



## **FACTUAL HISTORY**

On September 16, 2008 appellant, a 50-year-old secretary, injured her right shoulder and right arm when she tripped on a hole while walking on grass. She filed a traumatic injury claim (Form CA-1) for benefits on September 17, 2008, which OWCP accepted for right shoulder sprain, right upper arm sprain, right elbow sprain, and right forearm sprain.

On December 17, 2008 appellant underwent a magnetic resonance imaging (MRI) scan and arthrogram of her right shoulder. The results of this test showed that she had a right rotator cuff tear, with a tear of both the supraspinatus and infraspinatus tendons and apparent superior labral tear from anterior to posterior (SLAP) lesion.

On March 27, 2009 appellant underwent authorized surgery to ameliorate the conditions of severe right shoulder impingement and right rotator cuff tear. The procedure was performed by Dr. Bruce Greene, Board-certified in orthopedic surgery.

On March 10, 2010 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right upper extremity.

On April 8, 2010 appellant underwent an MRI scan of her right shoulder. The results of this test showed a full thickness tear involving the supraspinatus tendon.

On September 16, 2010 appellant underwent authorized right shoulder surgery, an arthroscopy, open acromioplasty, excision of clavicle, and rotator cuff repair of the right shoulder. The procedure was performed by Dr. Thomas Smallman, a specialist in orthopedic surgery.

In a report dated May 23, 2012, appellant's treating physician, Dr. George Mina, Board-certified in orthopedic surgery, found that appellant had six percent permanent right upper extremity impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (the A.M.A., *Guides*), based on a class 1 impairment for right rotator cuff tear. He noted that appellant had some pain and atrophy in the right shoulder but that her right shoulder was stable and that she had returned to work without restrictions. Using the diagnosis-based method of impairment calculation, Dr. Mina utilized Table 15-5, page 403 of the A.M.A., *Guides*, the shoulder regional grid and applied the net adjustment formula at section 15.3, pages 406, 410 and 411 of the A.M.A., *Guides*.<sup>2</sup> He found that the grade modifier at Table 15-7, page 406 for functional history was 2, for a moderate problem, pain with normal and strenuous activities. With regard to physical examination, Dr. Mina assigned a grade modifier of one for muscle atrophy at Table 15-8, page 408 of the A.M.A., *Guides*.<sup>3</sup> Lastly, he found that the grade modifier for clinical studies at Table 15-9, page 407-10 of the A.M.A., *Guides*,<sup>4</sup> was not applicable, given the fact that he used a rotator cuff tear two as the basis for diagnostic criteria and imaging studies, preoperative.

---

<sup>2</sup> A.M.A., *Guides* 406, 410-11.

<sup>3</sup> *Id.* at 408.

<sup>4</sup> *Id.* at 407-10.

Pursuant to the net adjustment formula set forth at Table 15-21, pages 409-411 of the A.M.A., *Guides*,<sup>5</sup> Dr. Mina determined that appellant had an adjusted, default grade D impairment, which equated to six percent permanent impairment of the right upper extremity at Table 15-5, page 403.<sup>6</sup> He also asserted that she reached MMI “probably one year postoperative, September 2011.”

In a March 25, 2015 report, Dr. Henry J. Magliato, a specialist in occupational medicine and an OWCP medical adviser, concurred with Dr. Mina’s finding that appellant had six percent permanent impairment from her accepted right rotator cuff condition. He stated, however, that appellant reached MMI as of May 23, 2012, the date of Dr. Mina’s examination.

By decision dated April 17, 2015, OWCP granted appellant a schedule award for six percent permanent impairment of the right upper extremity for the period May 23 to October 1, 2012, for a total of 18.72 weeks of compensation, pursuant to the A.M.A., *Guides* (sixth edition).

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of FECA<sup>7</sup> and its implementing regulations<sup>8</sup> 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 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, and the Board has concurred in such adoption.<sup>9</sup> The method used in making such determination is a matter which rests in the sound 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.

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).<sup>10</sup> Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition Class of Diagnosis (CDX), which is then adjusted by grade modifiers based

---

<sup>5</sup> *Id.* at 409-11.

<sup>6</sup> *Id.* at 403.

<sup>7</sup> 5 U.S.C. § 8107.

