

accepted a sprain of the right shoulder, cervical spondylosis and sprains of both shoulders and upper arms. It authorized arthroscopic surgery on the right shoulder on October 6, 2009 and the left shoulder on June 29 and October 6, 2010.

In 2009 appellant was treated by Dr. Charles D. Marable, a Board-certified neurologist, for the work-related shoulder injury. Dr. Marable diagnosed a cervical disc and right rotator cuff tear. He opined that repetitive use of his shoulders and lifting boxes injured appellant's neck, shoulders and back. A February 27, 2009 magnetic resonance imaging (MRI) scan of the right shoulder revealed a partial tear of the supraspinatus tendon, tendinosis with a partial tear of the proximal infraspinatus and severe acromioclavicular spurring. Appellant came under the treatment of Dr. Linden Dillin, a Board-certified orthopedic surgeon. On October 6, 2009 Dr. Dillin performed a right shoulder arthroscopy and superior labral repair and right anterior labral repair and diagnosed right superior and anterior labral tear. On December 21, 2009 he noted that appellant was progressing well postoperatively with excellent range of motion of the right shoulder.

On April 12, 2010 appellant filed a claim for a schedule award. He submitted an April 20, 2010 report from Dr. Marable, who opined that appellant sustained four percent impairment of the right arm under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² Dr. Marable noted a history of injury and diagnosed status post right partial rotator cuff tear. He noted that appellant underwent surgery on the right shoulder on October 6, 2009 for partial right rotator cuff tear. Dr. Marable listed appellant's complaints of pain, numbness and weakness in the right arm, movement aggravated his right arm, he could not sleep on his right side, comb his hair, reach overhead or do his usual work. A February 27, 2009 right shoulder MRI scan revealed a partial tear of the supraspinatus tendon and tendinosis. Under Table 15-5, Shoulder Regional Grid, for the diagnoses of right cuff partial thickness tear, appellant was a class 1 rating, grade C for painful injury and residual symptoms without consistent objective findings for a default rating of three percent impairment of the right upper extremity. Dr. Marable also noted range of motion (ROM) for the right shoulder was: flexion of 130 degrees, extension was intact, abduction of 130 degrees, adduction of -10 degrees, internal rotation was intact and external rotation was -20 degrees. Pursuant to the Adjustment Grid: Functional History Adjustment, Table 15-7, appellant was assigned a grade modifier 3 for consistent moderate symptoms despite continuous treatment and intermittent severe symptoms despite continuous treatment; for Physical Examination Adjustment, appellant was assigned a grade modifier 2 for constant mild physical findings despite continuous and intermittent moderate findings; and for Clinical Studies Adjustment, appellant was assigned a grade modifier 2 for persistent mild abnormalities despite continuous treatment or intermittent moderate abnormalities. Dr. Marable added the net adjustment of +4 to the default rating of three percent which equaled seven percent. He then multiplied seven percent by .6 to determine that appellant had four percent whole person impairment for the right shoulder.

In a May 21, 2010 report, an OWCP medical adviser reviewed Dr. Marable's April 20, 2010 report and agreed that appellant reached maximum medical improvement on that date. The

² A.M.A., *Guides* (6th ed. 2008).

medical adviser stated that, pursuant to Table 15-5, Shoulder Regional Grid, the diagnoses of right rotator partial thickness tear and repair, appellant was a class 1 rating, grade C for three percent default impairment of the right arm. He noted that, pursuant to the Adjustment Grid: Functional History, Table 15-7, appellant was assigned a grade modifier 3. With regard to Physical Examination Adjustment, appellant was assigned a grade modifier 2 and with regard to the Clinical Studies Adjustment, he was assigned a grade modifier 2. The medical adviser noted that this yielded a net adjustment of +4 which resulted in a grade E and five percent upper extremity impairment under Table 15-5.

Appellant submitted reports from Dr. Dillin dated May 26, 2010 to June, 28, 2012, who noted that appellant's right shoulder was healing well but he had pain and discomfort of the left shoulder. Dr. Dillin also diagnosed left shoulder impingement, acromioclavicular arthropathy and possible labral tear. He advised that appellant had a significant left labral tear which needed reconstruction.

In a decision dated September 26, 2012, OWCP granted appellant a schedule award for five percent impairment for the right arm. The period of the award was from August 26 to December 13, 2012.

