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

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| **F.G., Appellant** | ) | |
| **and** | ) | **Docket No. 19-0494** |
| | ) | **Issued: August 16, 2019** |
| **U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### *JURISDICTION*

On January 8, 2019 appellant filed a timely appeal from an October 2, 2018 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the October 2, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## *ISSUE*

The issue is whether appellant has met her burden of proof to establish more than 19 percent permanent impairment of her right upper extremity, for which she previously received schedule award compensation.

## *FACTUAL HISTORY*

On March 7, 2014 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day she sustained right side upper extremity injuries when she slipped and fell on a sheet of ice while in the performance of duty. OWCP accepted the claim for right shoulder and upper arm contusions and right shoulder impingement syndrome. Appellant underwent OWCP-authorized right shoulder arthroscopies on December 26, 2016 and June 5, 2017.

In a December 26, 2017 report with a December 28, 2017 addendum, Dr. Donald Weimer, a Board-certified orthopedic surgeon, indicated that he had performed appellant's June 5, 2017 surgical procedure and opined that appellant had reached maximum medical improvement (MMI). He indicated that she could return to work on December 27, 2017 in a light-duty position.

On January 9, 2018 appellant filed a claim for a schedule award (Form CA-7).

In a January 18, 2018 development letter, OWCP requested that appellant provide a detailed narrative medical report from Dr. Weimer, based on a recent examination, which included impairment ratings under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3] It requested that Dr. Weimer independently calculate the impairment using both the diagnosis-based impairment (DBI) and range of motion (ROM) method, if allowed by the A.M.A., *Guides*, and identify the higher rating. OWCP afforded appellant 30 days to submit the required medical evidence.

In January 25 and February 14, 2018 letters, appellant informed OWCP that Dr. Weimer did not perform permanent impairment evaluations.

On March 20, 2018 OWCP referred appellant, a statement of accepted facts (SOAF), and a list of questions to Dr. Richard T. Katz, a Board-certified physiatrist, for a second opinion impairment evaluation. In his April 27, 2018 report, Dr. Katz noted appellant's history of injury, reviewed the medical records and the SOAF, and provided examination findings. He indicated that she had multiple conditions of the right shoulder, which included impingement syndrome, adhesive capsulitis, subacromial adhesions, subacromial impingement, partial tear of the long tendon of the biceps, contusion of shoulder and upper arm, right glenohumeral chondromalacia, partial thickness tear of supraspinatus and subscapularis tendon, and acromioclavicular arthritis. Dr. Katz opined that MMI was reached on December 26, 2017 when appellant had optimally recovered from surgery, completed extensive physical therapy, and completed a functional capacity evaluation. Since appellant had multiple shoulder diagnoses and impaired ROM, he indicated that the ROM methodology should be used to calculate her right upper extremity

[3] A.M.A., *Guides* ($6^{th}$ ed. 2009).

impairment. Dr. Katz indicated that three active ROM measurements were recorded after a warm up and that all measurements fell within 10 degrees of the mean. Under Table15-34, shoulder range of motion, he found 80 degrees flexion equaled 9 percent impairment, 50 degrees extension equaled 0 percent impairment, 60 degrees abduction equaled 6 percent impairment, 50 degrees adduction equaled 0 percent, external rotation 0 degrees equaled 4 percent impairment, and internal rotation 90 degrees equaled 0 percent impairment for 19 percent total permanent impairment. Under Table 15-36, functional history grade adjustment: range of motion, Dr. Katz assigned a grade modifier 2 and a grade modifier 4 based on appellant's *Quick*DASH score of 4.[4] He then increased her 19 percent impairment rating by multiplying the 19 percent total ROM impairment by 10 percent and concluded that she had a final right upper extremity ROM permanent impairment of 20.9 percent, which rounded up to 21 percent.

On July 29, 2018 Dr. James W. Butler, a Board-certified occupational medicine specialist serving as the district medical adviser (DMA), reviewed the medical evidence of record along with Dr. Katz's impairment report. He indicated that MMI was reached on April 27, 2018, the date Dr. Katz performed appellant's impairment evaluation. For appellant's right upper extremity conditions, the DMA indicated that the A.M.A., *Guides* provided impairments based on either ROM or DBI methodology and that the schedule award should be based on the higher of the two impairment calculations. He provided calculations under both methodologies and opined that appellant had 19 percent right upper extremity impairment under the ROM methodology, which yielded the higher rating of permanent impairment.

Under the DBI methodology, the DMA determined that appellant had acromioclavicular (AC) joint injury or disease status post distal clavicle resection or AC separation type III (complete disruption AC joint capsule and coracoclavicular ligaments)[5] class 1, grade E or 12 percent final right upper extremity impairment. He determined the grade modifier for functional history (GMFH) was not applicable as it was two classes above the assigned class. The DMA assigned grade modifiers 2 for physical examination (GMPE) and clinical studies (GMCS) and applied the net adjustment formula (GMFH-CDX)(n/a) + (GMPE-CDX)(2-1) + (GMCS-CDX)(2-1) to find +2 net adjustment, which moved the default grade C to grade E or 12 percent. He provided his calculations and cited to appropriate Tables within the A.M.A., *Guides*.

