United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 14-910**
	)	**Issued: August 8, 2014**
U.S. POSTAL SERVICE, POST OFFICE, WEST PALM BEACH P & DC, West Palm Beach, FL, Employer	)	

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 March 12, 2014 appellant filed a timely appeal from a January 31, 2014 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 met his burden of proof to establish that he is entitled to a schedule award for his right and left upper extremities.

FACTUAL HISTORY

On April 8, 2008 appellant, then a 64-year-old mail handler, filed an occupational disease claim alleging that factors of employment caused bilateral shoulder pain. OWCP accepted

[1] 5 U.S.C. §§ 8101-8193.

calcifying tendinitis of the right shoulder and on August 13, 2008 Dr. Graham. F. Whitfield, an orthopedic surgeon, performed surgical arthroscopy of the right shoulder with extensive debridement of the glenohumeral joint. Appellant was placed on the periodic compensation rolls. On January 8, 2009 OWCP accepted calcifying tendinitis of the left shoulder, and on May 6, 2009 additionally accepted traumatic arthropathy of the left shoulder. Appellant returned to modified duty on February 18, 2009,[2] continuing until September 17, 2009, when Dr. Whitfield's associate, Dr. Rena Amro, Board-certified in orthopedic surgery, performed surgical arthroscopic left rotator cuff repair with distal clavicle resection. Appellant was returned to the periodic rolls. On October 19, 2010 Dr. Amro performed surgical arthroscopic right rotator cuff repair with distal clavicle resection. Appellant continued under the care of Drs. Whitfield and Amro who submitted monthly treatment notes. OWCP additionally accepted right shoulder disorder of bursae and tendons and left shoulder contracture of shoulder joint.

On September 27, 2013 appellant filed a claim for a schedule award. In an October 7, 2013 letter, OWCP informed him of the type of evidence needed to support his claim, to include an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[3] (hereinafter A.M.A., *Guides*) and a physician's narrative opinion regarding the diagnosed conditions and degree of impairment with a detailed description of all objective findings and subjective complaints. Appellant was allotted 30 days to submit the requested information.

Appellant returned to a modified mail handler position on October 19, 2013. Dr. Whitfield provided treatment notes dated September 24 and October 29, 2013 in which he described appellant's complaints of bilateral shoulder, interscapular, neck and upper back pain. He provided physical examination findings and diagnosed left shoulder arthralgia, with supraspinatus, infraspinatus, and teres minor tendinitis, subscapularis tendinitis, subacromial bursitis, and acromioclavicular joint arthralgia, status post diagnostic and surgical arthroscopic rotator cuff repair of the left shoulder in September 2009; right shoulder arthralgia with supraspinatus, infraspinatus, teres minor, and subscapularis tendinitis, biceps tendinitis, subacromial bursitis, and acromioclavicular joint arthralgia, status post diagnostic and surgical arthroscopic rotator cuff repair of the right shoulder in October 2010; cervical paraspinal muscle spasm, with rhomboid, levator scapulae, and trapezius myalgia; bilateral carpal tunnel syndrome, left/right wrists; and diabetes mellitus and herpes zoster/shingles. Dr. Whitfield recommended a functional capacity evaluation that was completed by a physical therapist on December 9, 2013.

By decision dated January 31, 2014, OWCP denied appellant's schedule award claim on the grounds that he submitted no medical evidence to support a permanent impairment to a scheduled member due to the accepted conditions.

[2] In a July 14, 2009 decision, OWCP found that an overpayment of compensation in the amount of $2,139.48 had been created because appellant continued to receive wage-loss compensation after his return to work.

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

LEGAL PRECEDENT

The schedule award provision of FECA,[4] and its implementing federal regulations,[5] 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.[6] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is to be 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 grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[9] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[10] The sixth edition of the A.M.A., *Guides* also provides that, under certain circumstances, range of motion may be selected as an alternative approach in rating impairment. An impairment rating that is calculated using range of motion may not be combined with a diagnosis-based impairment and stands alone as a rating.[11]

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he has a ratable impairment. The accepted conditions are bilateral shoulder calcifying tendinitis, traumatic arthropathy of the left shoulder, disorder of bursae and tendons and left shoulder contracture of shoulder joint.

By letter dated October 7, 2013, OWCP informed appellant of the type of evidence needed to support his claim, to include a physician's narrative opinion regarding the diagnosed conditions and degree of impairment with an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*. The physician's report was to indicate whether appellant was at

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id*. at § 10.404(a).

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

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

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

[10] *Id*. at 411.

[11] *Id*. at 390. The A.M.A., *Guides* explains that diagnoses in the grid that may be rated using range of motion are followed by an asterisk.

maximum medical improvement and was to include a detailed description of all objective findings and subjective complaints. Appellant did not submit the requested medical evidence, and on January 31, 2014, OWCP denied his schedule award claim on the grounds that he submitted no medical evidence to support a permanent impairment to a scheduled member due to the accepted conditions.

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 are able to clearly visualize the impairment with its resulting restrictions and limitations.[12] A claimant has the burden of proof to establish that he or she sustained a permanent impairment to a scheduled member.[13]

The record in this case contains a number of treatment notes from Drs. Whitfield and Amro, dated March 11, 2008 to October 29, 2013. The physicians, however, did not provide an impairment rating, discuss whether the accepted conditions caused permanent impairment, or state an opinion as to whether appellant was at maximum medical improvement.[14] As Drs. Whitfield and Amro did not support that the accepted conditions caused any permanent impairment, their reports are insufficient to establish that appellant has impairment due to the accepted conditions.[15]

Appellant also submitted a functional capacity evaluation dated December 9, 2013. This was completed by a physical therapist. Lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA.[16] The functional capacity evaluation is therefore of no probative value regarding appellant's impairment.

Without probative medical opinion evidence from a physician addressing how appellant's impairment correlated to the A.M.A., *Guides* and explaining the causal relationship between these findings and an accepted employment injury, appellant has failed to establish his claim for a schedule award.[17]

[12] *Renee M. Straubinger*, 51 ECAB 667 (2000).

[13] *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

[14] *See D.R.*, 57 ECAB 720 (2006) (a schedule award is not payable unless it is determined by probative medical evidence that the employee is at maximum medical improvement).

[15] *See A.L.*, *supra* note 13.

[16] *David P. Sawchuk*, 57 ECAB 316 (2006). Section 8101(2) of FECA provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See Roy L. Humphrey*, 57 ECAB 238 (2005).

[17] *R.E.*, Docket No. 14-713 (issued June 26, 2014).

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.[18]

CONCLUSION

The Board finds that appellant did not establish that he has a permanent impairment due to the accepted bilateral shoulder conditions.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 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

[18] The Board notes that appellant requested reconsideration with OWCP simultaneous with his appeal to the Board. OWCP and the Board may not have simultaneous jurisdiction over the same issue in the same case. Following the docketing of an appeal with the Board, OWCP does not retain jurisdiction to render a further decision regarding a case on appeal until after the Board relinquishes its jurisdiction. Any decision rendered by OWCP on the same issues for which an appeal is filed is null and void. *Linda D. Guerrero*, 54 ECAB 556 (2003). Following appellant's reconsideration request with OWCP, OWCP issued a June 25, 2014 schedule award decision which is void. Furthermore, the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of the January 31, 2014 decision. *J.T.*, 59 ECAB 293 (2008). It therefore cannot review the evidence submitted by appellant with his March 2014 reconsideration request to OWCP, a February 12, 2014 report in which Dr. Whitfield provided an impairment evaluation for appellant's left upper extremity only.