

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

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| L.L., Appellant |) | |
| |) | |
| and |) | Docket No. 19-0855 |
| |) | Issued: September 24, 2019 |
| U.S. POSTAL SERVICE, POST OFFICE, |) | |
| Clinton, IA, Employer |) | |
| _____ |) | |

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 15, 2019 appellant filed a timely appeal from a February 28, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 her burden of proof to establish greater than 17 percent permanent impairment of the right upper extremity, for which she received schedule award compensation.

FACTUAL HISTORY

On January 11, 2016 appellant, then a 54-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right wrist while in the performance

¹ 5 U.S.C. § 8101 *et seq.*

of duty. OWCP accepted the claim for unspecified fractures of the lower end of the right radius and right ulna. It subsequently expanded acceptance of appellant's claim to include an incomplete rotator cuff tear or rupture of the right shoulder and unspecified complications of medical care.

On January 28, 2016 appellant underwent a closed reduction and percutaneous pinning of her right distal radius fracture. On September 13, 2016 she underwent a right rotator cuff repair, subacromial decompression, and resection of the acromioclavicular (AC) joint.

On May 23, 2017 appellant filed a claim for a schedule award (Form CA-7).

In a development letter dated June 6, 2017, OWCP requested that appellant submit an impairment evaluation from her attending physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

In a June 14, 2017 impairment evaluation, Dr. Tuvi Mendel, a Board-certified orthopedic surgeon, measured range of motion (ROM) of appellant's bilateral shoulders and wrists. He found that she had 3 percent permanent impairment of the upper extremity due to her wrist fracture and 12 percent impairment of the upper extremity due to her shoulder condition. Dr. Mendel rated appellant's impairment using the fifth edition of the A.M.A., *Guides*.³

On July 31, 2017 Dr. David J. Slutsky, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), reviewed the evidence and opined that appellant had two percent permanent impairment of the right upper extremity due to her nondisplaced distal radius fracture using the diagnosis-based impairment (DBI) method set forth in the sixth edition of the A.M.A., *Guides*. He further found 10 percent permanent impairment of the right upper extremity due to her right rotator cuff tear with AC joint resection using the DBI method.

By decision dated August 17, 2017, OWCP granted appellant a schedule award for 12 percent permanent impairment of the right upper extremity.

On September 1, 2017 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated December 15, 2017, OWCP's hearing representative vacated the August 17, 2017 decision. He instructed OWCP to obtain a supplemental report from the DMA addressing the extent of appellant's upper extremity impairment due to loss of ROM in accordance with FECA Bulletin No. 17-06.⁴

² A.M.A., *Guides* (6th ed. 2009).

³ A.M.A., *Guides* (5th ed. 2001).

⁴ FECA Bulletin No. 17-06 (May 8, 2017).

On January 16, 2018 Dr. Slutsky advised that the ROM measurements obtained by Dr. Mendel failed to conform to the provisions of the sixth edition of the A.M.A., *Guides* for assessing motion.

On January 23, 2018 OWCP requested that appellant have her physician review the DMA's January 17, 2018 report and indicate whether his ROM measurements conformed to the sixth edition of the A.M.A., *Guides*. It afforded her 30 days to submit the requested evidence.

In a February 1, 2018 response, appellant related that her physician only provided impairment ratings using the fifth edition of the A.M.A., *Guides*.

On March 27, 2018 OWCP referred appellant to Dr. Farid Manshadi, a Board-certified physiatrist, for a second opinion examination.

In a report dated April 26, 2018, Dr. Manshadi discussed appellant's January 11, 2016 employment injury. He measured ROM of the bilateral wrists and shoulders three times and obtained the average measurement. For the right wrist, Dr. Manshadi measured extension of 54 degrees, flexion of 53 degrees, radial deviation of 22 degrees, and ulnar deviation of 30 degrees. He measured right shoulder forward flexion of 135 degrees, extension of 58 degrees, abduction of 11 degrees, external rotation of 71 degrees, internal rotation of 68 degrees, and adduction of 45 degrees. Dr. Manshadi further measured passive ROM of the right shoulder as 150 degrees flexion, 150 degrees abduction, and 65 degrees extension. Using Table 15-3 on page 396 of the A.M.A., *Guides*, he identified the diagnosis as a wrist fracture, which yielded a default value of three percent. Dr. Manshadi applied a grade modifier for functional history (GMFH) of two, a grade modifier for physical examination (GMPE) of one, and determined that a grade modifier for clinical studies (GMCS) was inapplicable. He applied the net adjustment formula to find four percent permanent impairment of the right upper extremity due to appellant's wrist fracture.

For the right shoulder, Dr. Manshadi identified the CDX as an AC joint injury after a distal clavicle resection or AC joint separation using Table 15-5 on page 403, which yielded a default value of 10 percent. He found a GMFH of two, a GMPH of two, and that GMCS were inapplicable, which yielded a 12 percent permanent impairment of the right upper extremity due to appellant's shoulder condition after applying the net adjustment formula. Dr. Manshadi opined that the DBI method was more appropriate than the ROM impairment method as her active ROM was not within 10 degrees of her passive ROM.

