionally, Dr. Gosey did not cite to tables or charts in the A.M.A., *Guides* for an impairment rating determination. Therefore the Board

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<sup>6</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

<sup>7</sup> See 20 C.F.R. § 10.404.

<sup>8</sup> *Lela M. Shaw*, 51 ECAB 372 (2000) (where the Board found that a physician's opinion which does not explicitly define impairment in terms of the A.M.A., *Guides*, i.e., whether it be based on findings of pain, loss of range of motion or loss of strength, is insufficient to establish that appellant sustained any permanent impairment due to her accepted employment injury).

<sup>9</sup> While FECA provides for a schedule award for the arm, neither FECA nor its implementing regulations provide for a schedule award for the shoulder. See 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404.

finds that he did not follow the A.M.A., *Guides*, and his report is of little probative value where the A.M.A., *Guides* were not properly followed.<sup>10</sup>

In order to determine entitlement to a schedule award appellant's physician must provide a sufficiently detailed description of his condition so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>11</sup> As Dr. Gosey did not adequately describe appellant's condition or correlate his findings with the A.M.A., *Guides*, his report is insufficient to establish the extent of appellant's permanent impairment. Thus, OWCP properly sought the opinion of its medical adviser.<sup>12</sup>

In a December 15, 2012 report, OWCP's medical adviser noted maximum medical improvement occurred on January 2, 2014. He noted reviewing the functional capacity evaluation of September 18, 2012, Dr. Gosey's memorandum of December 18, 2013 and the report of the second opinion physician, Dr. Letonoff, dated November 1, 2013. The medical adviser noted that there was no evidence that supported an additional schedule award of the left arm greater than the 39 percent previously awarded pursuant to the A.M.A., *Guides*. In a January 13, 2014 worksheet, he used the left shoulder range of motion figures from the functional capacity evaluation dated September 18, 2012 to determine impairment as they were more complete and comprehensive than Dr. Letnoff's findings. The medical adviser noted that, pursuant to Table 15-34, A.M.A., *Guides* 475, for shoulder range of motion, forward elevation was 80 degrees for 9 percent impairment, abduction was 70 degrees for 6 percent impairment, internal rotation was 30 degrees for 6 percent impairment and external rotation was 30 degrees for 2 percent impairment for a total impairment of 21 percent of the left upper extremity using the Combined Values Chart of the A.M.A., *Guides*. He opined that, because appellant was previously granted 39 percent impairment for the left arm due to his left shoulder condition, he was not entitled to an additional award.<sup>13</sup>

The Board finds that the medical evidence does not show that appellant has a left arm impairment greater than that for which he previously received a schedule award. There is no medical evidence of record in accordance with the A.M.A., *Guides* which supports that appellant sustained more than 39 percent left arm impairment.

On appeal appellant asserts that Dr. Gosey's report provided a detailed outline of appellant's permanent impairment and complied with OWCP's request for information substantiating his claim for a schedule award. However, as noted above, Dr. Gosey's report failed to provide an adequate description of appellant's physical condition so that an impairment

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<sup>10</sup> See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

<sup>11</sup> *Renee M. Straubinger*, 51 ECAB 667, 669 (2000).

<sup>12</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

<sup>13</sup> The medical adviser erred in combining, rather than adding, the impairment percentages for the different ranges of motion within the shoulder joint. See A.M.A., *Guides* 473 (all values for the joint are added). However, this error is harmless as the added percentages equal 23 percent, well below the 39 percent previously awarded that was also attributable to the shoulder joint.

rating could be determined. Although he concluded that appellant had 75 percent impairment of the shoulder he failed to clearly explain how he arrived at this or any other rating under the A.M.A., *Guides*.

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 failed to establish that he is entitled to an additional schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 14, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

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

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