The DMA also determined that Dr. Katz provided valid ROM measurements. He agreed that Dr. Katz's impairment measurements resulted in 19 percent total upper extremity impairment, but disagreed with the final ROM impairment rating of 21 percent. The DMA indicated that Dr. Katz inappropriately utilized the GMFH under Table 15-36 in his ROM calculation. He explained that, as appellant's GMFH of 4 differed 2 or more grades from that described by physical examination or clinical studies, pursuant to section 15.3a of the A.M.A., *Guides,* the functional history findings should be determined to be inconsistent or unreliable with other documentation

[4] Table 15-36, page 477 of the sixth edition of the A.M.A., *Guides* is entitled, Functional History Grade Adjustment: Range of Motion.

[5] *Id.* at 402, Table 15-5.

and should be excluded from the grading process.[6] Thus, the DMA found that appellant's total right upper extremity permanent impairment under the ROM methodology was 19 percent.

By decision dated September 26, 2018, OWCP granted appellant a schedule award for 19 percent permanent impairment of her right upper extremity. The award ran for 59.28 weeks for the period April 27 to June 15, 2018. By decision dated October 2, 2018, OWCP issued an amended award letter adjusting the period of the schedule award for 19 percent upper extremity permanent impairment to reflect that the period of the award was from April 27 to September 15, 2018.

## ***LEGAL PRECEDENT***

The schedule award provisions of FECA,[7] and its implementing federal regulations,[8] 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.[9] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[10]

In addressing upper extremity impairments, the sixth edition requires identification of the impairment class of diagnosis (CDX) condition, which is then adjusted by GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[11] Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[12]

Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides:

> "As the A.M.A., *Guides* caution that, if it is clear to the evaluator evaluating loss of ROM that a restricted ROM has an organic basis, three independent measurements should be obtained and the greatest ROM should be used for the

[6] Section 15-3a, page 406 of the sixth edition of the A.M.A., *Guides* is entitled, Adjustment Grid: Functional History.

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

[9] *Id*. at § 10.404(a).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[11] A.M.A., *Guides* 411.

[12] *R.R.,* Docket No. 17-1947 (issued December 19, 2018); *R.V.,* Docket No. 10-1827 (issued April 1, 2011).

determination of impairment, the claims examiner (CE) should provide this information (*via* the updated instructions noted above) to the rating physician(s).

"Upon initial review of a referral for upper extremity impairment evaluation, the DMA should identify: (1) the methodology used by the rating physician (*i.e.*, DBI or ROM); and (2) whether the applicable tables in Chapter 15 of the A.M.A., *Guides* identify a diagnosis that can alternatively be rated by ROM. *If the A.M.A., Guides allow for the use of both the DBI and ROM methods to calculate an impairment rating for the diagnosis in question, the method producing the higher rating should be used.*" (Emphasis in the original).[13]

The Bulletin further advises:

"If the rating physician provided an assessment using the ROM method and the A.M.A., *Guides* allow for use of ROM for the diagnosis in question, the DMA should independently calculate impairment using both the ROM and DBI methods and identify the higher rating for the CE."[14]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides,* with the DMA providing rationale for the percentage of permanent impairment specified.[15]

## ***ANALYSIS***

The Board finds that appellant has not met her burden of proof to establish more than 19 percent permanent impairment of her right upper extremity, for which she previously received schedule award compensation.

As appellant's treating physician did not perform impairment evaluations, OWCP referred appellant for a second opinion evaluation with Dr. Katz. In his April 27, 2018 report, Dr. Katz found that appellant had reached MMI due to her accepted conditions and had 21 permanent impairment based on ROM methodology. ROM measurements were provided after three measurements for appellant's right shoulder were taken consistent with the requirements set forth in the A.M.A., *Guides* and FECA Bulletin No. 17-06.

In accordance with its procedures, OWCP properly referred the evidence of record to its DMA, who reviewed the clinical findings of Dr. Katz. In his July 29, 2018 report, the DMA found that appellant reached MMI as of April 27, 2018, the date of Dr. Katz's impairment evaluation. He calculated appellant's permanent impairment using both DBI and ROM methodology and found that the ROM methodology resulted in the higher impairment rating. The DMA determined

[13] FECA Bulletin No. 17-06 (May 8, 2017).

[14] *Id.*

[15] *See P.R.,* Docket No. 18-0022 (issued April 9, 2018); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6f (March 2017).

that appellant had 19 percent permanent impairment of the right upper extremity based upon Dr. Katz's valid ROM measurements.

The DMA explained in his report that Dr. Katz inappropriately utilized the GMFH under Table 15-36 in his ROM calculation as the functional history of 4 differed by two or more grades from the GMPE or 2 and the GMCS of 2. Thus, he found that appellant's total right upper extremity permanent impairment under the ROM methodology was 19 percent.

The Board finds that the DMA applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Katz's clinical findings and his calculations were mathematically accurate.[16] The DMA also discussed how he arrived at his conclusion in finding that appellant had 19 percent permanent impairment of her right upper extremity based on the highest impairment methodology.[17] Therefore, the Board finds that his opinion is given the weight of the medical evidence and supports that appellant does not have greater than the 19 percent permanent impairment of the right upper extremity.[18]

Accordingly, appellant has not met her burden of proof to establish that she is entitled to an additional schedule award.

Appellant may request a schedule award or increased schedule award at any time 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 her burden of proof to establish more than 19 percent permanent impairment of her right upper extremity, for which she previously received schedule award compensation.

[16] *See R.N.,* Docket No. 17-1123 (issued May 25, 2018).

[17] *Id.*

[18] *See D.T.,* Docket No. 18-1773 (issued April 22, 2019).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the October 2, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 16, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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