On June 10, 2018 Dr. Slutsky concurred with Dr. Manshadi's finding of four percent permanent impairment of the right upper extremity due to appellant's wrist fracture and 12 percent permanent impairment of the right upper extremity due to her distal clavicle resection using the DBI method. He further found that, for the right wrist, 53 degrees of flexion yielded three percent impairment, 54 degrees extension yielded three percent impairment, 22 degrees radial deviation yielded no impairment, and 30 degrees ulnar deviation yielded no impairment, for a total ROM impairment of six percent.⁵ Dr. Slutsky applied a grade modifier of one which yielded no adjustment. For the right shoulder, he determined that 135 degrees flexion yielded three percent impairment, 58 degrees extension yielded no impairment, 111 degrees abduction yielded three

⁵ A.M.A., *Guides* 473, Table 15-32.

percent impairment, 45 degrees adduction yielded no impairment, 68 degrees internal rotation yielded two percent impairment, and 71 degrees external rotation yielded no impairment, for a total impairment due to loss of ROM of eight percent.⁶ Dr. Slutsky found no adjustment after application of the grade modifier of one.

In a supplemental report dated December 8, 2018, Dr. Slutsky again advised that, for her right wrist, appellant had four percent permanent impairment of the upper extremity using the DBI method and six percent permanent impairment of the upper extremity using the ROM method. For the right shoulder, he found 12 percent permanent impairment of the upper extremity using the DBI method and 8 percent permanent impairment of the upper extremity using the ROM method. Dr. Slutsky combined the 6 percent impairment of the right upper extremity using the ROM method due to appellant's wrist condition with the 12 percent impairment of the right upper extremity using the DBI method due to her shoulder condition to find 17 percent permanent impairment of the right upper extremity.

On February 3, 2019 Dr. Slutsky clarified that combining 6 percent impairment and 12 percent yielded 17 percent permanent impairment as indicated in his prior report.⁷ He noted that he had used ROM method for the wrist and the DBI method for the shoulder as it yielded the greater impairment rating.

By decision dated February 28, 2019, OWCP granted appellant a schedule award for an additional 5 percent permanent impairment of the right upper extremity, for a total right upper extremity impairment of 17 percent. The period of the award ran for 15.6 weeks from March 4 to June 21, 2018.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁸ and its implementing federal regulations,⁹ 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*, published in 2009.¹⁰ The Board has approved the use by

⁶ *Id.* at 475.

⁷ *Id.* at 419, 604.

⁸ *Supra* note 1.

⁹ 20 C.F.R. § 10.404.

¹⁰ 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* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

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.¹¹

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).¹² Under the sixth edition, the evaluator identifies the impairment class of diagnosis (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE, and GMCS.¹³ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁴ Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹⁵

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.¹⁶ If ROM is used as a stand-alone approach, the total of motion impairment for all units of function must be calculated. All values for the joint are measured and added.¹⁷ 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.¹⁸

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 CE [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*

¹¹ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

¹² 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.

¹³ *Id.* at 494-531.

¹⁴ *Id.* at 411.

¹⁵ *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹⁶ A.M.A., *Guides* 461.

¹⁷ *Id.* at 473.

¹⁸ *Id.* at 474.

*impairment rating for the diagnosis in question, the method producing the higher rating should be used.*¹⁹ (Emphasis in the original.)

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than 17 percent permanent impairment of the right upper extremity, for which she received schedule award compensation.

In an impairment evaluation dated June 14, 2017, Dr. Mendel opined that appellant had 12 percent permanent impairment of the right upper extremity due to her shoulder condition and 3 percent permanent impairment due to her wrist fracture. However, he utilized the fifth edition of the A.M.A., *Guides* in reaching his impairment rating, and thus his opinion is of diminished probative value.²⁰

OWCP referred appellant to Dr. Manshadi for a second opinion examination. In an April 26, 2018 impairment evaluation, Dr. Manshadi measured ROM of the right wrist and shoulder three separate times. For the right wrist, he identified the CDX as a wrist fracture using Table 15-3 on page 396 of the A.M.A., *Guides*, for a default value of three percent. Dr. Manshadi found a GMFH of two, a GMPE of one, and that a GMCS was not applicable. He applied the net adjustment formula and found four percent permanent impairment of appellant's right upper extremity due to her right wrist fracture.²¹ For the right shoulder, Dr. Manshadi identified the CDX as an AC joint injury after a distal clavicle resection or AC joint separation using Table 15-5 on page 403, which yielded a default value of 10 percent. He applied a GMFH of two, a GMPH of two, and determined that GMCS were inapplicable, which yielded an adjustment of two after using the net adjustment formula and 12 percent permanent impairment of the right upper extremity due to appellant's shoulder condition.²² Dr. Manshadi opined that the ROM was not appropriate as her active ROM was not within 10 degrees of passive ROM.

On June 10, 2018 Dr. Slutsky, the DMA, concurred with Dr. Manshadi's finding of 4 percent permanent impairment of the right upper extremity due to appellant's right wrist fracture right wrist and 12 percent permanent impairment of the right upper extremity due to her AC joint injury using the DBI method. He used Dr. