United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 16-0989**
	)	**Issued: October 13, 2016**
DEPARTMENT OF THE NAVY, COMMANDER FLEET FORCES, Portsmouth, VA, Employer	)	

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 April 8, 2016 appellant filed a timely appeal from a January 7, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 established an increased schedule award for permanent impairment of the left upper extremity.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.[2] The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below. The facts relevant to the present appeal are as follows.

OWCP accepted that on November 30, 1987 appellant, then a 38-year-old woodworker, sustained left adhesive capsulitis of the shoulder as a result of cutting plywood in the performance of duty. On June 6, 1995 it accepted the claim for a recurrence of disability beginning on August 23, 1993.

Appellant filed a claim for a schedule award (Form CA-7) and by decision dated March 25, 1997, OWCP granted a schedule award for five percent permanent impairment of the left upper extremity. On October 24, 2001 it accepted the claim for a recurrence of disability beginning on September 9, 1998.

Appellant continued seeking medical treatment and subsequently requested a claim for an increased schedule award on July 22, 2008. In support of his claim, he submitted medical reports from Dr. Donald Holzer, a Board-certified neurologist, who provided impairment ratings utilizing the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a report dated February 25, 2009, Dr. Holzer related that appellant had reached maximum medical improvement in 1993. He opined that using the A.M.A., *Guides*, appellant had 41 percent permanent impairment of the left upper extremity due to his left shoulder impairment. Dr. Holzer related that appellant had 15 percent impairment in abduction, 1 percent impairment in adduction, 16 percent impairment in forward flexion, 2 percent impairment in extension, 5 percent impairment in internal rotation, and 2 percent impairment in external rotation.

On July 31, 2009 OWCP informed Dr. Holzer that his February 25, 2009 impairment rating appeared to be based upon the fifth edition of the A.M.A., *Guides*, however he had been asked to provide a rating pursuant to the sixth edition.

By letter dated August 4, 2009, Dr. Holzer responded that the sixth edition of the A.M.A., *Guides*, was not available at the time appellant's original impairment evaluation was scheduled, therefore his rating was based upon the fifth edition of the A.M.A., *Guides*. He provided the same impairment ratings as contained in his February 25, 2009 report.

On August 13, 2009 an OWCP district medical adviser (DMA) reviewed appellant's record. He related that Dr. Holzer simply provided an impairment rating, but did not provide the actual measured ranges of motion, therefore his impairment rating could not be verified. The DMA also noted that Dr. Holzer had not utilized the sixth edition of the A.M.A., *Guides* in preparing the impairment rating.

[2] Docket No. 13-494 (issued March 8, 2013); Docket No. 13-661 (issued July 24, 2013).

The case was again referred to a DMA for review in December 2010. In a report dated December 22, 2010, a DMA reviewed Dr. Holzer's August 4, 2009 report. He noted that an impairment rating could be made utilizing the August 4, 2009 report, under the diagnosis-based impairment method, and the sixth edition of the A.M.A., *Guides.* The DMA related that the closest diagnosis for appellant's condition was impingement syndrome, as the sixth edition did not provide rating for appellant's diagnosis of adhesive capsulitis. He then explained that the default rating would be three percent impairment, but appellant would receive a grade modifier of 2 for functional history, as well as a grade modifier of 1 for physical examination, therefore with a net adjustment factor of 1, the upper extremity impairment rating would total four percent.

By decision dated January 7, 2011, OWCP found that appellant failed to establish that he had impairment of the left upper extremity greater than the five percent already awarded. It noted that the DMA calculated appellant's schedule award based on the sixth edition of the A.M.A., *Guides*[3] and determined that he was only entitled to four percent left upper extremity impairment. As he had previously received a schedule award for five percent impairment of the left upper extremity, the medical evidence of record did not support an increase in the impairment already compensated.

By letter dated February 24, 2012, appellant requested reconsideration of OWCP's decision and submitted additional medical reports, which did not provide an impairment rating.

By decision dated May 18, 2012, OWCP denied appellant's reconsideration request as it was untimely filed and failed to demonstrate clear evidence of error. It informed appellant that the DMA utilized reports from his attending physicians and Dr. Holzer in accordance with the sixth edition of the A.M.A., *Guides*.[4] OWCP further noted that appellant should have Dr. Holzer refer him to another physician who could calculate his impairment rating based on the sixth edition of the A.M.A., *Guides* and to file a new schedule award claim if the impairment rating was greater than five percent of the left upper extremity.

On December 27, 2012 appellant appealed to the Board.[5] In a March 8, 2013 order, the Board dismissed appellant's appeal finding that it was untimely filed.

