

January 27, 2008 employment injury that was accepted for tendinitis of the right shoulder and elbow under OWCP File No. xxxxxx282. She also had an injury on September 12, 2012, which was accepted for right supraspinatus shoulder and upper arm sprain and contusion of multiple sites not elsewhere classified, right, under OWCP File No. xxxxxx283. OWCP combined these three claims into the current claim under the Master File No. xxxxxx115 which was accepted for disorder of bursae and tendons in shoulder region, unspecified, right; other affections of shoulder region, not elsewhere classified, right; adhesive capsulitis of shoulder, right; lateral epicondylitis, right; sprain of shoulder and upper arm, supraspinatus, right; contusion of back. Appellant received appropriate compensation benefits and OWCP authorized three right shoulder arthroscopic surgeries, which she underwent on May 12 and October 27, 2010 and June 11, 2011. She worked limited duty since the date of injury.

On April 17, 2013 appellant, through counsel, filed a claim for a schedule award (Form CA-7) and submitted a January 8, 2013 report from Laura Evans, a physician assistant, noting that a permanent partial impairment rating would be determined when appellant had reached maximum medical improvement.

A functional capacity evaluation (FCE) with impairment rating by Dr. Geoffrey Higgs, a Board-certified orthopedic surgeon, and Dr. Keith A. Glowacki, an orthopedic surgeon specializing in hand surgery, dated August 27, 2012 found that appellant's residual functional capacity was inadequate for resumption of her regular duties and determined that she had 10 percent permanent impairment of the right upper extremity. The range of motion measurements for her right shoulder were: flexion of 106 degrees, yielding three percent impairment; extension of 28 degrees, yielding one percent impairment; abduction of 140 degrees, yielding three percent impairment; adduction of 28 degrees, yielding one percent impairment; and internal rotation of 52 degrees, yielding two percent impairment. Appellant's date of maximum medical improvement was determined to be August 27, 2012, the date of the FCE.

In an April 26, 2013 letter, OWCP notified appellant that it could not consider her claim for a schedule award as the medical evidence failed to demonstrate that her accepted conditions had reached maximum medical improvement.

On July 2, 2013 appellant, through counsel, requested reconsideration and submitted a June 26, 2014 report from Dr. Higgs, who opined that appellant continued to have 10 percent permanent impairment of the right arm for her right shoulder condition and had an additional 4 percent permanent impairment of the right upper extremity for her strength deficiency associated with extensor carpi radialis brevis (ECRB) tendinopathy of the elbow, according to Table 16-35 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Utilizing the Combined Valued Charts on page 604² of the A.M.A., *Guides*, Dr. Higgs found that appellant had a total 14 percent permanent impairment of the right upper extremity as a result of her employment injuries.

On October 29, 2014 Dr. Lawrence Manning, an orthopedic surgeon and OWCP medical adviser, reviewed a statement of accepted facts and the medical evidence of record. He concurred with the 10 percent impairment rating of the August 27, 2012 FCE based on the range

² Appendix A, page 604, of the sixth edition of the A.M.A., *Guides* is entitled *Combined Values Chart*.

of motion measurements for her right shoulder as applied to Table 15-34,³ page 475, of the A.M.A., *Guides*.

By decision dated November 20, 2014, OWCP granted appellant a schedule award for 10 percent permanent impairment to the right upper extremity for 31.2 weeks for the period August 30, 2012 to April 5, 2013.⁴

On December 10, 2014 appellant, through counsel, requested an oral hearing before an OWCP hearing representative and resubmitted Dr. Higgs's June 26, 2014 report.

By decision dated May 8, 2015, an OWCP hearing representative determined that the case was not in posture for a hearing and remanded the case for further development to obtain an opinion from an OWCP medical adviser based on an updated statement of accepted facts and a review of Dr. Higgs' June 26, 2014 report.

On July 3, 2015 OWCP's medical adviser, Dr. Manning, reviewed an updated statement of accepted facts and Dr. Higgs' June 26, 2014 report. He found that appellant had reached maximum medical improvement as of June 26, 2014, the date of Dr. Higgs' report. Dr. Manning noted that appellant had previously received a schedule award for 10 percent permanent impairment of the right upper extremity. He found that Dr. Higgs used Table 16-35 of the A.M.A., *Guides* to calculate four percent permanent impairment of the right upper extremity for appellant's strength deficit associated with ECRB. Dr. Higgs indicated that there was full range of motion of the elbow, which did not warrant any impairment, but the injury was consistent with ECRB tendinopathy. Dr. Manning reviewed the sixth edition of the A.M.A., *Guides* and found no Table 16-35. He noted that Chapter 16 involved lower extremities, not the upper extremities. Dr. Manning reviewed Table 15-35 regarding the upper extremities, but found that it did not involve impairment for strength deficit from the elbow or forearm tendons. He found that the closest diagnosis for ECRB tendinopathy and weakness was epicondylitis, which had one percent default permanent impairment rating. Dr. Manning assigned a class 1, grade E for the diagnosis of epicondylitis and a grade modifier of 2 for Physical Examination (GMPE) and Functional History (GMFH), equaling two percent permanent impairment of the right arm.

