

OWCP accepted the claim for right shoulder impingement and appellant received compensation benefits.¹

On June 6, 2008 appellant filed a claim for a schedule award. In support of his request, he submitted an April 25, 2008 report from Dr. Byron E. Strain, a Board-certified physiatrist. Dr. Strain noted that appellant injured his right arm when he picked up a bucket at work. He indicated that appellant had physical therapy as well as a magnetic resonance imaging (MRI) scan of the right shoulder which showed rotator cuff tendinitis and acromioclavicular (AC) joint arthrosis. Cervical spine examination revealed full range of motion in all planes with end range pain in all planes. Appellant had decreased range of motion in the right shoulder. Motor examination was normal and sensory examination was intact to light touch. Dr. Strain diagnosed right rotator cuff impingement. He noted that appellant had undergone conservative treatment for the right shoulder, but did not foresee any foreseeable change in the near future. Dr. Strain opined that appellant was at maximum medical improvement.

Dr. Strain referred to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (hereinafter A.M.A., *Guides*). Dr. Strain determined that appellant had 130 degrees of flexion, which gave him three percent impairment. He found 48 degrees of extension, which warranted zero impairment. Dr. Strain found 135 degrees of abduction, which qualified for two percent impairment; 38 degrees of adductions or zero percent, and 30 degrees of internal rotation, or four percent impairment; and 68 degrees of external rotation or zero percent. He added the values and determined that appellant had nine percent right upper extremity impairment.

In a June 24, 2008 report, an OWCP medical adviser noted appellant's history of injury and treatment and the report of Dr. Strain. He referred to Figures 16-37, 16-40, and 16-46 for right shoulder range of motion.² The medical adviser concurred with the findings of Dr. Strain and opined that appellant had nine percent right upper extremity impairment. He determined that appellant reached maximum medical improvement on April 25, 2008.

By decision dated August 13, 2008, OWCP granted appellant a schedule award for a total of 28.08 weeks of compensation for a nine percent permanent impairment of the right arm.

On March 8 and 19, 2013 appellant filed claims for an increased schedule award and submitted two medical reports.

A March 7, 2011 MRI scan read by Dr. Jerry Domescik, a diagnostic radiologist, revealed minor degenerative changes of the glenoid rim and AC arthropathy. He found that the rotator cuff was intact.

In a February 20, 2012 report, Dr. William M. Craven, a Board-certified orthopedic surgeon, advised that appellant had reached maximum medical improvement and without

¹ Appellant retired on December 31, 2008.

² A.M.A., *Guides* at 476, 477, 479.

reference to the A.M.A., *Guides* had seven percent permanent impairment. In a January 21, 2013 report, Dr. Craven indicated that appellant had a 13 percent impairment of the arm.

In an April 2, 2013 report, an OWCP medical adviser explained that there was not enough information to provide an impairment rating under the A.M.A., *Guides*, (6th ed. 2009). He indicated that additional information was needed such as range of motion measurements and whether appellant was a candidate for surgery.

By letter dated April 3, 2013, OWCP advised appellant that his physician should utilize the sixth edition of the A.M.A., *Guides* to rate impairment. It requested that he submit such evidence within 30 days. Appellant did not respond.

By decision dated May 21, 2013, OWCP denied appellant's claim for an increased schedule award.

On September 24, 2014 appellant filed a claim for an increased award. He provided an August 5, 2014 report from Dr. Ralph D'Auria, a Board-certified internist and treating physician, who noted appellant's history and examined appellant. Dr. D'Auria advised that his examination of the right shoulder revealed no signs of instability or labral damage. He diagnosed recurrent right shoulder sprain and right bicipital tenosynovitis. Dr. D'Auria noted that appellant had reached maximum medical improvement on February 4, 2008. He referred to Table 15-5, page 404 of the A.M.A., *Guides*, 6th ed. and indicated that appellant had a grade modifier 3, impairment Class 1, Grade E. Dr. D'Auria opined that appellant had 10 percent impairment of the right upper extremity.

