

the performance of duty when he pulled a box that was stuck in a trash chute. He stopped work that day. Appellant returned to full-time light-duty work on August 26, 2016. OWCP accepted that appellant sustained a left shoulder sprain causally related to the accepted August 25, 2016 injury.

In a report dated September 15, 2016, Dr. Gregory A. Merrell, Board-certified in orthopedic surgery and hand surgery, diagnosed possible left proximal biceps tendon and left supraspinatus tendon tears. He ordered a magnetic resonance imaging (MRI) scan of the left shoulder which was performed on September 30, 2016. It demonstrated supraspinatus and subscapularis tendinopathy, moderate chronic acromioclavicular joint arthropathy, and glenohumeral arthritis with posteroinferior labral fraying and adhesive capsulitis.

In a report dated December 29, 2016, Dr. Merrell opined that appellant had attained maximum medical improvement (MMI). He referred appellant to Joanne McDowell, a physical therapist, who performed a functional capacity evaluation (FCE) on February 3, 2017. Appellant demonstrated that he could perform work at a medium physical demand level. The physical therapist opined that utilizing the diagnosis-based impairment (DBI) method, according to Figure 15-2 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² appellant had a class of diagnosis (CDX) of 1 for the diagnosis of impingement syndrome with residual functional loss, a grade modifier for functional history (GMFH) of 2, a grade modifier for physical examination (GMPE) of 1, and no applicable grade modifier for clinical studies (GMCS). Applying the net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), or (2-1) + (1-1), resulted in a net adjustment of one, which raised the default CDX upward one grade from three to four percent. Ms. McDowell found that appellant had four percent permanent impairment of the left upper extremity due to impingement syndrome with moderate symptoms and normal range of motion.

In a report dated October 24, 2017, Dr. Merrell found that appellant had attained MMI. He concurred with Ms. McDowell's February 3, 2017 assessment of four percent permanent impairment of the left shoulder.

On November 22, 2017 appellant filed a claim for a schedule award (Form CA-7).

By development letter dated November 28, 2017, OWCP informed appellant that the evidence of record was insufficient to establish his schedule award claim. Appellant was advised of the type of medical evidence needed, including an updated report from his attending physician including the date of MMI, detailed physical findings, and an impairment rating utilizing the appropriate portions of the A.M.A., *Guides*. OWCP afforded him 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated January 23, 2018, OWCP denied appellant's claim for a schedule award. It found that he had not submitted sufficient evidence demonstrating permanent impairment of a scheduled member or a function of the body warranting a schedule award.

² A.M.A., *Guides* (6th ed. 2009).

LEGAL PRECEDENT

The schedule award provisions 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, 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 As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

A claimant has the burden of proof under FECA to establish permanent impairment of a scheduled member or function as a result of his or her employment injury entitling him or her to a schedule award.⁷ Before the A.M.A., *Guides* can be utilized a description of impairment must be obtained from his physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, and decrease in strength or disturbance of sensation or other pertinent descriptions of the impairment. This 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.⁸

OWCP's procedures provide that, if a claimant has not submitted an impairment evaluation, it should request a detailed report that "includes: history of clinical presentation; physical findings; functional history; clinical studies or objective tests; analysis of findings, and the appropriate impairment based on the most significant diagnosis, as well as a discussion of how the impairment rating was calculated."⁹ If the claimant does not provide an impairment evaluation, "and there is no indication of permanent impairment in the medical evidence of file, the [claims examiner] may proceed with a formal denial of the award."¹⁰

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁷ *See D.H.*, 58 ECAB 358 (2007); *Annette M. Dent*, 44 ECAB 403 (1993).

⁸ *A.T.*, Docket No. 18-0864 (issued October 9, 2018); *D.M.*, Docket No. 11-0775 (issued October 11, 2011); *Peter C. Belkind*, 56 ECAB 580 (2005).

⁹ Federal (FECA) Procedure Manual, *supra* note 6 at Chapter 2.808.6(a).

¹⁰ *Id.* at Chapter 2.808.6(c). *See also A.T.*, *supra* note 8.

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a permanent impairment of the left upper extremity entitling him to a schedule award.

OWCP accepted that appellant sustained a sprain of his left shoulder in the performance of duty. Appellant's attending physician, Dr. Merrell, found in a report dated October 24, 2017, that he had reached MMI. Based on an FCE performed on February 3, 2017, Dr. Merrell opined on October 24, 2017 that appellant had sustained four percent permanent impairment of the left upper extremity.

OWCP, on November 28, 2017, requested that appellant submit an impairment evaluation from his physician addressing the extent of any employment-related permanent impairment using the A.M.A., *Guides*. Appellant did not, however, submit an updated impairment evaluation with detailed clinical findings establishing permanent impairment. The FCE performed on February 3, 2017 contained limited physical findings reported by Ms. McDowell, a physical therapist, and reviewed on October 24, 2017 by Dr. Merrell. However, this report did not provide sufficient detail describing the precise nature of physical impairment, as observed on physical examination, due to the accepted left shoulder strain.¹¹ The Board notes that Dr. Merrell did not note a diagnosis of left shoulder strain, but rather listed a number of diagnoses which were not accepted by OWCP as causally related to the accepted employment injury.

As the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body, appellant has not met his burden of proof.¹²

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 his burden of proof to establish permanent impairment of his left upper extremity, entitling him to a schedule award.

¹¹ *A.T.*, *supra* note 8.

¹² *See supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2019
Washington, DC

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

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

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