

FACTUAL HISTORY

This has previously been before the Board with respect to an overpayment of compensation.² The facts of the case as set forth in the prior appeal are incorporated by reference. The facts relevant to the current appeal are set forth below.

OWCP accepted that on May 5, 2010 appellant, a 48-year-old mail handler, sustained a right shoulder and upper arm sprain causally related to factors of her federal employment. She returned to full-time work at the employing establishment on July 21, 2011. Appellant underwent two authorized right shoulder surgeries performed on November 23, 2011 and August 2, 2012.

On April 12, 2013 appellant filed a claim for a schedule award. In a March 22, 2013 medical report, Dr. Karen M. Perl, an attending Board-certified physiatrist, noted that appellant had returned to limited-duty work, but was still having problems with her right shoulder. On physical examination, she reported that appellant ambulated independently and was able to heel and toe walk bilaterally. Appellant walked with no shuffling, ataxia or antalgia. An examination of the cervical, thoracic and lumbar spines and myofascial was unchanged. Pulses were intact and the skin showed no signs of infection. Dr. Perl advised that, although there was improvement in range of motion from the first to the second surgery, there were still significant deficits with multiple levels of range of motion. Passive range of motion was better than active range of motion. Appellant still had some weakness at the right shoulder, but a drop arm test was negative.

On neurological examination, Dr. Perl found that deep tendon reflexes were +2/4 in the upper extremities bilaterally. Sensation to light touch was intact in the upper extremities bilaterally. Sensation to pinprick was decreased at the proximal shoulder on the right. Manual muscle testing showed definitive weakness with the right shoulder at 3+/5. The right upper extremity measured 16, 28 and 35 centimeters. Dr. Perl diagnosed a May 5, 2010 employment-related right shoulder injury and right shoulder strain with impingement syndrome. She advised that appellant was status post right shoulder arthroscopies performed on November 23, 2011 and August 2, 2012.

Dr. Perl utilized the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), and found that the range of motion method of calculating impairment was more appropriate than the diagnosis-based estimates.³ Regarding the right shoulder, she used Table 15-34 on page 475 and found that 135 degrees of flexion rounded to 140 degrees was 3 percent impairment, 44 degrees of extension rounded to 40 degrees was 1 percent impairment, 145 degrees of abduction rounded to 150 was 3 percent impairment, 42 degrees adduction rounded to 40 degrees was 0 percent impairment, 58 degrees

² Docket No. 12-688 (issued September 7, 2012). In a September 7, 2012 decision, the Board affirmed in part a November 1, 2011 OWCP decision, finding that appellant received an overpayment of compensation. The Board set aside in part the decision, finding that appellant was not at fault in creation of the overpayment and remanded the case to OWCP for further development as to whether she was entitled to waiver of recovery of the overpayment.

³ A.M.A., *Guides* 461.

of internal rotation rounded to 60 degrees was 2 percent impairment and 54 degrees of external rotation rounded to 50 degrees was 2 percent impairment. Dr. Perl added these impairments to reach 11 percent impairment of the right upper extremity due to loss of range of motion. She utilized Table 15-7 on page 406 and determined that appellant had a grade modifier 2 for functional history, moderate problems with pain and symptoms on normal activity and use of medications to control the symptoms, and a *QuickDASH* score that fell into the 50 range. Dr. Perl utilized Table 15-35 on page 477 and found that 11 percent was a grade modifier 1. She determined, based on Table 15-36 on page 477, since the functional history grade adjustment was one grade higher than the range of motion grade modifier, that she would multiply 11 percent by 5 percent equaling 0.55 percent, which rounded to 1 percent. Dr. Perl added the 1 percent and 11 percent impairment ratings to calculate a 12 percent right upper extremity impairment rating. She concluded that appellant reached maximum medical improvement on March 22, 2013.

On May 2, 2013 an OWCP medical adviser reviewed Dr. Perl's report and concurred with the date of maximum medical improvement and 12 percent right upper extremity impairment rating.

In a September 12, 2013 decision, OWCP granted appellant a schedule award for 12 percent impairment of the right upper extremity or 37.44 weeks of compensation. The award ran from March 22 to December 9, 2013.

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, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁶ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷ Effective May 1, 2009, FECA adopted the sixth edition of the A.M.A., *Guides*⁸ as the appropriate edition for all awards issued after that date.⁹

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Ausbon N. Johnson*, 50 ECAB 304 (1999).