On January 28, 2013 appellant appealed a purported decision of December 3, 2012 to the Board.[6] In a July 24, 2013 order, the Board dismissed appellant's appeal, finding that the record did not include a final adverse decision dated December 3, 2012 or a final OWCP decision regarding a new schedule award claim filed by appellant

Following the Board's dismissals of his appeals, appellant continued seeking medical treatment with his treating physicians. On April 3, 2014 he filed a claim for an increased schedule award.

[3] A.M.A., *Guides* (2009).

[4] On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of OWCP should reflect use of the sixth edition of the A.M.A., *Guides.*

[5] Docket No. 13-494 (issued March 8, 2013).

[6] Docket No. 13-661 (issued July 24, 2013).

By letter dated April 28, 2014, OWCP requested that appellant submit an impairment evaluation from his attending physician in accordance with the sixth edition of the A.M.A., *Guides.* It afforded him 30 days to submit the requested impairment evaluation.

In support of his claim, appellant submitted treatment notes from physician assistants dated March 12, 2014 through December 3, 2015. He also submitted treatment notes dated April 9, 2014 through March 5, 2015 from Dr. Holzer documenting left shoulder trigger point injections.

In a May 5, 2014 report, Dr. Holzer reported that appellant was being treated for left shoulder adhesive capsulitis and had reached maximum medical impairment (MMI). He noted no prior impairments of the left shoulder and explained that he was unable to provide a permanent impairment rating. Dr. Holzer requested referral to a physical therapy facility for such determination.[7]

By decision dated January 7, 2016, OWCP denied appellant's claim for a schedule award as the evidence was insufficient to establish that he sustained a measurable impairment to a member or function of the body.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations 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.[8] 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* (6th ed. 2009) has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[9]

It is the claimant's burden to establish that he has sustained a permanent impairment of the scheduled member or function as a result of any employment injury[10]. OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of maximum medical improvement), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.[11]

[7] The record did not contain a request for authorization form from the physician for a physical therapy location.

[8] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[9] *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

[10] *Tammy L. Meehan*, 53 ECAB 229 (2001).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (February 2013).

The sixth edition requires identifying the impairment for the Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).[12] The net adjustment formula is GMFH-CDX + GMPE-CDX + GMCS-CDX.

ANALYSIS

OWCP accepted appellant's claim for left shoulder adhesive capsulitis. By decision dated March 25, 1997, it granted a schedule award for five percent permanent impairment of the left upper extremity. Appellant continued seeking treatment with his treating physicians. On April 3, 2014 he filed a claim for an increased schedule award. By decision dated January 7, 2016, OWCP denied appellant's claim for an increased schedule award finding that he had not submitted an impairment evaluation to establish that he sustained a permanent impairment resulting from his work injury.

Appellant has not submitted sufficient evidence to establish that, as a result of his employment injury, he sustained increased impairment to a scheduled member such that he would be entitled to an additional schedule award. By letter dated April 28, 2014, OWCP informed him of the type of evidence necessary to establish his schedule award claim and specifically requested that he submit an impairment evaluation from his attending physician in accordance with the sixth edition of the A.M.A., *Guides*.

In support of his claim, appellant submitted a May 5, 2014 report from Dr. Holzer, his treating physician. Dr. Holzer reported that appellant was being treated for left shoulder adhesive capsulitis and had reached MMI. He noted no prior impairments of the left shoulder and explained that he was unable to provide a permanent impairment rating.

The Board finds that Dr. Holzer's report is insufficient to establish that appellant is entitled to an increased schedule award. While Dr. Holzer may have determined that MMI had been reached, he failed to give a proper impairment rating in accordance with the A.M.A., *Guides*.[13] He noted in his May 5, 2014 report that he was unable to provide a permanent impairment rating. Thus, Dr. Holzer's report is insufficient to establish that appellant sustained an increased impairment of his left shoulder adhesive capsulitis.

Appellant did not submit other medical evidence substantiating a permanent impairment. The Board has held that an opinion from a physician assistant has no probative medical value in establishing a schedule award claim as physician assistants are not considered physicians as defined under FECA.[14]

The Board notes that it is appellant's burden of proof to establish a permanent impairment of a scheduled member as a result of an employment injury.[15] The medical evidence

[12] A.M.A., *Guides* 494-531.

[13] *Supra* note 11.

[14] *A.A.*, Docket No. 16-0041 (issued February 11, 2016).

[15] *Supra* note 10.

must include a description of any physical impairment in sufficient detail so that the claims examiner and others reviewing the file would be able to clearly visualize the impairment with its resulting restrictions and limitations.[16] Appellant did not submit such evidence and thus he has not met his burden of proof.[17]

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 established an increased schedule award for permanent impairment of the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated January 7, 2016 is affirmed.

Issued: October 13, 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

[16] *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

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