

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

K.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Portland, OR, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 16-0351
Issued: May 2, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 18, 2015 appellant filed a timely appeal from a November 19, 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 to consider the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish a ratable permanent impairment of her left shoulder, entitling her to a schedule award.

FACTUAL HISTORY

On June 18, 2014 appellant, then a 49-year-old postal clerk, filed an occupational disease claim (Form CA-2) alleging that repetitive lifting and arm motions involved in handling mail caused left shoulder pain and a possible "muscle tear." She did not stop work. OWCP accepted

¹ 5 U.S.C. § 8101 *et seq.*

appellant's claim by decision dated August 28, 2014 for disorder of the bursae and tendons in the left shoulder, unspecified, and other affections of the left shoulder region not clarified elsewhere.²

In a report dated July 7, 2014, Dr. Gregory Gramstad, a Board-certified orthopedic surgeon, noted a number of preexisting conditions.³ He found limited range of motion in all planes on cervical examination. With regard to the upper extremities, Dr. Gramstad found tenderness to the left shoulder on palpation, limited range of motion, and well-healed incisions over the bilateral elbows. He performed surgery on her left shoulder on January 5, 2015, consisting of a left arthroscopic rotator cuff repair and an arthroscopic acromioplasty and limited debridement. OWCP authorized the surgery and paid appellant wage-loss compensation benefits on the supplemental rolls from January 5 to April 3, 2015.

A July 16, 2014 magnetic resonance imaging (MRI) scan of the left shoulder interpreted by Dr. Joel Rubenstein, Board-certified in radiology, disclosed two partial thickness tears of the supraspinatus tendon, subscapularis tendinosis, and marked degeneration of the superior labrum probably extending into the biceps tendon.

Appellant filed a claim for a schedule award (Form CA-7) on October 6, 2015. In support of her claim she submitted a September 15, 2015 report by Dr. Gramstad, in which he assessed appellant's postsurgical condition. Dr. Gramstad found that appellant had reached maximum medical improvement (MMI). Based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition 2001) (hereinafter, A.M.A., *Guides*), he assigned nine percent permanent impairment resulting from loss of motion in the left shoulder, which he converted to five percent permanent impairment of the whole person.

By letter dated October 8, 2015, OWCP acknowledged receipt of appellant's claim for a schedule award. The letter noted that Dr. Gramstad had submitted a report describing appellant's medical condition and function using the fifth edition of the A.M.A., *Guides* rather than the sixth edition. The letter explained that an impairment rating using the sixth edition of the A.M.A., *Guides* was needed. Appellant was afforded 30 days in which to provide the necessary information.

The record reveals that appellant telephoned OWCP on November 4, 2015 to advise that she was looking for a physician who could provide an impairment rating under the sixth edition of the A.M.A., *Guides*. Appellant did not submit any additional medical evidence within the time allotted.

² Appellant has two prior FECA claims: OWCP File No. xxxxxx155 with a December 7, 2010 date of injury, and OWCP File No. xxxxxx249 with a July 27, 2000 date of injury.

³ Dr. Gramstad indicated that appellant had back surgery in 1991 and 1992, right shoulder surgery in 2011, left elbow surgery in 2008, a fracture of her right wrist in 1990, bilateral carpal tunnel release in 2000, left knee arthroscopy in 2013.

By decision dated November 19, 2015, OWCP denied appellant's schedule award claim as the medical evidence submitted was insufficient to support a finding of ratable permanent impairment of her left shoulder, causally related to the accepted employment injuries.

LEGAL PRECEDENT

The schedule award provision of FECA,⁴ and its implementing regulations⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members of the body. FECA 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 discretion of OWCP. 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.⁶ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷ For decisions issued after May 1, 2009, the sixth edition is used to calculate schedule awards.⁸ Before the A.M.A., *Guides* can be utilized, a description of the claimant's impairment must be obtained from her physician. The description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁹

FECA does not authorize schedule awards for permanent impairment of the whole person.¹⁰

ANALYSIS

The Board finds that appellant has not established a ratable permanent impairment of her left shoulder, thereby warranting a schedule award.

Dr. Gramstad concluded, based on his application of the fifth edition of the A.M.A., *Guides*, that appellant had nine percent permanent impairment of the left shoulder, which he converted to five percent whole person impairment. As of May 1, 2009 the use of the sixth edition of the A.M.A., *Guides* is mandatory.¹¹ Appellant did not provide an impairment rating

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Ausborn N. Johnson*, 50 ECAB 304, 311 (1999).

⁷ *Id.*

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁹ *A.A.*, 59 ECAB 726 (2008).

¹⁰ *D.J.*, 59 ECAB 620 (2008); *N.D.*, 59 ECAB 344 (2008).

¹¹ *Supra* note 10. *See also E.W.*, Docket No. 13-1277 (issued December 24, 2013).

from her attending physician under that edition. Although OWCP explained the requirements for developing schedule award claims utilizing the sixth edition, appellant did not submit additional medical evidence within the allotted time.

It is appellant's burden of proof to establish that she sustained permanent impairment of a scheduled member as a result of an employment injury.¹² She did not submit such evidence and thus, she did not meet her burden of proof.¹³

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 failed to establish that she had a ratable permanent impairment of her left shoulder entitling her to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 19, 2015 is affirmed.

Issued: May 2, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

¹² A.A., Docket No. 16-41 (issued February 11, 2016).

¹³ V.W., Docket No. 09-2026 (issued February 16, 2010); *L.F.*, Docket No. 10-343 (issued November 29, 2010).