By decision dated July 28, 2015, OWCP granted appellant an additional schedule award for two percent permanent impairment to the right upper extremity for 6.24 weeks for the period June 26 to August 8, 2014.

LEGAL PRECEDENT

The schedule award provisions of FECA⁵ provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA,

³ Table 15-34, page 475, of the sixth edition of the A.M.A., *Guides* is entitled *Shoulder Range of Motion*.

⁴ On July 5, 2013 appellant, through counsel, filed a claim for compensation (Form CA-7) for eight hours due to time lost from work to obtain medical care and for disability for her accepted conditions during the period June 25, 2013. By decision dated December 29, 2014, OWCP denied appellant's claim as the medical evidence failed to establish that the time was lost to obtain medical care or for disability for the period claimed.

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

however, does not specify the manner in which the percentage loss of a member shall be determined. 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 A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁶ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.⁷

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).⁸ Under the sixth edition, the evaluator identifies the impairment Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on GMFH, GMPE, and GMCS.⁹ 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.¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP accepted that appellant developed the following conditions in the performance of duty: right rotator cuff syndrome; tendinitis of the right shoulder and elbow; right supraspinatus shoulder and upper arm sprain; contusion of multiple sites not elsewhere classified, right; disorder of bursae and tendons in shoulder region, unspecified, right; other affections of shoulder region, not elsewhere classified, right; adhesive capsulitis of shoulder, right; lateral epicondylitis, right; sprain of shoulder and upper arm, supraspinatus, right; contusion of back. In a November 20, 2014 award of compensation, OWCP granted appellant a schedule award for 10 percent permanent impairment to the right upper extremity for her right shoulder condition.

In a July 28, 2015 decision, OWCP granted appellant an additional schedule award for two percent permanent impairment to the right arm for her right elbow condition. The award was based on the impairment rating contained in a July 3, 2015 report from Dr. Manning, a Board-certified orthopedic surgeon serving as an OWCP medical adviser.

⁶ See *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000). See also 5 U.S.C. § 8107.

⁷ See *D.T.*, Docket No. 12-503 (issued August 21, 2012); 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).

⁸ A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3, International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

⁹ *Id.* at 494-531.

¹⁰ See *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

In his July 3, 2015 report, Dr. Manning found that appellant had reached maximum medical improvement as of June 26, 2014, the date of Dr. Higgs' report. He noted that Dr. Higgs related using Table 16-35 of the A.M.A., *Guides* to calculate four percent permanent impairment of the right upper extremity for appellant's strength deficit associated with ECRB. Dr. Higgs indicated that there was full range of motion of the elbow, which did not warrant any impairment, but the injury was consistent with ECRB tendinopathy. Dr. Manning reviewed the sixth edition of the A.M.A., *Guides* and found no Table 16-35. He noted that Chapter 16 involved lower extremities. Dr. Manning reviewed Table 15-35 regarding the upper extremities, but found that it did not involve impairment for strength deficit from the elbow or forearm tendons. He found that the closest diagnosis for ECRB tendinopathy and weakness was epicondylitis, which had one percent default permanent impairment rating. Dr. Manning assigned a class 1, grade E for the diagnosis of epicondylitis and a grade modifier of 2 for physical examination and functional history, equaling two percent permanent impairment of the right arm.

The Board finds that Dr. Manning's report is in need of clarification. The Board is able to determine that he properly used Table 15-4 (page 399) Elbow Regional Grid, however, he provided grade modifiers for physical examination and functional history in rating appellant's right elbow condition, but he did not provide an adequate explanation for how he chose these grade modifiers and why he did not include a grade modifier for clinical studies.

It is well established that proceedings under FECA are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹¹ For these reasons, the case shall be remanded to OWCP for further clarification of Dr. Manning's opinion that appellant only has a two percent permanent impairment of the right upper extremity for her epicondylitis condition.¹² After carrying out this development, OWCP shall issue a *de novo* decision regarding appellant's entitlement to schedule award compensation.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹¹ See *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹² See *J.L.*, Docket No. 14-1896 (issued January 15, 2015).

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: January 11, 2016
Washington, DC

Christopher J. Godfrey, 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