

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

M.W., Appellant)

and)

DEPARTMENT OF THE NAVY, NAVAL AIR)
SYSTEMS COMMAND, San Diego, CA,)
Employer)

Docket No. 15-1324
Issued: September 10, 2015

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 26, 2015 appellant filed a timely appeal from a May 12, 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 more than 13 percent permanent impairment of the right upper extremity for which she received schedule awards.

FACTUAL HISTORY

On May 13, 2005 appellant, then a 39-year-old aircraft ordinance systems mechanic, filed a traumatic injury claim alleging that on May 3, 2005 she pulled her right shoulder in the performance of duty. OWCP accepted the claim for neck sprain/strain, a sprain/strain of the right arm and shoulder, and a complete rupture of the right rotator cuff. On July 12, 2005

¹ 5 U.S.C. § 8101 *et seq.*

appellant underwent a repair of a type 2 tear of the superior labrum anterior to posterior and repair of a full-thickness rotator cuff tear at the supraspinatus area and an undersurface tear on the humeral side of the right shoulder.

OWCP had previously accepted that appellant sustained a right shoulder strain and labral tear due to a February 25, 2005 work injury, assigned file number xxxxxx297. On September 3, 2002 appellant had undergone a right shoulder debridement and subacromial decompression. In decisions dated December 17, 2003 and July 15, 2004, OWCP granted her a schedule award for three percent permanent impairment of the right upper extremity due to loss of range of motion of the right shoulder under file number xxxxxx297.

In an impairment evaluation dated December 14, 2005, Dr. Lindy O'Leary, who specializes in occupational medicine, diagnosed resolved cervical strain, right shoulder strain, a torn rotator cuff, and a torn labrum. She noted that appellant was status post repairs of a type 2 labrum tear and a torn rotator cuff. Dr. O'Leary discussed appellant's complaints of "minimal right shoulder pain that increases to slight to moderate with right shoulder reaching and with over shoulder reaching or heavy lifting." She measured range of motion of the right shoulder. Dr. O'Leary found that appellant had eight percent permanent impairment of the right upper extremity due to loss of range of motion according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

On January 12, 2007 an OWCP medical adviser concurred with Dr. O'Leary's finding that appellant had an eight percent right upper extremity permanent impairment due to loss of range of motion of the right shoulder. He further found an additional 5 percent permanent impairment due to pain from the axillary nerve, for a total right upper extremity impairment of 13 percent.

By decision dated February 2, 2007, OWCP granted appellant a schedule award for an additional 10 percent permanent impairment of the right upper extremity. The period of the award ran for 31.2 weeks from February 5 to September 11, 2006.

On August 9, 2013 appellant underwent an authorized right shoulder arthroscopy and debridement with the removal of a loose suture.

In a permanent and stationary report dated January 13, 2014, Dr. O'Leary discussed appellant's history of shoulder injuries and surgeries and, on examination, found full range of motion of the right shoulder without pain, negative impingement, and no erythema, ecchymosis, or swelling. Dr. O'Leary diagnosed resolved cervical strain, right shoulder strain with a labrum and rotator cuff tear, status post repair of the rotator cuff and labrum tears, and status post debridement and removal of a loose suture. She advised that appellant had obtained maximum medical improvement.

On February 6, 2014 appellant filed a claim for an additional schedule award. By letter dated February 18, 2014, OWCP requested that she submit an impairment evaluation from an attending physician using the sixth edition of the A.M.A., *Guides*. In a January 23, 2015 response, appellant related that she was unable to find a physician who utilized the sixth edition of the A.M.A., *Guides*.

On February 23, 2015 OWCP referred appellant to Dr. David T. Easley, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent of any permanent

impairment of the right upper extremity. In a report dated March 20, 2015, Dr. Easley reviewed appellant's history of injury and the medical reports of record. On examination he found tenderness on palpation at the supraspinatus and subscapularis tendons and the glenoid labrum, a negative impingement sign, and symmetrical reflexes. Dr. Easley measured range of motion as identical for both shoulders and found 4/5 muscle strength testing of the deltoids and elevators of the right shoulder. Citing the sixth edition of the A.M.A., *Guides*, he identified the diagnosis as a class 1 rotator cuff partial thickness tear using the shoulder regional grid at Table 15-5 on page 403, which yielded a default value of three percent. Dr. Easley applied a grade modifier of one for functional history due to pain with vigorous activity, a grade modifier of two for physical examination findings, and a grade modifier of two for clinical studies showing a partial rotator cuff and labrum tear. He utilized the net adjustment formula and found that the default value should be moved two places to the right, for a total right upper extremity impairment of five percent.