On December 3, 2012 appellant requested reconsideration. In a November 2, 2012 statement, he asserted that OWCP's referral physician, Dr. Shaffer,³ arrived one hour late and did not perform a thorough examination. Appellant noted that his impairment rating for the right shoulder was five percent for one surgery; however, he had two surgeries on his left shoulder and the ratings provided by the second opinion physician were inadequate to compensate him for his impairment. He submitted an October 18, 2012 report from Dr. Marable, who diagnosed history of lumbar disease, cervical spondylosis, bilateral rotator cuff and status post surgery of both shoulders. Dr. Marable advised that appellant was disabled.

In a decision dated March 14, 2013, OWCP denied modification of the September 26, 2012 decision.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ 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

³ This appears to be a typographical error as the OWCP referral physician was Dr. John A. Sklar.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a).

For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷ For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.⁸ It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.⁹

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).¹⁰ Under the sixth edition of the A.M.A., *Guides*, 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).¹¹ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹²

ANALYSIS

On appeal, appellant contends that he has greater than five percent permanent impairment of the right upper extremity. OWCP accepted his claim for sprain of the right shoulder, cervical spondylosis and sprains of both shoulders and upper arms. On October 6, 2009 appellant underwent a right shoulder arthroscopy, superior labral repair and right anterior labral repair.

In his April 20, 2010 report, Dr. Marable reviewed the medical evidence and applied the sixth edition of the A.M.A., *Guides*. For the right shoulder, he determined that, pursuant to Table 15-5, Shoulder Regional Grid, for the diagnoses of right cuff partial thickness tear, appellant was a class 1 rating, grade C, page 402, for painful injury and residual symptoms without consistent objective findings for a default rating of three percent impairment of the right upper extremity. Dr. Marable noted that, pursuant to the Adjustment Grid: Functional History Adjustment, Table 15-7, appellant was assigned a grade modifier 3 for consistent moderate symptoms despite continuous treatment and intermittent severe symptoms despite continuous treatment, for Physical Examination Adjustment, appellant was assigned a grade modifier 2 for constant mild physical findings despite continuous and intermittent moderate findings, and for Clinical Studies Adjustment, appellant was assigned a grade modifier 2 for persistent mild abnormalities despite continuous treatment or intermittent moderate abnormalities. The Board notes that Dr. Marable incorrectly added the amounts for the schedule award, specifically adding the default value of three percent with the net adjustment formula of +4 for seven percent arm impairment and then he improperly multiplied seven percent by .6 for a four percent right whole

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁸ A.M.A., *Guides* (6th ed. 2009).

⁹ *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹⁰ A.M.A., *Guides*, *supra* note 1 at 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

¹¹ *Id.* at 385-419.

¹² *Id.* at 411.

person impairment. This calculation does not conform to the A.M.A., *Guides* which provide for a default value of three percent for class 1, grade C, and a maximum five percent impairment for the class 1, grade E condition.¹³ The A.M.A., *Guides* are clear that in applying grade modifiers to the net adjustment formula, a change in class is not permitted regardless of the net adjustment.¹⁴ Furthermore, FECA does not provide for whole person impairment.¹⁵

The medical adviser reviewed the medical record. In a report dated May 21, 2010, he noted that pursuant to Table 15-5, Shoulder Regional Grid, for the diagnoses of right rotator partial thickness tear and repair, appellant was a class 1 rating, grade C for residual symptoms, functional loss for a default rating of three percent impairment of the right arm. The medical adviser noted that, pursuant to the Adjustment Grid: Functional History, Table 15-7, appellant was assigned a grade modifier 3. With regard to Physical Examination Adjustment, he was assigned a grade modifier 2 and with regard to the Clinical Studies Adjustment, he was assigned a grade modifier 2 as the clinical studies confirmed the diagnoses of a partial rotator cuff tear. The medical adviser noted that these adjustments yielded a net adjustment of +4. This resulted in a grade E and five percent upper extremity impairment under Table 15-5.

The Board finds that the medical adviser properly applied the A.M.A., *Guides* to rate impairment to appellant's right shoulder as set forth by Dr. Marable. OWCP's medical adviser reviewed the medical evidence and determined that appellant had five percent impairment for the right arm under the sixth edition of the A.M.A., *Guides*. There is no current medical evidence that establishes any greater impairment under the A.M.A., *Guides*.¹⁶

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 five percent impairment of the right upper extremity for which he received a schedule award.

¹³ *Id.* at 402

¹⁴ *Id.* at 409.

¹⁵ See *B.P.*, Docket No. 08-1457 (issued February 2, 2009).

¹⁶ The Board notes that OWCP developed evidence with regard to whether appellant has employment-related left arm impairment and he referenced this on appeal. However, the Board has no jurisdiction over the extent of any left arm impairment as OWCP has not yet issued a final decision regarding left arm impairment. See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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