United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
and	)	**Docket No. 14-1521**
	)	**Issued: January 7, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Hollywood, FL, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 23, 2014 appellant filed a timely appeal from a May 20, 2014 merit 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 schedule award determination.

ISSUE

The issue is whether appellant has met his burden of proof to establish more than an eight percent impairment of the right upper extremity for which he received a schedule award.

FACTUAL HISTORY

On August 18, 2008 appellant, then a 57-year-old manager, filed a traumatic injury claim alleging that on that same date, a customer struck him in the right shoulder, and left hand in the performance of duty. He did not stop work. On October 10, 2008 OWCP accepted appellant's

[1] 5 U.S.C. § 8101 *et seq.*

claim for a sprain of the right shoulder/upper arm, rotator cuff syndrome right. On August 17, 2009 appellant underwent authorized surgery to the right shoulder for impingement syndrome, and partial tears of the rotator cuff, and glenoid labrum. He received compensation benefits.

On March 10, 2009 OWCP issued a schedule award for eight percent impairment of the right arm due to appellant's right shoulder condition. The award covered a period of 24.96 weeks from November 6, 2008 to January 17, 2009.[2]

On November 8, 2010 appellant underwent an authorized right shoulder debridement of scar tissue, subacromial decompression (SAD), and mini open rotator cuff repair.

In a report dated February 20, 2014, Dr. Scott D. Tannenbaum, Board-certified in physical medicine and rehabilitation, opined that appellant had six percent impairment using a diagnosis-based evaluation for a grade "C-D" right rotator cuff tear.

In a March 6, 2014 report, an OWCP medical adviser determined that appellant did not have any additional impairment. He utilized the A.M.A., *Guides* and concluded that evidence did not support an additional schedule award of the right arm. The medical adviser found that appellant had reached maximum medical improvement and that appellant had a right shoulder arthroscopic SAD and debridement to the rotator cuff, and glenoid labrum on August 17, 2009 for impingement syndrome, and partial tear of the rotator cuff. Appellant had a second right shoulder SAD, debridement, and full thickness rotator cuff tear repair on November 8, 2010. The medical adviser noted that appellant received a schedule award for eight percent right arm impairment following the August 17, 2009 surgery. He noted that the report from Dr. Tannenbaum reflected a six percent impairment award based upon the diagnosis-based evaluation. The medical adviser referred to Table 15-5 for full thickness rotator cuff tear,[3] noting that the table is used for a full thickness rotator cuff tear with residual functional loss. As appellant had already received a schedule award for eight percent impairment of the right arm, he determined that there was no additional impairment.

On April 4, 2014 appellant filed a claim for an additional schedule award.

By letter dated April 14, 2014, OWCP informed appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days. It advised him that the medical adviser reviewed the report from Dr. Tannenbaum and determined that the impairment rating of six percent was not greater than the eight percent previously awarded. Appellant was advised to review the report from the medical adviser. OWCP noted that Dr. Tannenbaum would need to submit a final impairment rating and discussion of the rationale

[2] Appellant retired on March 3, 2010. He subsequently sought an increased schedule award. OWCP denied appellant's claim for an increased award in a September 14, 2011 decision as the medical evidence did not demonstrate an increased impairment. On January 28, 2012 appellant requested reconsideration. In a February 15, 2012 decision, OWCP refused to reopen his case for further review of the merits of his claim. It found that appellant had not submitted relevant new evidence.

[3] A.M.A., *Guides* 403. For a full thickness rotator cuff tear with residual loss, this table provides an impairment range of three to seven percent for the arm.

for his calculation to find any impairment greater than eight percent of the right arm as previously awarded.

Appellant did not respond to the request to OWCP's request to provide additional documentation to support his claim for increased permanent impairment.

By decision dated May 20, 2014, OWCP determined that appellant was not entitled to an additional schedule award.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.[4] FECA, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[5] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[6] For decisions issued after May 1, 2009, the sixth edition will be used.[7]

In addressing upper extremity impairments, the sixth edition requires identifying the impairment class for the Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[8] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[9]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with him providing rationale for the percentage of impairment specified.[10]

ANALYSIS

The evidence of record is insufficient to establish that appellant has more than eight percent impairment of the right arm. OWCP accepted his claim for a sprain of the right shoulder/upper arm, rotator cuff syndrome right. It also approved August 17, 2009, right

[4] 5 U.S.C. § 8107.

[5] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[6] 20 C.F.R. § 10.404.

[7] FECA Bulletin No. 09-03 (issued March 15, 2009).

[8] A.M.A., *Guides* 494-531; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

[9] *Id.* at 521.

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

shoulder surgery, and a November 8, 2010 right SAD, debridement, and repair of a rotator cuff tear.

In a report dated February 20, 2014, Dr. Tannenbaum opined that appellant had an impairment of six percent to the right arm for a grade "C-D" right rotator cuff tear. However, he did not explain how he arrived at his opinion. By letter dated April 14, 2014, OWCP informed appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days. It noted that Dr. Tannenbaum would need to submit a final impairment rating and a discussion of the rationale for his calculation. Because Dr. Tannenbaum did not explain his rating under the A.M.A., *Guides* and did not otherwise support a greater impairment of the shoulder region than appellant had already received. His opinion is insufficient to warrant a greater schedule award.

Furthermore, in a March 6, 2014 report, the medical adviser utilized the A.M.A., *Guides* and determined that evidence did not support an additional schedule award to the right arm. He noted appellant's conditions, and his two authorized right shoulder surgeries. The medical adviser explained that appellant previously received a schedule award of eight percent to the right upper extremity following the right shoulder arthroscopy of August 17, 2009. He referred to Table 15-5 for full thickness rotator cuff tear, with residual loss.[11] The Board notes that the range of impairment for this diagnosis is three to seven percent. The medical adviser found no basis on which to attribute additional impairment of the right shoulder region. Thus, he correctly utilized the A.M.A., *Guides* and determined that appellant had an impairment of no more than eight percent to right upper extremity for which he previously received a schedule award.

Section 8107(c)(1) of FECA provides 312 weeks of compensation for the total loss of an arm.[12] Section 8107(c)(19) provides that compensation for partial losses is proportionate.[13] Therefore, eight percent of 312 weeks of compensation is 24.96 weeks of compensation, which is what OWCP awarded. Appellant has not submitted any other medical evidence conforming with the A.M.A., *Guides* establishing that he has a greater schedule award.[14]

On appeal, appellant argued that Dr. Tannenbaum meant that he was entitled to an additional impairment of six percent. However, Dr. Tannenbaum did not respond to the request to clarify his findings with the requisite rationale in accordance with the A.M.A., *Guides*. He also submitted additional evidence with his appeal. However, the Board has no jurisdiction to review this evidence for the first time on appeal.[15]

[11] A.M.A., *Guides* 403.

[12] 5 U.S.C. § 8107(c)(1).

[13] *Id.* at § 8107(c)(19).

[14] The Board also notes that OWCP regulations provide that benefits payable under section 8107(c) shall be reduced by the period of compensation paid or payable under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment. 20 C.F.R. § 10.404(d).

[15] *Id.* at § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

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

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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