⁷ 20 C.F.R. § 10.404; *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

⁸ A.M.A., *Guides* (6th ed. 2009).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

The sixth edition requires identifying 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).¹⁰ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹¹

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed through OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.¹²

ANALYSIS

OWCP accepted appellant's claim for right shoulder and upper arm sprain. Appellant received a schedule award for 12 percent impairment to the right upper extremity. The Board finds that she did not meet her burden of proof to establish greater impairment to the right upper extremity.

Appellant has failed to submit any evidence by a treating physician finding greater impairment to the right upper extremity related to the accepted conditions. Dr. Perl's March 22, 2013 report determined that appellant's impairment should be based on her loss of range of motion due to her accepted right shoulder conditions under the sixth edition of the A.M.A., *Guides*. She determined that her loss of range of motion resulted in a 12 percent impairment rating. Dr. Perl properly referred to Table 15-34 on page 475 for shoulder range of motion and found 3 percent impairment for flexion of 135 degrees, 1 percent impairment for 44 degrees of extension, abduction of 145 degrees would equal 3 percent impairment, adduction of 42 degrees would equal 0 percent impairment, internal rotation of 58 degrees would equal 2 percent impairment and external rotation of 54 degrees would equal 2 percent impairment. She added the range of motion values and indicated that it would result in an 11 percent permanent impairment.

Following the process set forth in the A.M.A., *Guides* for using range of motion as a stand-alone approach to rating impairment in the shoulder joint,¹³ Dr. Perl also referred to Table 15-35 on page 477 and explained that the range of motion deficit qualified for a grade 1 modifier. She also referred to Table 15-7 and advised that, because appellant continued to have pain with normal activities, she qualified for a grade 2 modifier. Dr. Perl noted the difference of 1, and advised that the permanent impairment award was multiplied by 5 percent resulting in 12

¹⁰ A.M.A., *Guides* 494-531.

¹¹ *Id.* at 521.

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010). See *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

¹³ A.M.A., *Guides* 473-78.

percent impairment.¹⁴ She advised that appellant reached maximum medical improvement on March 22, 2013.

The file was then properly routed to OWCP's medical adviser, for an opinion concerning the nature or percentage of permanent impairment in accordance with the A.M.A., *Guides*.¹⁵ On May 2, 2013 the medical adviser reviewed Dr. Perl's report and concurred with her use of the A.M.A., *Guides* and the impairment rating.

The Board finds that both physicians applied the appropriate tables of the A.M.A., *Guides* and found that appellant has no more than 12 percent impairment of the right upper extremity under the sixth edition of the A.M.A., *Guides*. The medical evidence does not establish that appellant has any greater impairment than that for which she has already received a schedule award.¹⁶

On appeal, appellant requested that the Board explain how the period and percentage of a schedule award is determined by OWCP. The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury. Maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.¹⁷ The determination of the date of maximum medical improvement is factual in nature and depends primarily on the medical evidence.¹⁸ The date of maximum medical improvement is usually considered to be the date of the evaluation accepted as definitive by OWCP.¹⁹ In this case, Dr. Perl and OWCP's medical adviser found that the date of maximum medical improvement was March 22, 2013. Therefore, March 22, 2013 was the appropriate date used by OWCP to commence the schedule award.

Regarding payment of the schedule award, the Board notes that section 8107(c)(1) of FECA²⁰ provides that, for a 100 percent loss of use of the arm, a claimant is entitled to 312 weeks of compensation. As appellant has a 12 percent loss of use of her right shoulder and arm, she is entitled to 12 percent of 312 weeks or 37.44 weeks of compensation, which was provided to her in the schedule award decision. She is entitled to no more under FECA.

¹⁴ *Id.* at 477, Table 15-36, Functional History Grade Adjustment: Range of Motion.

¹⁵ *Id.*

¹⁶ *S.C.*, Docket No. 11-1679 (issued September 12, 2012).

¹⁷ *Adela Hernandez-Piris*, 35 ECAB 839 (1984).

¹⁸ *J.B.*, Docket No. 11-1469 (issued February 14, 2012); *Franklin L. Armfield*, 28 ECAB 445 (1977).

¹⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, *supra* note 9 at Chapter 3.700.3.a (January 2010); *see Richard Larry Enders*, 48 ECAB 184 (1996) (the date of maximum medical improvement was the date of the audiologic examination used as the basis of the schedule award).

²⁰ 5 U.S.C. § 8107(c)(1).

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 failed to establish that she has more than 12 percent impairment of the right upper extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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