On April 25, 2015 an OWCP medical adviser reviewed Dr. Easley's report and concurred with his impairment rating.

By decision dated May 12, 2015, OWCP denied appellant's claim for an increased schedule award.

On appeal appellant relates that after this injury she had to undergo a third surgery and that she has continued difficulty using her right shoulder. She describes activities that she can no longer perform and also notes that she has back problems.

LEGAL PRECEDENT

The schedule award provision of FECA,² and its implementing federal regulations,³ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁴ As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, as amended, is used to calculate schedule awards.⁵

The sixth edition requires identifying 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).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.* at § 10.404(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁶ A.M.A., *Guides* 494-531.

ANALYSIS

OWCP accepted that on May 3, 2005 appellant sustained a complete rupture of the right rotator cuff, a sprain/strain right shoulder and arm, and a neck sprain/strain in file number xxxxxx258. Appellant also had a prior accepted claim, assigned file number xxxxxx297, for a strain and labral tear of her right shoulder from an employment injury on February 25, 2002. On September 3, 2002 she underwent a subacromial decompression and debridement of the right shoulder. OWCP granted appellant a schedule award for three percent permanent impairment of the right upper extremity due to loss of shoulder motion under file number xxxxxx297.

On July 12, 2005 appellant had additional surgery to repair a full-thickness rotator cuff tear and a tear of the labrum. In a decision dated February 2, 2007, OWCP granted her an additional 10 percent permanent impairment of the right upper extremity due to loss of range of motion and pain in the axillary nerve of the right shoulder.

On August 9, 2013 appellant underwent further surgery for a debridement and removal of a loose suture. In a report dated January 13, 2014, Dr. O'Leary found that appellant had full range of shoulder motion without pain and no sign of impingement or swelling. She opined that appellant's neck strain had resolved. Dr. O'Leary advised that appellant had reached maximum medical improvement.

On February 6, 2014 appellant filed a claim for an increased schedule award. She could not find a physician to rate her impairment using the sixth edition of the A.M.A., *Guides*, and on February 23, 2015 OWCP referred her to Dr. Easley for an impairment evaluation.

In a report dated March 20, 2015, Dr. Easley measured symmetrical range of motion of both shoulders and 4/5 muscle strength of the right shoulder at the deltoids and elevators. On examination he found tenderness to palpation at the right shoulder. Dr. Easley identified appellant's diagnosis as a partial thickness rotator cuff tear according to Table 15-5 on page 403, which yielded a default value of three percent. He applied grade modifiers and found a total right upper extremity impairment of five percent.

An OWCP medical adviser agreed with Dr. Easley's finding and impairment rating. However, OWCP had accepted appellant's claim for a complete rupture of the right rotator cuff and the operative report supported that she had a full rotator cuff tear rather than a partial tear. The proper diagnosis in this claim is a full-thickness rotator cuff tear, which yields a default value of three percent with no consistent objective findings and a default value of five percent with residual loss but normal motion. The maximum allowed for a full-thickness tear after applying grade modifiers is seven percent.

Accepting this distinction, even if appellant received the maximum rating under Table 15-5 for the diagnosis of a full-thickness rotator cuff tear, she has not shown a greater impairment of the right arm than the previously awarded 13 percent. She has not submitted any evidence showing a greater impairment.

On appeal appellant describes continued problems with her right shoulder and notes that she can no longer perform some activities. Factors such as limitations on daily activities, however, do not influence the calculation of appellant's schedule award.⁷

Appellant also maintains that she is experiencing difficulty with her back. This medical problem is not covered by the decision appealed from OWCP. The Board's jurisdiction is limited, however, to reviewing this final decision is appellant's claim.⁸

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 13 percent permanent impairment of the right upper extremity for which she received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁷ See *E.L.*, 59 ECAB 405 (2008); *Kimberly M. Held*, 56 ECAB 670 (2005).

⁸ 20 C.F.R. § 501.2(c).