

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

I.T., Appellant	)	
	)	
and	)	Docket No. 13-1815
	)	Issued: March 10, 2014
DEPARTMENT OF THE ARMY, ANNISTON	)	
ARMY DEPOT, Anniston, AL, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 30, 2013 appellant filed a timely appeal of a June 13, 2013 Office of Workers' Compensation Programs' (OWCP) merit decision denying her claim for a schedule award. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant has more than 17 percent impairment of her right upper extremity for which she has received a schedule award.

**FACTUAL HISTORY**

On January 20, 2011 appellant, then a 58-year-old heavy mobile equipment mechanic, filed a traumatic injury claim alleging that she injured her right shoulder<sup>2</sup> and right knee when

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Appellant received a prior schedule award on January 14, 2002 for 17 percent impairment of her right upper extremity for the period September 17 through December 29, 2001. This award was issued in claim number xxxxxx739.

she slipped and fell in the performance of duty. She underwent a magnetic resonance imaging (MRI) scan of her right shoulder on January 20, 2011 which demonstrated degenerative changes of acromioclavicular joint, and possible partial tears of the infraspinatus and supraspinatus tendons. OWCP accepted appellant's claim for partial thickness tear of the right rotator cuff and right knee sprain on March 9, 2011. On April 29, 2011 it expanded her accepted conditions to include sprain of the right shoulder or upper arm and aggravation of osteoarthritis of the right shoulder.

Appellant underwent right shoulder surgery on December 13, 2011 consisting of right shoulder biceps tenodesis, right shoulder subacromial decompression and right shoulder mini open rotator cuff repair.

An MRI scan dated May 29, 2012 demonstrated degenerative arthritis of the humeral head, partial tear of the anterior fibers of the supraspinatus and possible labral tear. Appellant underwent right shoulder arthroscopy with supraspinatus repair and chondroplasty of the humeral head and glenoid on August 1, 2012.

On January 22, 2013 appellant received a permanent impairment rating of seven percent under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup> Dr. Michael Wiedmer, a Board-certified orthopedic surgeon, found that appellant had a rotator cuff injury, full-thickness tear under Table 15-5 of the A.M.A., *Guides*.<sup>4</sup> He found that appellant had class 1 impairment with functional history, physical examination and clinical studies modifiers of 3, 3 and 4 respectively resulting in a net adjustment of plus 2 or grade E. Dr. Wiedmer concluded that appellant had seven percent impairment of the right upper extremity.

Appellant requested a schedule award on March 1, 2013. OWCP referred her claim to OWCP's medical adviser on March 4, 2013. The medical adviser reviewed appellant's claim and agreed with Dr. Wiedmer's application of the A.M.A., *Guides* and the impairment rating of seven percent of the right upper extremity. In a supplemental report dated April 11, 2013, he noted that appellant's previous schedule award was for the repair of a partial thickness rotator cuff tear of the right shoulder and that no additional schedule award was due.

By decision dated June 13, 2013, OWCP denied appellant's claim for a schedule award finding that she did not have more than 17 percent impairment of her right upper extremity for which she had previously received a schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>5</sup> and its implementing regulations<sup>6</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment for

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<sup>3</sup> 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

<sup>4</sup> A.M.A., *Guides* 403, Table 15-5.

<sup>5</sup> 5 U.S.C. §§ 8101-8193, 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

loss or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.<sup>7</sup>

If a claimant who has received a schedule award calculated under a previous edition of the A.M.A., *Guides* is entitled to additional benefits, the increased award will be calculated according to the sixth edition. Should the subsequent calculation result in a percentage of impairment lower than the original award (as sometimes occurs), a finding should be made that the claimant has no more than the percentage of impairment originally awarded, that the evidence does not establish an increased impairment, and that OWCP has no basis for declaring an overpayment. Similarly, awards made prior to May 1, 2009 (the effective date for use of the sixth edition) should not be reconsidered merely on the basis that the A.M.A., *Guides* have changed. All permanent partial impairment calculations made on or after May 1, 2009 must be based on the sixth edition.<sup>8</sup>

In addressing upper extremity impairments, the sixth edition requires identification of 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). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>9</sup>

### ANALYSIS

OWCP accepted appellant's claim for partial thickness tear of the right rotator cuff and sprain of the right shoulder or upper arm as well as aggravation of osteoarthritis of the right shoulder. Appellant's physician, Dr. Wiedmer, diagnosed a rotator cuff injury, full-thickness tear under Table 15-5 of the A.M.A., *Guides*.<sup>10</sup> He found that appellant had a class 1 impairment with functional history, physical examination and clinical studies modifiers of 3, 3 and 4 respectively resulting in a net adjustment of plus 2 or grade E. Dr. Wiedmer concluded that appellant had seven percent impairment of the right upper extremity. OWCP's medical adviser reviewed appellant's case and agreed with Dr. Wiedmer's impairment rating of seven percent. He also noted that appellant had previously received a schedule award for right rotator cuff injury of 17 percent under a previous edition of the A.M.A., *Guides*. The medical adviser concluded that appellant was not entitled to any additional schedule award.

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<sup>7</sup> For new decisions issued after May 1, 2009, OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6<sup>th</sup> ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(b)(4) (January 2010)

<sup>9</sup> A.M.A., *Guides* 411.

<sup>10</sup> *Id.* at 403, Table 15-5.

The Board finds that the medical evidence of the record establishes that appellant currently has seven percent impairment of her right upper extremity due to her accepted rotator cuff injuries. The Board further finds that, as appellant previously received a schedule award due to a right rotator cuff injury of 17 percent, she is not entitled to any additional schedule award.

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 no more than 17 percent impairment of her right upper extremity for which she has received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** June 13, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2014  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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