United States Department of Labor
Employees' Compensation Appeals Board

J.F., Appellant	)	
and	)	**Docket No. 19-0166**
	)	**Issued: July 29, 2019**
U.S. POSTAL SERVICE, POST OFFICE, New Baltimore, MI, 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
JANICE B. ASKIN, Judge

JURISDICTION

On October 30, 2018 appellant filed a timely appeal from a September 18, 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 September 18, 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 13 percent permanent impairment of her right upper extremity, for which she previously received a schedule award.

FACTUAL HISTORY

On October 20, 2014 appellant, a then 56-year-old retail distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right shoulder injury on October 17, 2014 as a result of pulling up a parcel onto a scale while in the performance of duty. By decision dated March 26, 2015, OWCP accepted the claim for complete right rotator cuff rupture, other joint derangement, and disorder of bursae and tendons in the right shoulder region. It further authorized a right shoulder surgery, which appellant underwent on July 17, 2015. Appellant returned to full-time, limited-duty work in December 2015.

On November 27, 2017 appellant filed a claim for a schedule award (Form CA-7).

In an October 30, 2017 report, Dr. Peter E. Metropoulos, an osteopath Board-certified in occupational medicine and preventative medicine, opined that appellant had reached maximum medical improvement (MMI) for the accepted conditions as of his examination that day. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[3] Dr. Metropoulos calculated that appellant had 13 percent permanent impairment of her right upper extremity based on the diagnosis-based impairment (DBI) method. He found that she had numerous findings following an injury to her right shoulder and opined that her most impairing diagnosis was multidirectional shoulder instability, which equated to a class 1 impairment for the diagnosis (CDX) under Table 15-5, page 404, of the A.M.A., *Guides*. Dr. Metropoulos assigned a grade modifier of 2 for functional history (GMFH) based on appellant's *Quick*DASH score of 39. He assigned a grade modifier of 2 for physical examination (GMPE), and indicated that a grade modifier for clinical studies (GMCS) was not applicable in this case. Using the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), Dr. Metropoulos calculated that appellant had a net adjustment of (2-1) + (2-1) + (n/a) = +2, equaling a grade E impairment. Based on these calculations, he concluded that appellant had 13 percent permanent impairment of the right upper extremity. Dr. Metropoulos determined that using the range of motion (ROM) method resulted in a lesser impairment rating of 12 percent.

The case record was referred to Dr. David H. Garelick, a Board-certified orthopedic surgeon serving as OWCP's district medical adviser (DMA). The DMA reviewed the medical evidence of record and determined that appellant's date of MMI was October 30, 2017, the date of Dr. Metropoulos' impairment examination. He disagreed with Dr. Metropoulos regarding appellant's most impairing diagnosis. The DMA opined that there had never been evidence that appellant had shoulder dislocation and her labral tears evident on a magnetic resonance imaging (MRI) scan were degenerative, not traumatic in nature. Thus, he determined that appellant's most

[3] A.M.A., *Guides* (6th ed. 2009).

impairing diagnosis was full-thickness rotator cuff tear with residual loss under Table 15-5, page 403 of the A.M.A., *Guides*. The DMA concurred with Dr. Metropoulos' net adjustment of +2 and concluded that appellant had 7 percent permanent impairment of the right upper extremity. Using the ROM method, he found that appellant had 140 degrees flexion, 30 degrees extension, 110 degrees abduction, 30 degrees adduction, 60 degrees external rotation, and 40 degrees internal rotation, which equated to 12 percent permanent impairment of the right upper extremity. The DMA explained that appellant's ROM had been properly measured three times, so the ROM method could be utilized. He determined that the ROM method should be used in this particular case because it was a higher rating than the DBI method.

In an April 11, 2018 development letter, OWCP requested Dr. Metropoulos' review of the DMA's report. It requested an addendum report providing a well-rationalized medical opinion as well as objective and diagnostic findings, if he disagreed with the DMA.

Subsequently, Dr. Metropoulos submitted a May 4, 2018 report disagreed with the DMA's opinion regarding appellant's most impairing diagnosis. He explained that it should have been right shoulder instability because orthopedic surgery had specifically identified multidirectional instability early in the course of appellant's medical care. Dr. Metropoulos referenced an operative report dated August 25, 2000 that was not yet a part of the record.

In a letter dated May 25, 2018, OWCP requested that appellant provide a copy of the August 25, 2000 operative report.

In response, appellant submitted an operative report dated August 25, 2000 from Dr. Steven T. Plomaritis, a Board-certified orthopedic surgeon, who had performed a subacromial bursal decompression and glenohumeral capsulorrhaphy that day. On September 11, 2000 Dr. Plomaritis indicated that appellant's symptoms had significantly improved from her operative state and she had satisfactory internal and external rotation strength of the rotator cuff.

In a memorandum dated June 7, 2018, OWCP requested an addendum report from the DMA in light of the new evidence.

In his June 13, 2018 addendum report, the DMA continued to disagree with Dr. Metropoulos regarding appellant's most impairing condition. He noted that appellant's most recent surgery was for a large rotator cuff tear which was so large that it necessitated a dermal allograft and stem cell augmentation, two procedures that were typically reserved for more advanced rotator cuff tears. There was no instability described at the time of surgery and there was no description of any instability described in the follow-up reports from Dr. Plomartis. The DMA further noted that the residual dysfunction in appellant's shoulder and diminished shoulder ROM was a direct result of the rotator cuff pathology rather than instability. Finally, he explained that, if there were to be multidirectional instability, there would be more shoulder ROM than normal, not less. However, in this case, appellant's shoulder ROM was subnormal. The DMA concluded that appellant's residual shoulder pain was secondary to rotator cuff dysfunction, not multidirectional instability, and that there was no change to his prior impairment rating or appellant's date of MMI.

