

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

C.I., Appellant)	
)	
and)	Docket No. 15-1320
)	Issued: December 15, 2015
DEPARTMENT OF VETERANS AFFAIRS,)	
JAMES BROWN MEDICAL CENTER,)	
Chicago, IL, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 26, 2015 appellant filed a timely appeal of a March 10, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 more than six percent right upper extremity permanent impairment and six percent left upper extremity permanent impairment, for which he had received schedule awards.

FACTUAL HISTORY

On April 18, 2012 appellant, then a 67-year-old police officer, filed an occupational disease claim (Form CA-2) alleging that on March 5, 2012 he first became aware of neck and

¹ 5 U.S.C. § 8101 *et seq.*

shoulder conditions. It was not until March 12, 2012 that he realized those conditions were due to wearing a body armor/vest. OWCP accepted the claim for left complete rotator cuff rupture and brachial neuritis or radiculitis, which was expanded to include bilateral complete rotator cuff rupture, shoulder adhesive capsulitis, and brachial neuritis or radiculitis.

In an April 8, 2013 report, Dr. Anatoly Rozman, an examining Board-certified physiatrist, concluded that appellant had a combined 22 percent whole person permanent impairment based on the accepted conditions. He indicated that appellant had reached maximum medical improvement on March 5, 2013. Dr. Rozman advised that appellant had full shoulder range of motion with mild adhesive capsulitis, pain on cervical paraspinal muscle palpation, no more than 4+/5 shoulder strength on external fixation, forward flexion, and internal rotation, mildly decreased bilateral rotator cuff range of motion, bilateral shoulder pain on normal activity, decreased C5-6 nerve sensation, mild bilateral shoulder swelling, and negative bilateral shoulder drop arm test. A review of a February 23, 2012 magnetic resonance imaging (MRI) scan of the right shoulder showed a complete distal supraspinatus tendon tear while a December 15, 2011 MRI scan of the left shoulder showed a complete supraspinatus tear.

In reaching the impairment determination, Dr. Rozman used Table 15-5, page 403 to find five percent impairment for each upper extremity based on a class 1 impairment due to full bilateral rotator cuff tear. Using Table 15-7, Table 15-8, and Table 15-9, he assigned grade modifier of 2 for each functional history, physical examination findings, and clinical studies. The net adjustment formula resulted in moving the rating three places to the right or 8 percent impairment in each upper extremity or a combined 16 percent bilateral upper extremity impairment.

Next, using Table 17-21, page 568, Dr. Rozman assigned 11 percent whole person impairment due to a class 2 impairment for clinical stenosis with cervical radiculopathy. Using Table 17-6, Table 17-7, and Table 17-9, he again assigned a grade modifier of two each for functional history, physical examination, and clinical studies. The net adjustment formula resulted in no change and the final impairment rating for the cervical condition was 11 percent whole person impairment. Dr. Rozman added, from Table 15-5, page 403, 1 percent permanent impairment for condition adhesive capsulitis and converted the 16 percent impairment for bilateral rotator cuff tear to 10 percent whole person impairment which was combined with the 11 percent impairment for the cervical condition and the 1 percent for adhesive capsulitis resulting in a combined 22 percent whole person impairment.

On March 17, 2014 appellant filed a claim for a schedule award.

In a September 23, 2013 report, Dr. David H. Garelick, Board-certified in orthopedic surgery and an OWCP medical adviser, concluded that appellant had six percent right upper extremity impairment and six percent left upper extremity impairment. He disagreed with Dr. Rozman's impairment determination because according to Table 15-5, page 403 the highest impairment rating for a full-thickness rotator cuff was seven percent, OWCP does not recognize whole person impairments, and there was no evidence of significant radiculopathy. The medical adviser related that the record reflected essentially full shoulder strength and range of motion and pain with physical activities in shoulders. Using Table 15-5, page 403, he assigned five percent impairment, which was the default value for a full-thickness rotator cuff tear. The medical adviser assigned a grade modifier of 2 for clinical studies but found no modification necessary

for either functional history or physical examination. Using the net adjustment formula, the grade modifier moved the default value one place to the right resulting in six percent right upper extremity impairment and six percent left upper extremity impairment.

By decision dated March 10, 2015, OWCP granted appellant a schedule award for six percent impairment of the right upper extremity and six percent impairment of the left upper extremity. The number of weeks was 37.44 and the award ran from April 7 to December 25, 2013.

