United States Department of Labor
Employees' Compensation Appeals Board

N.B., Appellant	)	
and	)	**Docket No. 14-803**
	)	**Issued: July 8, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, Employer	)	

Appearances:
Appellant, pro se
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 February 25, 2014 appellant filed a timely appeal from the October 30, 2013 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 met her burden of proof to establish more than a five percent permanent impairment of her right arm and a seven percent permanent impairment of her left arm, for which she received schedule awards.

FACTUAL HISTORY

In December 2010, OWCP accepted that appellant, then a 46-year-old rural carrier, sustained left carpal tunnel syndrome and bilateral shoulder, rotator cuff and upper arm sprains

[1] 5 U.S.C. §§ 8101-8193.

due to her repetitive work duties over time. OWCP also accepted that she sustained a foreign body granuloma in the muscle of her right shoulder and residual foreign body in the soft tissue of her right shoulder due to her work factors.

On March 7, 2011 Dr. Bryan T. Edwards, an attending Board-certified orthopedic surgeon, performed a rotator cuff repair and subacromial decompression of appellant's right shoulder. On January 23, 2012 he performed a rotator cuff repair and subacromial decompression of her left shoulder, left carpal tunnel release and foreign body excision of a right shoulder fibroma.[2] On April 8, 2013 Dr. Edwards removed hardware from appellant's prior right shoulder surgery.[3] The procedures were authorized by OWCP.

On August 27, 2013 appellant filed a claim for a schedule award due to her accepted work injuries.

In a July 25, 2013 report, Dr. Edwards stated that the date of maximum medical improvement for appellant's left wrist was May 28, 2013; June 18, 2013 for her left shoulder; and July 25, 2013 for her right shoulder. He noted that she had full range of motion and good strength. Appellant complained of mild residual weakness in both shoulders, mild residual weakness in her left wrist and some fatigue with repetitive overhead activity. On physical examination of her right shoulder, appellant had forward flexion to 165 degrees, abduction to 100 degrees, full internal rotation and full external rotation. Rotator cuff strength was intact bilaterally and there was no pain over the acromioclavicular joint. Appellant had well-healed surgical scars and mild deltoid weakness was noted. Dr. Edwards diagnosed right shoulder status post hardware revision, rotator cuff repair, left shoulder rotator cuff tear and left wrist carpal tunnel release. He stated, "Based on the fact of the two surgeries and the rotator cuff repairs, it would be 15 percent whole body rating for the right shoulder. It would be a 15 percent whole body rating for the left shoulder. It would be a six percent whole body rating of the left wrist. This is according to [American Medical Association, *Guides to the Evaluation of Permanent Impairment*]."

In a September 4, 2013 report, Dr. Howard P. Hogshead, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, discussed appellant's medical history, including her history of surgery. He reviewed Dr. Edwards' July 25, 2013 report and stated, "This is not explained or referenced. This is not correct." For the right arm, Dr. Hogshead stated that, under Table 15-5 on page 403 of the sixth edition of the A.M.A., *Guides* (6th ed. 2009),[4] appellant had a diagnosed-based impairment of a rotator cuff injury (full-thickness tear) which fell under class 1 with a default value of five percent. She had a grade modifier 1 for functional history, grade modifier 1 for physical examination and the grade modifier for clinical studies was not applicable. Calculation of the net adjustment formula did not result in any movement from the default value and therefore she had a total right arm impairment of five percent. For the left arm,

[2] The surgical reports indicated that appellant had full-thickness tears of both rotator cuffs. In April 2012, appellant returned to limited-duty work for the employing establishment. In May 2012, she returned to full-duty work without restrictions.

[3] Appellant stopped work at the time of this surgery.

[4] *See* A.M.A., *Guides* 403, Table 15-5.

Dr. Hogshead noted that, under Table 15-5, she had a diagnosed-based impairment of a rotator cuff injury (full-thickness tear) which fell under class 1 with a default value of five percent. Appellant had a grade modifier 1 for functional history, grade modifier 1 for physical examination and the grade modifier for clinical studies was not applicable. Calculation of the net adjustment formula did not result in any movement from the default value and therefore she had a left arm impairment of five percent due to her left shoulder condition. Dr. Hogshead then rated impairment for appellant's left carpal tunnel syndrome. Under Table 15-23 (Entrapment/ Compression Neuropathy Impairment) on page 449,[5] appellant had a grade modifier 1 for test findings, grade modifier 1 for history and grade modifier 1 for physical findings. She fell under the default value of two percent impairment of the left arm (under grade modifier 1) and there was no adjustment from this rating value due to functional scale. Adding the five percent rating due to left shoulder deficit to the two percent rating due to left carpal tunnel syndrome totaled left arm impairment of seven percent.

In a September 20, 2013 report, Dr. Edwards discussed appellant's right shoulder condition as observed in June 2013. Under the sixth edition of the A.M.A., *Guides,* she had a 13 percent rating for her right arm. In a September 19, 2013 report, he detailed her left shoulder findings from an unspecified examination and noted that, under the sixth edition of the A.M.A., *Guides,* she had a 13 percent rating for her right arm. On September 20, 2013 Dr. Edwards discussed appellant's left carpal tunnel condition and indicated that, under the sixth edition of the A.M.A., *Guides,* she had a six percent rating "for the left wrist in regard to the carpal tunnel surgery."[6]

On October 11, 2013 Dr. Hogshead reviewed Dr. Edwards' September 19 and 20, 2013 impairment ratings and stated that they were not acceptable because Dr. Edwards did not provide any citation to the sixth edition of the A.M.A., *Guides.* Dr. Hogshead reiterated his opinion that appellant had five percent permanent impairment of her right arm and seven percent permanent impairment of her left arm.