In a July 11, 2018 letter, OWCP advised appellant that it had found a conflict in the medical opinion evidence between his attending physician, Dr. Metropoulos, and its DMA, Dr. Garelick, regarding his permanent impairment rating. It referred him to Dr. Clifford Buchman, a Board-certified orthopedic surgeon, for an independent medical examination to resolve the conflict.

In his August 27, 2018 report, Dr. Buchman concurred with Dr. Metropoulos' impairment rating of 13 percent permanent impairment of the right upper extremity. He agreed with the use of the DBI method in this case. Upon physical examination, Dr. Buchman found a two-inch scar superiorly over the right shoulder and multiple puncture wounds from arthroscopic surgery. Appellant's ROM of the shoulder was about normal, but she lacked 20 degrees of abduction. She abducted the right shoulder to 160, left to 180, and flexed both to 180 degrees. An impingement test was negative. Speed and Yergensen's testing was also negative. Dr. Buchman concurred with Dr. Metropoulos' opinion that appellant's most impairing diagnosis was multidirectional shoulder instability, which equated to a class 1 impairment under Table 15-5, page 404, of the A.M.A., *Guides*. He also concurred with Dr. Metropoulos' assignment of a GMFH of 2 based on appellant's *Quick*DASH score of 39 and a GMPE of 2. Using the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), Dr. Buchman calculated that appellant had a net adjustment of (2-1) + (2-1) + (n/a) = +2, equaling a grade E impairment. Based on these calculations, he concluded that appellant had 13 percent permanent impairment of the right upper extremity.

By decision dated September 18, 2018, OWCP granted appellant a schedule award for 13 percent permanent impairment of her right upper extremity. The award ran for 40.56 weeks for the period October 30, 2017 to August 9, 2018 (and a fraction of a day).

LEGAL PRECEDENT

The schedule award provisions of FECA[4] and its implementing regulations[5] provide for compensation to employees sustaining impairment from loss or loss of use of specified 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 sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[6] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.[7]

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *See Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000). *See also* 5 U.S.C. § 8107.

[7] *See D.T.*, Docket No. 12-503 (issued August 21, 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[8] Under the sixth edition, the evaluator identifies the CDX, which is then adjusted by grade modifiers based on GMFH, GMPE, and GMCS.[9] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[10]

Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06[11] 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 determination of impairment, the CE [claims examiner] should provide this information (*via* the updated instructions noted above) to the rating physician(s).
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> "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 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).[12]
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> The Bulletin further advises:
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> "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."[13]

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a

[8] A.M.A., *Guides* (6th ed., 2009), p.3, section 1.3, International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[9] *Id.* at 494-531.

[10] *See R.V.*, Docket No. 10-1827 (issued April 1, 2011).

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

[12] *Id*.

[13] *Id.*

third physician who shall make an examination.[14] When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.[15] Where a case is referred to an impartial medical examiner (IME) for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.[16]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish more than 13 percent permanent impairment of her right upper extremity, for which she previously received a schedule award.

On July 11, 2018 OWCP advised appellant that it had found a conflict in the medical opinion evidence between her attending physician, Dr. Metropoulos, who opined that appellant had 13 percent permanent impairment of her right upper extremity based on the DBI method, and its DMA, Dr. Garelick, who opined that appellant had 12 percent permanent impairment of her right upper extremity based on the ROM method.

OWCP properly referred appellant to Dr. Buchman for an independent medical examination to resolve the conflict. In his August 27, 2018 report, Dr. Buchman found that appellant's ROM of the shoulder was about normal, which would have resulted in a lesser schedule award based on the ROM method. Moreover, he also found that impingement, Speed, and Yergensen's testing were all negative. Dr. Buchman reviewed appellant's August 25, 2000 operative report and concurred with Dr. Metropoulos' opinion that appellant's most impairing diagnosis was multidirectional shoulder instability, which equated to a CDX of 1 for impairment under Table 15-5, page 404, of the A.M.A., *Guides*. He agreed with the use of the DBI method in this case. Dr. Buchman also concurred with Dr. Metropoulos' assignment of a GMFH of 2 based on appellant's *Quick*DASH score of 39 and a GMPE of 2. Using the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), he calculated that appellant had a net adjustment of (2-1) + (2-1) + (n/a) = +2, equaling a grade E impairment. Based on these calculations, Dr. Buchman concluded that appellant had 13 percent permanent impairment of the right upper extremity.

The Board finds that Dr. Buchman properly applied the standards of the A.M.A., *Guides* and his opinion is sufficiently well rationalized and based upon a proper factual and medical background such that it is entitled to the special weight of medical evidence.[17] The Board further

[14] 5 U.S.C. § 8123(a).

[15] *C.R.*, Docket No. 18-1285 (issued February 12, 2019).

[16] *Id.*

[17] *See N.L.*, Docket No. 18-0743 (issued April 10, 2019); *A.H.*, Docket No. 18-0050 (issued March 26, 2018); *J.J.*, Docket No. 10-1758 (issued May 16, 2011).

finds that OWCP properly determined that MMI was achieved on October 30, 2017, the date of Dr. Metropoulos' examination.

As there is no current medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing greater than the 13 percent permanent impairment of the right upper extremity previously awarded, appellant has not met her burden of proof.

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 13 percent permanent impairment of her right upper extremity, for which she previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the September 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board