In an October 10, 2014 report, the OWCP medical adviser explained that the March 7, 2011 MRI scan revealed minor degenerative changes of the glenoid rim and AC arthropathy with no rotator cuff tear. He explained that an additional schedule award was not supported since appellant had already been paid for the same problem in the right shoulder. The medical adviser opined that no additional impairment was warranted.

By letter dated March 18, 2015, OWCP requested that Dr. D'Auria provide additional information to support his rating impairment. Dr. D'Auria was allotted 30 days to submit the requested evidence. No response was received.

By decision dated April 30, 2015, OWCP denied the claim for an increased schedule award finding that the medical evidence failed to establish an increased award.

LEGAL PRECEDENT

The schedule award provision of FECA,³ and its implementing federal regulations,⁴ 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,

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

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.⁵ For decisions issued after May 1, 2009, the sixth edition will be used.⁶

In addressing upper extremity impairments, the sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).⁷ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁸

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP medical adviser providing rationale for the percentage of impairment specified.⁹

ANALYSIS

In support of his claim for an additional schedule award, appellant submitted reports from Dr. Craven, who found a permanent partial disability of seven percent. In a January 21, 2013 report, Dr. Craven, indicated that appellant had 13 percent impairment of the upper extremity. However, he did not provide an explanation as to how he arrived at this conclusion. Furthermore, it is not clear whether he utilized the A.M.A., *Guides*.¹⁰ As his report did not comport with the A.M.A., *Guides*, it is of limited probative value.

Appellant also provided an August 5, 2014 report from Dr. D'Auria who advised that his examination of the right shoulder revealed no signs of instability or labral damage. He diagnosed recurrent right shoulder sprain and right bicipital tenosynovitis and noted that appellant had reached maximum medical improvement. The physician referred to Table 15-5, page 404 of the A.M.A., *Guides* and stated that appellant had a grade modifier 3, impairment Class 1, Grade E. He opined that appellant had 10 percent impairment of the right arm. This report is insufficient, however, to establish any greater impairment as Dr. D'Auria did not explain how he used the *Guides* to arrive at his calculation. He referred to Table 15-5 at page 404 of the *Guides* but did not specify on which diagnosis his rating was based. He stated that appellant was impairment Class 1 and Grade E but there is no Class 1, Grade E diagnosis on

⁵ *Id.* at § 10.404(a).

⁶ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁷ A.M.A., *Guides* at 494-531; *see J.B.*, (Docket No. 09-2191, issued May 14, 2010).

⁸ A.M.A., *Guides* at 521.

⁹ *See* FECA Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹⁰ 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 permanent impairment. *I.F.*, Docket No. 08-2321 (issued May 21, 2009).

page 404 which provides for 10 percent impairment of the arm. In the absence of any explanation of how he used the A.M.A., *Guides* to arrive at his impairment rating, his opinion is of limited probative value. Board precedent is well settled that when an attending physician's report gives an estimate of impairment but does not address how the estimate is based upon the A.M.A., *Guides*, OWCP is correct to follow the advice of its medical adviser or consultant where he or she has properly applied the A.M.A., *Guides*.¹¹

In an October 10, 2014 report, the OWCP medical adviser reviewed the medical evidence and explained that an additional schedule award was not supported under the A.M.A., *Guides*. He noted that appellant was already paid a schedule award for nine percent impairment for the same right shoulder problem and he found no basis to support any increased impairment.

There is no other current medical evidence in conformance with the A.M.A., *Guides*, which supports that appellant has more than the nine percent impairment of the right arm. The Board finds that appellant failed to submit sufficient medical evidence to establish entitlement to an increased schedule award for his right arm.

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 nine percent permanent impairment of his right upper extremity for which he previously received a schedule award.

¹¹ *J.Q.*, 59 ECAB 366 (2008); *Laura Heyen*, 57 ECAB 435 (2006).

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2015 decision of OWCP is hereby affirmed.

Issued: July 12, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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