United States Department of Labor
Employees' Compensation Appeals Board

S.R., Appellant	)	
and	)	**Docket No. 14-1103**
	)	**Issued: September 4, 2014**
DEPARTMENT OF THE INTERIOR, BR-REGULAR EMPLOYEE FUNCTIONS, Billings, MT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 15, 2014 appellant filed a timely appeal from a February 25, 2014 schedule award 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 sustained more than a seven percent permanent impairment of the right upper extremity for which he received a schedule award.

FACTUAL HISTORY

On November 11, 2011 appellant, then a 40-year-old drill rig operator, sustained a right shoulder injury from unloading a box of wall bits. On December 9, 2011 OWCP accepted the

[1] 5 U.S.C. § 8101 *et seq.*

claim for tears of the right shoulder supraspinatus and infraspinatus tendons and dislocation of the bicep.

On December 15, 2011 appellant underwent open repair of the supraspinatus and upper border subscapularis and infraspinatus tendons with bicep tenodesis and athroscopic subacromial decompression. On October 23, 2012 he underwent subacromial smoothing, smooth and move, removal of multiple sutures and buried suture anchors with resection of a prominent tuberosity bone and manipulation under anesthesia.

In an April 5, 2013 medical report, Dr. John Petrisko, Board-certified in occupational medicine, diagnosed appellant with an irreparable right shoulder rotator cuff repair with range of motion deficits. He provided range of motion measurements, noted reduced range of motion and opined that maximum medical improvement (MMI) had been reached. Using the range of motion method under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[2] Dr. Petrisko rated 10 percent impairment of the upper right extremity based on Table 15-34[3] or a 6 percent whole person impairment. He noted utilizing Figure 15-28, Figure 15-29 and Figure 15-30 of the A.M.A., *Guides*.[4] Dr. Petrisko did not provide calculations demonstrating how he reached his impairment rating.

On January 22, 2014 appellant filed a claim for a schedule award (Form CA-7).

On January 27, 2014 OWCP routed Dr. Petrisko's report, a statement of accepted facts (SOAF) and the case file to Dr. Morley Slutsky, Board-certified in occupational medicine and an OWCP district medical adviser (DMA). In a February 19, 2014 report, Dr. Slutsky stated that appellant reached MMI of the upper right extremity on January 21, 2014. He noted that appellant's impairment rating should be calculated based on the preferred diagnosis-based impairment method rather than Dr. Petrisko's range of motion method which conform to the range of motion protocols at Section 15.7, page 464.

Using Table 15-5, Shoulder Regional Grid, of the sixth edition of the A.M.A., *Guides*, Dr. Slutsky found that appellant had the diagnosis-based condition of full thickness rotator cuff tear with residual dysfunction and, therefore, fell under the class 1 default value of five percent impairment.[5] Applying Table 15-7, he noted that appellant had a grade modifier of 1 for Functional History (GMFH), the ability to perform self-care activities independently with mild problems of pain and symptoms with strenuous activity.[6] With respect to Physical Examination (GMPE), Dr. Slutsky noted that Dr. Petrisko only documented one motion per joint movement which was not consistent with Section 15.7, Range of Motion Impairment, of the A.M.A.,

[2] A.M.A., *Guides*.

[3] *Id.* at 475.

[4] *Id.* at 475-76.

[5] *Id.* at 403.

[6] *Id.* at 406.

Guides.[7] As no other objective deficits were documented, he assigned a grade modifier of 0 for GMPE.[8] A grade modifier of 4 was assigned for Clinical Studies (GMCS) (diagnoses confirmed by diagnostic testing and moderate pathology).[9] Applying the net adjustment formula, Dr. Slutsky subtracted 1, the numerical value of the class, from the numerical value of the grade modifier for each component (functional history, physical examination and clinical studies) and then added those values, resulting in a net adjustment of 2 ((1-1) + (0-1) + (4-1)).[10] He noted that application of the net adjustment formula meant that movement was warranted two places to the right of class 1 default value grade C to grade E based on Table 15-5. Therefore, the diagnosis-based impairment rating for appellant's right rotator cuff, full thickness tear with residual dysfunction yielded a seven percent impairment of the upper right extremity.[11]

By decision dated February 25, 2014, OWCP granted appellant a schedule award claim for seven percent permanent impairment of the right arm. The date of maximum medical improvement was noted as January 21, 2014. The award covered a period of 21.84 weeks from January 21 to June 22, 2014.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations 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.[12] 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.[13]

The A.M.A., *Guides* provide a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[14] 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. After the class of diagnosis (CDX) is determined for the diagnosed condition (including identification of a default grade value), the net adjustment formula is applied using the

[7] *Id.* at 459.

[8] *Id.* at 408.

[9] *Id.* at 410.

[10] *Id.* at 411.

[11] *Supra* note 5.

