

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

B.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Greensboro, NC, Employer**

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**Docket No. 14-535
Issued: June 9, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 9, 2014 appellant filed a timely appeal from an October 29, 2013 merit decision of the Office of Workers' Compensation Programs' (OWCP) schedule award. Pursuant to the Federal Employees' Compensation Act¹ (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 established additional impairment to his right upper extremity, for which he had previously received a schedule award.

FACTUAL HISTORY

On May 14, 1997 appellant, a 48-year-old city carrier, injured his right knee, right leg and right shoulder while trying to break a fall. He filed a claim for benefits, which OWCP accepted for fractured right ankle, right shoulder sprain and right knee sprain. The claim was ultimately

¹ 5 U.S.C. § 8101 *et seq.*

expanded to include the following conditions: injury to right ulnar nerve; lesion of right ulnar nerve; ganglion of right joint; sprain of right shoulder and right upper arm, other specified sites; lateral malleolus of the right ankle; rotator cuff syndrome of the right shoulder and allied disorders; closed fracture of the right scapular, acromial process; and closed FX shaft of the right humerus.

By decision dated February 26, 1999, OWCP granted appellant a schedule award for a two percent permanent impairment of the right upper extremity/right shoulder for the period November 9, 1998 to May 12, 1999, for a total of 18.40 weeks of compensation, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

By decision dated May 3, 2007, OWCP granted appellant a schedule award for an additional 40 percent permanent impairment of the right upper extremity for the period March 18, 2007 to August 7, 2009, for a total of 124.8 weeks of compensation, under the A.M.A., *Guides* (5th ed. 2001).

By decision dated October 28, 2010, OWCP granted appellant a schedule award for an additional 11 percent impairment of the right upper extremity (right arm/right shoulder) for the period August 4, 2010 to April 1, 2011, for a total of 34.32 weeks of compensation, under the updated A.M.A., *Guides* (6th ed. 2008).

On November 12, 2012 appellant underwent total arthroplasty surgery to remove a right shoulder prosthesis, which had been implanted in the glenohumeral joint; a new glenoid and proximal humeral prosthesis was implanted to replace the old prosthesis. The procedure, which was authorized by OWCP, was performed by Dr. Rodney J. Stanley, a specialist in family and sports medicine and appellant's treating physician, who executed open treatment of the humeral shaft fracture with plate/screws and cerclage.

In a September 13, 2013 report, Dr. Stanley found that appellant had an additional four percent impairment from his accepted right shoulder condition based on a right shoulder prosthesis removal and replacement. Using the diagnosis-based method of impairment calculation, he utilized Table 15-5, page 405 of the A.M.A., *Guides*, the Shoulder Regional Grid, to find that appellant had a class 3 impairment for shoulder prosthesis removal and replacement, shoulder arthroplasty, for "complicated, unstable or infected," noting that appellant had required removal of a right shoulder prosthesis and the implantation of a new prosthesis in the shoulder. Applying the net adjustment formula at section 15.3, pages 406, 410 and 411 of the A.M.A., *Guides*,² Dr. Stanley found that the grade modifier at Table 15-7, page 406 for functional history was 4, for a severe problem, because appellant had pain of a severe nature even at rest, as medications did not alleviate his discomfort. Dr. Stanley advised that appellant was unable to perform certain self-care activities and required the assistance of his wife with dressing, bathing and routine hygiene. He stated that the grade modifier for physical examination at Table 15-8, page 408 was 4, for very severe palpatory findings consistently documented and supported by observed severe abnormalities, gross instability and very severe decrease of range of motion, as measured according to pages 472-76, figures 15-28, 15-29, 15-30 and Table 15-34; and the grade

² A.M.A., *Guides* at 406, 410-11.

modifier for clinical studies at Table 15-9, page 407-11 was 3, as the clinical studies of record confirmed a diagnosis with severe pathology.