In an October 30, 2013 decision, OWCP granted appellant schedule awards for a five percent impairment of her right arm and a seven percent permanent impairment of her left arm. The awards ran for 37.44 weeks from August 25, 2013 to May 14, 2014 and was based on the opinion of Dr. Hogshead, an OWCP medical adviser.

LEGAL PRECEDENT

The schedule award provision of FECA[7] and its implementing regulations[8] 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

[5] *See* A.M.A., *Guides* 449, Table 15-23.

[6] In these reports, Dr. Edwards again stated that the date of maximum medical improvement for appellant's left wrist was May 28, 2013; June 18, 2013 for her left shoulder; and July 25, 2013 for her right shoulder.

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404 (1999).

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.[9] For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6th ed. 2009) is used for evaluating permanent impairment.[10]

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 shoulder, the relevant portion of the arm for the present case, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the Class of Diagnosis (CDX) is determined from the Shoulder Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for Functional History (GMFH), grade modifier for Physical Examination (GMPE) and grade modifier for Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[11]

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[12] In Table 15-23, grade modifier levels (ranging from zero to four) are described for the categories Test Findings, History and Physical Findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down by one percent based on functional scale, an assessment of impact on daily living activities.[13]

A schedule award is not payable under section 8107 of FECA for an impairment of the whole person.[14]

ANALYSIS

OWCP accepted that appellant sustained left carpal tunnel syndrome, bilateral shoulder, rotator cuff and upper arm sprains, foreign body granuloma in the muscle of her right shoulder and residual foreign body in the soft tissue of her right shoulder due to the performance of her repetitive work duties over time. On March 7, 2011 Dr. Edwards, an attending Board-certified

[9] *Id*.

[10] *See* FECA Bulletin No. 9-03 (issued March 15, 2009). For OWCP decisions issued before May 1, 2009, the fifth edition of the A.M.A., *Guides* (5th ed. 2001) is used.

[11] *See* A.M.A., *Guides* 401-11 (6th ed. 2009).

[12] *See id.* at 449, Table 15-23.

[13] A survey completed by a given claimant, known by the name *Quick*DASH, may be used to determine the Function Scale score. *Id.* at 448-49.

[14] *See Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

orthopedic surgeon, performed a rotator cuff repair and subacromial decompression of appellant's right shoulder. On January 23, 2012 he performed a rotator cuff repair and subacromial decompression of appellant's left shoulder, left carpal tunnel release and foreign body excision of a right shoulder fibroma and, on April 8, 2013, he removed hardware from appellant's prior right shoulder surgery. On October 30, 2013 OWCP granted appellant schedule awards for five percent permanent impairment of her right arm and seven percent permanent impairment of her left arm. The awards were based on the opinion of Dr. Hogshead, an OWCP medical adviser.

In a September 4, 2013 report, Dr. Hogshead reviewed the medical records, including the report of Dr. Edwards. He found that appellant had a five percent permanent impairment of her right arm and a seven percent permanent impairment of her left arm under the standards of the sixth edition of the A.M.A., *Guides.* Dr. Hogshead properly applied the standards to rate appellant's permanent arm impairment.

For the right arm, Dr. Hogshead noted that, under Table 15-5 on page 403 of the A.M.A., *Guides*, appellant had a diagnosed-based impairment of a rotator cuff injury (full thickness tear) which fell under class 1 with a default value of five percent. Appellant had grade modifier 1 for functional history, grade modifier 1 for physical examination and the grade modifier for clinical studies was not applicable. Calculation of the net adjustment formula did not result in any movement from the default value and therefore appellant had a total right arm impairment of five percent. For the left arm, Dr. Hogshead provided a similar calculation for impairment due to the rotator cuff injury and concluded that appellant had a left arm impairment of five percent due to her left shoulder problems. He also rated an impairment for her left carpal tunnel syndrome. Under Table 15-23 on page 449, appellant had a grade modifier 1 for test findings, grade modifier 1 for history and grade modifier 1 for physical findings. Appellant fell under the default value of two percent impairment of the left arm and there was no adjustment from this rating value. Adding the five percent rating due to left shoulder deficit to the two percent rating due to left carpal tunnel syndrome meant that she had a total left arm impairment of seven percent.

In a July 25, 2013 report, Dr. Edwards stated, "Based on the fact of the [two] surgeries and the rotator cuff repairs, it would be 15 percent whole body rating for the right shoulder. It would be a 15 percent whole body rating for the left shoulder. It would be a six percent whole body rating of the left wrist." The Board notes that this impairment rating is of diminished probative value because a schedule award is not payable under section 8107 of FECA for any impairment of the whole person.[15] In reports dated September 19 and 20, 2013, Dr. Edwards indicated that, under the sixth edition of the A.M.A., *Guides*, appellant had a 13 percent rating for her right arm due to right shoulder impairment, a 13 percent rating for her left arm due to left shoulder impairment and a six percent rating "for the left wrist in regard to the carpal tunnel

[15] *See id.*

surgery." Again, he did not provide specific citations to the sixth edition of the A.M.A., *Guides* to support the impairment ratings.[16]

On appeal, appellant argued that her arm impairment had increased since July 2013, but the medical evidence of record does not support such an argument. He 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 did not meet her burden of proof to establish more than a five percent permanent impairment of her right arm and a seven percent permanent impairment of her left arm, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 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

[16] *See I.F.*, Docket No. 08-2321 (issued May 21, 2009) (an opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of diminished probative value in determining the extent of permanent impairment).