[12] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[13] *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

[14] A.M.A., *Guides*, *supra* note 2 at 3, section 1.3, The ICF: A Contemporary Model of Disablement.

grade modifier for Functional History, grade modifier for Physical Examination and grade modifier for Clinical Studies.[15] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[16] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[17]

In the sixth edition, diagnosis-based impairment (DBI) is the primary method of evaluation for the upper extremity. A grid listing relevant diagnoses is provided for each region of the upper extremity: the digit region, the wrist region, the elbow region and the shoulder region. A regional impairment will be defined by class and grade. The class is determined first by using the corresponding regional grid. The grade is initially assigned the default value for that class. This value may be adjusted slightly using nonkey grade modifiers such as functional history, physical examination and clinical studies.[18]

The A.M.A., *Guides* at Section 15.7 provides:

> "Range of motion should be measured after a warm up, in which the individual moves the joint through its maximum range of motion at least [three] times. The range of motion examination is then performed by recording the active measurements from [three] separate range of motion efforts. All measurements should fall within 10 [degrees] of the mean of these three measurements. The maximum observed measurement is used to determine the range of motion impairment."[19]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[20]

ANALYSIS

OWCP accepted appellant's claim for right shoulder tear of the supraspinatus, right shoulder partial tear of the infraspinatus and right arm dislocation of the bicep. The issue is whether he sustained more than a seven percent permanent impairment of the upper right extremity for which he received schedule awards. The Board finds that appellant has not met his

[15] *Id.* at 385-419.

[16] *Id.* at 411.

[17] *Id*. at 23-28.

[18] *Id.* at 387.

[19] *Id.* at 464.

[20] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (February 2013).

burden of proof to establish that he has impairment of the right upper extremity greater than the seven percent already awarded.

Dr. Petrisko's April 5, 2013 report utilized the range of motion method based on Table 15-34 to calculate 10 percent permanent impairment of the upper right extremity or 6 percent whole person impairment.[21] The Board notes that there is no statutory basis for the payment of a schedule award for whole body impairment under FECA.[22] Payment is authorized only for the permanent impairment of specified members, organs or functions of the body. The Board notes that Dr. Petrisko failed to show how he rated the 10 percent upper right extremity impairment and failed to provide valid range of motion measurements as required by Section 15.7a of the A.M.A., *Guides*.[23] The Board notes that the A.M.A., *Guides* require the rating physician to obtain three measurements per joint motion. The measurements are then averaged and each of the three measurements shown must be within 10 degrees of the calculated average. The maximum observed measurement is then used to determine the range of motion impairment.[24] It does not appear from Dr. Petrisko's report that he obtained the requisite three joint measurements. Consequently, his impairment rating does not conform to the A.M.A., *Guides* and is of diminished probative value.[25]

Dr. Petrisko's report was reviewed by Dr. Slutsky, who noted the above defects. Dr. Slutsky found that appellant's impairment rating should be calculated pursuant the preferred diagnosed-based impairment method rather than the alternative range of motion method utilized by Dr. Petrisko. He properly noted that Dr. Petrisko's range of motion measurements were not reliable as the physician failed to provide the valid range of motion measurements required by Section 15.7a of the A.M.A., *Guides*.[26]

Dr. Slutsky stated that, under Table 15-5 of the A.M.A., *Guides*, appellant had the diagnosis-based condition of full thickness rotator cuff tear with residual dysfunction and, therefore, fell under the class 1 default value of five percent impairment. Providing explanations for his grade modifiers, he applied Table 15-7 through Table 15-9 to show that appellant had a grade modifier 1 for functional history, 0 for physical examination and 4 for clinical studies.[27] Applying the net adjustment formula, Dr. Slutsky properly subtracted 1, the numerical value of the Class, from the numerical value of the grade modifier for each component (functional history, physical examination and clinical studies) and then added those values, resulting in a net adjustment of 2 ((1-1) + (0-1) + (4-1)).[28] He noted that application of the net adjustment formula

[21] *Supra* note 3.

[22] *N.M.*, 58 ECAB 273 (2007).

[23] *Supra* note 7.

[24] *Supra* note 19.

[25] *See Mary L. Henninger*, 52 ECAB 408 (2001).

[26] *D.U.*, Docket No. 13-2086 (issued February 11, 2014).

[27] *Supra* note 6 through 9.

[28] *Supra* note 10.

meant that movement was warranted two places to the right of class 1 default value grade C to grade E in accordance with Table 15-5. Therefore, Dr. Slutsky properly concluded that the diagnosis-based impairment rating for appellant's right rotator cuff injury full thickness tear with residual dysfunction yielded a seven percent impairment of the upper right extremity.[29]

The Board finds that appellant has a seven percent permanent impairment of the upper right extremity.[30] There is no probative evidence showing a greater impairment.

On appeal, appellant argues that he has continued difficulty performing everyday tasks and the medical reports submitted establish greater than seven percent impairment of the right upper extremity. As noted above, Dr. Petrisko's report is insufficient to form the basis of appellant's schedule award claim. The Board further notes that any evidence of record after the final decision cannot be considered by the Board.[31] The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its decision.[32] It is appellant's burden of proof to establish that he sustained a permanent impairment of a scheduled member as a result of an employment injury.[33] The medical evidence must include a description of any physical impairment in sufficient detail so that the claims examiner and others reviewing the file would be able to clearly visualize the impairment with its resulting restrictions and limitations.[34] Appellant did not submit such evidence and thus, OWCP properly awarded him seven percent impairment of the right upper extremity.[35]

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 seven percent permanent impairment of upper right extremity.

[29] *Supra* note 5.

[30] *Supra* note 26.

[31] 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

[32] 20 C.F.R § 501.2(c)(1).

[33] *Tammy L. Meehan*, 53 ECAB 229 (2001).

[34] *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

[35] *V.W.*, Docket No. 09-2026 (issued February 16, 2010); *L.F.*, Docket No. 10-343 (issued November 29, 2010).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated February 25, 2014 is affirmed.

Issued: September 4, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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