LEGAL PRECEDENT

Under section 8107 of FECA² and section 10.404 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. FECA, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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.⁴

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).⁵ Under the sixth edition, the evaluator identifies the impairment Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).⁶ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁷

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.⁸

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404

⁴ *D.J.*, 59 ECAB 620 (2008); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁵ A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

⁶ A.M.A., *Guides* (6th ed. 2009), pp. 383-419.

⁷ *Id.* at 411.

⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(e) (January 2010). See *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

ANALYSIS

OWCP accepted appellant's claim for bilateral complete rotator cuff rupture, shoulder adhesive capsulitis, and brachial neuritis or radiculitis. By decision dated March 10, 2015, it granted him a schedule award for six percent permanent impairment in each upper extremity.

In an April 8, 2013 report, Dr. Rozman described appellant's history, noted physical examination findings, and opined that, under the A.M.A., *Guides*, appellant had 22 percent whole person impairment. He noted that appellant had a class 1 impairment due to bilateral full bilateral rotator cuff tear. Applying the grade modifiers, Dr. Rozman assigned a grade modifier of two for functional history, physical examination findings, and clinical studies. The net adjustment formula resulted in eight percent impairment in each upper extremity or a combined 16 percent bilateral upper extremity impairment. Dr. Rozman also assigned 11 percent whole person impairment rating due to a class 2 impairment due to clinical stenosis with cervical radiculopathy, and one percent permanent impairment for adhesive capsulitis. He converted the 16 percent impairment for bilateral rotator cuff tear to 10 percent whole person impairment which was combined with the 11 percent impairment for the cervical condition and the 1 percent for adhesive capsulitis resulting in a total 22 percent whole person impairment.

The Board notes that, while he referenced the A.M.A., *Guides*, his impairment finding does not correlate with the impairment values in the A.M.A., *Guides*. Dr. Rozman rated eight percent impairment for a class 1 full-thickness rotator cuff tear. However, page 403 of the A.M.A., *Guides* provides that the maximum arm impairment for a class 1 full-thickness rotator cuff tear with residual loss is seven percent.⁹ Thus, Dr. Rozman's opinion was not based upon a correct application of the A.M.A., *Guides*. Further, FECA does not allow schedule awards for impairment to the whole person.¹⁰ Thus, Dr. Rozman's rating is of diminished probative value as he did not properly follow the A.M.A., *Guides*.¹¹

OWCP properly referred the case to an OWCP medical adviser who, on September 23, 2013, utilized the examination findings provided by Dr. Rozman and determined that appellant had no more than six percent impairment of each upper extremity. The medical adviser, as noted above, properly noted the deficiencies in Dr. Rozman's impairment ratings including the rating under Table 15-5 and properly found that under Table 15-5, for a full-thickness rotator cuff tear, a class 1 rating with a grade modifier of 2 for clinical studies yielded six percent impairment of the upper extremity.¹² Furthermore, the medical adviser properly noted that OWCP does not

⁹ The A.M.A., *Guides* 413, prohibits moving the impairment rating above the highest rating in the diagnosed class.

¹⁰ *B.M.*, Docket No. 09-2231 (issued May 14, 2010); *Phyllis F. Cundiff*, 52 ECAB 439 (2001); *John Yera*, 48 ECAB 243 (1996).

¹¹ See *Carl J. Cleary*, 57 ECAB 563, 568 n.14 (2006) (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 little probative value in determining the extent of a claimant's impairment).

¹² See *infra*. The medical adviser referred to Table 15-5, page 403, and found that appellant had a class 1 full-thickness rotator cuff tear, for a grade C default impairment of five percent. He applied grade modifiers to the net adjustment formula to arrive at a net adjustment of one which moved the grade one place to the right, for grade D, which yields six percent right arm impairment.

recognize whole person impairments and there was no evidence of significant radiculopathy to support any additional impairment.

The Board finds that the OWCP medical adviser correctly utilized the A.M.A., *Guides* and determined that appellant had an impairment of six percent of the right upper extremity and six percent impairment of the left upper extremity due to his bilateral shoulder conditions. Appellant has failed to meet his burden of proof to establish a greater impairment.

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 not met his burden of proof to establish more than six percent permanent impairment of his right upper extremity and six percent impairment of his left upper extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 10, 2015 is affirmed.

Issued: December 15, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board