United States Department of Labor
Employees' Compensation Appeals Board

J.F., Appellant	)	
and	)	**Docket No. 14-978**
	)	**Issued: August 1, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Elmira, NY, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 21, 2014 appellant, through his attorney, filed a timely appeal from a March 12, 2014 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 a five percent permanent impairment to his left arm, for which he received a schedule award.

FACTUAL HISTORY

On August 26, 2005 appellant, then a 44-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that he sustained a left bicep injury while pushing with his arm in

[1] 5 U.S.C. § 8101 *et seq.*

the performance of duty on August 19, 2005. OWCP accepted the claim on March 15, 2006 for a left biceps tendon rupture.

In a report dated September 23, 2008, Dr. Joseph Haluska, an osteopath, reported appellant had "reinjured" his left bicep at work. He advised that a September 16, 2008 x-ray was read as negative.

Appellant submitted a claim for a schedule award on December 17, 2012. He submitted an October 22, 2012 report from Dr. Stewart Kaufman, a Board-certified orthopedic surgeon. With respect to the left arm, Dr. Kaufman noted that appellant sustained a left arm biceps tendon rupture on August 19, 2005. He provided results on examination, including range of motion for both shoulders. Dr. Kaufman opined that, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had an 11 percent left arm impairment due to loss of shoulder range of motion.

OWCP referred the case to its medical adviser for review. In a report dated August 7, 2013, Dr. Henry J. Magliato, OWCP's medical adviser, noted that Dr. Kaufman primarily discussed the right shoulder and the left shoulder diagnostic tests were normal. He stated that Dr. Kaufman did not discuss the location of the biceps rupture or its relationship to appellant's left shoulder complaints. Dr. Magliato indicated that OWCP should refer the case for a second opinion examination.

OWCP prepared a statement of accepted facts and referred appellant and medical record to Dr. Sury Putcha, a Board-certified orthopedic surgeon. In a report dated December 4, 2013, Dr. Putcha reviewed a history of injury. On examination of the left arm, she found that appellant had a five percent left arm impairment under Table 15-5 of the A.M.A., *Guides* using the diagnosis-based grid for biceps tendon dislocation/subluxation. By report dated February 7, 2014, Dr. Andrew A. Merola, a medical adviser, concurred that appellant had a five percent left arm impairment. He opined that the date of maximum medical improvement was December 4, 2013 the date of Dr. Putcha's examination.

By decision dated March 12, 2014, OWCP granted appellant a schedule award for a five percent permanent impairment of the left arm. The period of the award was 15.60 weeks from December 4, 2013.

LEGAL PRECEDENT

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[2] Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has

[2] *Id.* at § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[3] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.[4]

With respect to a shoulder impairment, the A.M.A., *Guides* provides a regional grid at Table 15-5. The class of impairment (CDX) is determined based on specific diagnosis and then the default value for the identified CDX is determined. The default value (grade C) may be adjusted by using grade modifiers for Functional History (GMFH) Table 15-7, Physical Examination (GMPE) Table 15-8 and Clinical Studies (GMCS) Table 15-9. The adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[5]

ANALYSIS

In the present case, appellant submitted an October 22, 2012 report from Dr. Kaufman, who provided an opinion with respect to a left arm impairment under the AM.A., *Guides.* This report, however, is of diminished probative value on the issue. The Board notes that Dr. Kaufman based his impairment rating on left shoulder loss of range of motion, applying Table 15-34. The A.M.A., *Guides* state that the method of choice is a diagnosis-based impairment such as Table 15-5, discussed below. A range of motion impairment used by Dr. Kaufman is appropriate "when other grids refer" the examiner to the range of motion tables or "when no other diagnosis-based sections of this chapter are applicable for impairment rating of a condition."[6] Although Table 15-5 does note a range of motion alternative approach, Dr. Kaufman does not explain why a range of motion method would be appropriate in this case.[7] The accepted condition was a biceps tendon rupture resulting from an August 19, 2005 employment incident. As noted by the medical adviser, Dr. Kaufman does not discuss in any detail the accepted injury or explain causal relationship between a loss of shoulder range of motion and the employment injury. The Board accordingly finds the October 22, 2012 report was not sufficient to establish the degree of employment-related permanent impairment in the left arm.

OWCP referred appellant to Dr. Putcha for a second opinion examination. Dr. Putcha used a diagnosis-based method, identifying Table 15-5 with a diagnosis of biceps tendon dislocation/subluxation.[8] The default impairment for class 1 (residual symptoms) is three percent. The default impairment (grade C) is then adjusted in accord with the formula noted above. Dr. Putcha assigned a grade modifier of two (moderate problem) for both functional history and physical examination and one (mild) for clinical studies. Applying the adjustment

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[3] *A. George Lampo*, 45 ECAB 441 (1994).

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

[5] The net adjustment is up to +2 (grade E) or -2 (grade A).

[6] A.M.A., *Guides* 461.

[7] The Board notes that range of motion evaluations must be made in accord with section 15.7 of the A.M.A., *Guides* 459-81.

[8] A.M.A., *Guides* 404, Table 15-5.

formula, the net adjustment is +2 or a grade E impairment. Under Table 15-5, this grade E impairment is five percent.

Dr. Merola agreed that the impairment was five percent under Table 15-5. The Board finds that the weight of the medical evidence of record is represented by Dr. Putcha and OWCP's medical adviser. Under 5 U.S.C. § 8107(c), the maximum number of weeks of compensation for loss of use of the arm is 312 weeks. Since appellant's impairment was five percent, he is entitled to five percent of 312 weeks or 15.60 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.[9] In this case, Dr. Merola opined that the date of maximum medical improvement was the date of examination by Dr. Putcha. The award therefore properly runs for 15.60 weeks commencing on December 4, 2013.

On appeal, counsel states that the impairment rating should be based on the opinion of Dr. Kaufman. For the reasons noted, Dr. Kaufman's report does not represent the weight of the medical evidence. His report is not sufficient to establish that he followed the protocol of the A.M.A., *Guides* to base impairment on loss of range of motion. Appellant may request an increased schedule award based on the submission of new medical evidence showing an increased left arm impairment above the five percent awarded. Based on the evidence of record, OWCP properly found that he had a five percent left arm impairment.

CONCLUSION

The Board finds that the record does not establish more than a five percent left arm permanent impairment.

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[9] *Albert Valverde*, 36 ECAB 233, 237 (1984).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 12, 2014 is affirmed.

Issued: August 1, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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