<sup>8</sup> 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6<sup>th</sup> ed. 2009). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013) and see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

<sup>9</sup> *Id.* See *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>10</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009), p.3, section 1.3, *International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement*.

on grade modifier Functional History (GMFH), grade modifier Physical Examination (GMPE), and grade modifier Clinical Studies (GMCS).<sup>11</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.<sup>12</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted the conditions of right shoulder sprain and right shoulder impingement syndrome; it also authorized surgery to ameliorate the condition of right rotator cuff tear, right shoulder impingement, and excision of the clavicle. Dr. Mina, appellant's treating physician, rated her permanent impairment based on the diagnosis of right rotator cuff repair and the shoulder regional grid at Table 15-5, pages 403 and 405<sup>13</sup> and applied the net adjustment formula at section 15.3, pages 406, 410 and 411 of the A.M.A., *Guides*<sup>14</sup> to find that she had six percent right upper extremity impairment. Dr. Magliato, OWCP's medical adviser, reviewed Dr. Mina's May 23, 2012 report and concurred in his findings. The Board finds that Drs. Mina and Magliato properly applied the standards of the A.M.A., *Guides*, that their ratings were rendered in conformance with the applicable protocols and tables of the A.M.A., *Guides* and represented the weight of the medical evidence in this case. Accordingly, as the record contains no other probative, rationalized medical opinion which indicates that appellant is entitled to a greater schedule award based on her accepted right shoulder conditions, OWCP properly granted her a schedule award for six percent permanent right upper extremity impairment in its April 17, 2015 decision.

### **LEGAL PRECEDENT -- ISSUE 2**

Permanent impairment is to be rated according to the A.M.A., *Guides*, and only after the status of MMI is determined. Impairment should not be considered permanent until a reasonable time has passed for the healing or recovery to occur. This will depend on the nature of underlying pathology, as the optimal duration for recovery may vary considerably from days to months. The clinical findings must indicate that the medical condition is static and well stabilized for the person to have reached MMI.<sup>15</sup>

The period covered by a schedule award commences on the date that the employee reaches MMI from the residuals of the injury. The question of when MMI has been reached is a factual one that depends upon the medical findings in the record. The determination of such date

---

<sup>11</sup> *Id.* at 494-531.

<sup>12</sup> *See R.V.*, Docket No. 10-1827 (issued April 1, 2011).

<sup>13</sup> A.M.A., *Guides* 405.

<sup>14</sup> *Id.* at 406, 410-411.

<sup>15</sup> *Id.* at 24 (6<sup>th</sup> ed. 2009); *see Orlando Vivens*, 42 ECAB 303 (1991) (a schedule award is not payable until MMI -- meaning that the physical condition of the injured member of the body has stabilized and will not improve further -- has been reached).

is to be made in each case upon the basis of the medical evidence in that case.<sup>16</sup> The date of MMI is usually considered to be the date of the medical examination that determined the extent of the impairment.<sup>17</sup>

If the claimant sustains increased impairment at a later date which is due to work-related factors, an additional award will be payable if supported by the medical evidence. In such a case, the original award is undisturbed and the new award has its own date of MMI, percent and period.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

On appeal, appellant contests the date the schedule award began, contending that the period of her award should have begun as of the date of her injury and continue up through the present time. The Board will therefore review whether OWCP properly determined the date of MMI.

As the Board noted, the date of MMI is usually considered to be the date of the medical examination that determined the extent of the impairment.<sup>19</sup> That date was May 23, 2012, the date that Dr. Mina, appellant's treating physician, issued his report finding that appellant had a six percent right upper extremity impairment. He noted that appellant had some pain and atrophy in the right shoulder but found that her right shoulder was stable. Dr. Mina further noted that she had returned to work without restrictions. On March 25, 2015 OWCP's medical adviser, Dr. Magliato, found that the date of Dr. Mina's examination, May 23, 2012, was the date of MMI for appellant's schedule award. This finding was appropriate, as that was the date upon which the physical examination and findings were taken and calculated in order to obtain appellant's impairment rating.

The Board has noted a reluctance to find a date of MMI that is retroactive to the award, as retroactive awards often result in payment of less compensation benefits. The Board requires persuasive proof of the selection of the retroactive date of MMI.<sup>20</sup> The record contains no persuasive evidence that another date should have been accepted.

For these reasons, the Board finds that OWCP properly identified the date of MMI as May 23, 2012. The Board will thus affirm the April 17, 2015 decision.

---

<sup>16</sup> *Marie J. Born*, 27 ECAB 623 (1976).

<sup>17</sup> *E.g., Richard Larry Enders*, 48 ECAB 184 at n.12 (1996) (date of the audiologic examination).

<sup>18</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7.b(2) (January 2010).

<sup>19</sup> *Id.*

<sup>20</sup> *See J.C.*, 58 ECAB 258 (2007).

**CONCLUSION**

The Board finds that appellant is not entitled to more than six percent permanent impairment of the right upper extremity, for which she received a schedule award. The Board further finds that OWCP properly identified the date of MMI.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' April 17, 2015 decision is affirmed.

Issued: October 28, 2015  
Washington, DC

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board