Pursuant to the net adjustment formula set forth at Table 15-21, pages 409-11, Dr. Stanley determined that appellant had an adjusted, default grade E impairment, which yielded a class 3 complicated, unstable or infected shoulder arthroplasty, equated to a 46 percent impairment of the right upper extremity at Table 15-5, page 405.³ Utilizing the Combined Values Chart at pages 605-06 of the A.M.A., *Guides*, he combined the prior 11 percent impairment for the lower arm⁴ with a 46 percent impairment for the upper arm for a total 57 percent right upper extremity impairment. Dr. Stanley then stated that, as appellant had previously been awarded 53 percent right upper extremity impairment, this should be deducted from his rating, so that he recommended an additional 4 percent impairment of the right upper extremity pursuant to Chapter 16 of the A.M.A., *Guides*.

In an October 8, 2013 report, an OWCP medical adviser stated his concurrence with Dr. Stanley's findings and conclusions and found that appellant had an additional four percent impairment of the right upper extremity under the sixth edition of the A.M.A., *Guides* for a total 57 percent right upper extremity impairment.

On October 15, 2013 appellant filed a Form CA-7 claim for an additional schedule award based on a partial loss of use of his right upper extremity.

By decision dated October 29, 2013, OWCP granted appellant a schedule award for an additional four percent permanent impairment of the right upper extremity for the period September 13 to December 9, 2013, for a total of 12.48 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing regulations⁶ 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 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.⁷ The claimant has the burden of proving

³ *Id.* at 405.

⁴ Dr. Stanley stated that appellant had a prior 21 percent award for the right upper extremity/lower arm; evidently this was a typographical error, as the October 28, 2010 award was for an 11 percent additional right upper extremity impairment and 46 percent added to 11 percent totaled the 57 percent rating he recommended in this evaluation.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides*. (6th ed. 2009).

⁷ *Id.*

that the condition for which a schedule award is sought is causally related to his or her employment.⁸

ANALYSIS

OWCP previously awarded appellant a total 53 percent impairment for various accepted conditions of the right arm and right shoulder. It authorized Dr. Stanley to implant a right shoulder prosthesis, which subsequently required removal and the implantation of a new prosthesis in the right shoulder. Appellant requested an additional schedule award for these procedures. OWCP's medical adviser reviewed Dr. Stanley's September 13, 2013 report and found that appellant had an additional four percent right upper extremity impairment based on removal and the implantation of a new prosthesis in the right shoulder under the diagnosis-based method of impairment calculation. Dr. Stanley utilized Table 15-5, page 405 of the A.M.A., *Guides*, the Shoulder Regional Grid and found that appellant had a class 3 impairment for shoulder prosthesis removal and replacement, shoulder arthroplasty, under the category of "complicated, unstable or infected" procedures and found that appellant had a severe impairment stemming from this procedure. Applying the net adjustment formulas at section 15.3, pages 406, 410 and 411 of the A.M.A., *Guides*, Table 15-21, pages 409-11 of the A.M.A., *Guides* and the Combined Values Chart at pages 605-06 of the A.M.A., *Guides*, he combined the prior 11 percent impairment for the lower arm with a 46 percent impairment for the upper arm, for a total 57 percent right upper extremity impairment. Dr. Stanley deducted the previously awarded 53 right upper extremity impairment from this total and found that appellant had an additional 4 percent impairment of the right upper extremity, stemming from the removal and the implantation of a new prosthesis in the right shoulder, pursuant to Chapter 16 of the A.M.A., *Guides*.

The Board finds that Dr. Stanley's September 13, 2013 impairment rating, the only impairment rating rendered in conformance with the applicable protocols and tables of the A.M.A., *Guides*, represented the weight of the medical evidence in this case.⁹ As the record contains no other probative, rationalized medical opinion which indicates that appellant is entitled to a greater schedule award based on his accepted right shoulder conditions, OWCP properly granted him a schedule award for an additional four percent right upper extremity impairment in its October 29, 2013 decision.

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.

⁸ *Veronica Williams*, 56 ECAB 367, 370 (2005).

⁹ The Board notes that a description of appellant's impairment must be obtained from his physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. See *Peter C. Belkind*, 56 ECAB 580, 585 (2005).

CONCLUSION

The Board finds that appellant is not entitled to an additional award for the right upper extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 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