United States Department of Labor
Employees' Compensation Appeals Board

R.G., Appellant	)	
and	)	**Docket No. 18-0368**
	)	**Issued: September 10, 2019**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Fort Worth, TX, 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 November 8, 2017 appellant filed a timely appeal from an October 20, 2017 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 met his burden of proof to establish greater than 12 percent permanent impairment of the right upper extremity, for which he previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 23, 2013 appellant, then a 42-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed a right shoulder condition due to the repetitive duties of his job. OWCP accepted his traumatic injury claim for right shoulder and upper arm sprain and right shoulder adhesive capsulitis. On December 17, 2014 appellant underwent an authorized right shoulder arthroscopy and rotator cuff repair surgery. He had a prior work injury on August 25, 2012, a right shoulder injury, that OWCP accepted for a right shoulder rotator cuff tear and assigned OWCP File No. xxxxxx344.[2]

On November 21, 2016 appellant filed a claim for a schedule award (Form CA-7).

In support of his claim, appellant submitted a November 21, 2016 impairment rating from Dr. Les Benson, an emergency medicine specialist. Dr. Benson noted appellant's history of injury and treatment, conducted a physical examination, and provided range of motion (ROM) findings. He explained that appellant's ROM was severely decreased in the right shoulder with crepitus, that appellant had moderate discomfort at end range of motion, there was no acute swelling or acute bruising, there was tenderness with firm palpation, and antalgic guarding with normal gait was observed. Dr. Benson provided one set of measurements for ROM. He explained that the right shoulder impairment was best determined by the ROM methodology due to postoperative residual loss, function with abnormal motion, which was beyond a class 1 diagnosis (CDX) using the diagnosis-based impairment (DBI) methodology. Dr. Benson explained that therefore the ROM method was the most appropriate impairment. He opined that appellant sustained 15 percent right upper extremity permanent impairment due to loss of shoulder ROM under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) at Table 15-34, Shoulder Range of Motion, page 475.[3]

In a development letter dated November 30, 2016, OWCP advised appellant of the evidence needed to establish his claim for a schedule award. It afforded him 30 days to provide the medical evidence requested.

OWCP referred appellant's medical record, including the impairment rating report of Dr. Benson, to Dr. David H. Garelick, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA). The DMA reviewed the claim on July 22, 2017 and opined that appellant had 12 percent right upper extremity permanent impairment. He noted disagreement with Dr. Benson's right shoulder ROM impairment and explained that FECA Bulletin No. 17-06, issued on May 8, 2017, described the conditions for rating upper extremity impairments based upon loss of ROM. The DMA indicated that the bulletin specified: "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.…" He explained that it appeared that the right shoulder ROM was only measured once and, thus, appellant could not be rated per the ROM method. As such, the DMA explained that he would

[2] Appellant stopped work on July 28, 2013 under OWCP File No. xxxxxx344, which has been administratively combined with the present claim file, OWCP File No. xxxxxx396, and serves as the master claim file.

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

recommend the "preferred" DBI methodology. He determined that, pursuant to Table 15-5, Shoulder Regional Grid, appellant had 10 percent permanent impairment. The DMA explained that, considering the grade modifier for physical examination (GMPE) due to the loss of motion as well as the grade modifier for functional history (GMFH) due to difficulty with activities of daily living, the net adjustment modifier moved the award two places to the right for an overall award of 12 percent right upper extremity permanent impairment based on the distal clavicle resection.

By decision dated October 20, 2017, OWCP granted appellant a schedule award for 12 percent impairment of the right upper extremity. The award covered a period of 37.44 weeks, from November 21, 2016 through August 10, 2017. OWCP based the award on the DMA's July 22, 2017 impairment rating.

LEGAL PRECEDENT

The schedule award provision of FECA,[4] and its implementing federal regulations,[5] 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. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[6] The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[7]

The sixth edition of the A.M.A., *Guides* provides a DBI 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 impairment CDX, which is then adjusted by grade modifiers based on functional history, physical examination, and clinical studies (GMCS).[9] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10]

[4] *Supra* note 2.

[5] 20 C.F.R. § 10.404.

[6] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6 (March 2017); *see also id.* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[7] *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

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

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

[10] *Id*. at 411.

Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[11]

The A.M.A., *Guides* also provide that the ROM impairment method is to be used as a stand-alone rating for upper extremity impairments when other grids direct its use or when no other diagnosis-based sections are applicable.[12] If ROM is used as a stand-alone impairment rating method, the total of ROM impairment for all units of function must be calculated. All values for the joint are measured and combined.[13] Adjustments for functional history may be made if the evaluator determines that the resulting impairment does not adequately reflect functional loss and functional reports are determined to be reliable.[14]

Regarding the application of ROM or DBI 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 determination of impairment, the [claims examiner] 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.*"[15] (Emphasis in the original).

ANALYSIS

The Board finds that this case is not in posture for decision.

On November 21, 2016 Dr. Benson evaluated appellant's permanent impairment under Table 15-5 of the A.M.A., *Guides*, for a right rotator cuff tear, under the shoulder regional grid.[16] He explained that he was using the ROM impairment method as it was most appropriate and provided an impairment rating of 15 percent to the right shoulder. The DMA reviewed Dr. Benson's report and declined to use his ROM impairment rating as he noted that Dr. Benson's

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

[12] A.M.A., *Guides* 461.

[13] *Id*. at 473.

[14] *Id*. at 474.

[15] *V.L.*, Docket No. 18-0760 (issued November 13, 2018); FECA Bulletin No. 17-06 (May 8, 2018).

[16] A.M.A., *Guides* 402.

report did not demonstrate compliance with the protocols for measuring loss of ROM under the A.M.A., *Guides*. He indicated that, because Dr. Benson failed to provide three independent measurements, appellant could not be rated using the ROM method. The DMA rated appellant's permanent impairment of the right shoulder pursuant to the DBI method found in Table 15-5 of the A.M.A., *Guides* and concluded that appellant had 12 percent impairment based on the diagnosis of a distal clavicle resection .

The Board finds that OWCP did not properly develop the medical evidence pursuant to FECA Bulletin No. 17-06, which requires that it should instruct an evaluating physician to obtain three independent measurements of ROM loss, if they have not been provided into the record.[17] It was incumbent upon the DMA, when performing the ratings under both the ROM and DBI methods, to obtain the necessary ROM measurements to complete the full rating.[18]

The case must therefore be remanded. On remand the DMA should first request that Dr. Benson provide three independent ROM measurements and complete a supplemental ROM impairment rating, following an updated physical examination. If Dr. Benson will not perform the examination or provide the requested information, OWCP shall refer appellant for a second opinion examination to obtain the necessary ROM measurements as outlined in the A.M.A., *Guides* and FECA Bulletin No. 17-06 for the completion of a full impairment calculation under the ROM and DBI methods. Only after proper development of the medical record should the case record be rerouted to the DMA to determine the extent of appellant's permanent impairment. After this and any other such further development as is deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

[17] *V.H.*, Docket No. 18-0848 (issued February 25, 2019); *T.R.*, Docket No. 17-1961 (issued December 20, 2018).

[18] *See M.D.*, Docket No. 18-1073 (issued January 18, 2019) (finding that a DMA should advise as to the medical evidence necessary to complete the ROM method of rating if the medical evidence of record is insufficient to rate appellant's impairment using loss of ROM).

ORDER

IT IS HEREBY ORDERED THAT the October 20, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 10, 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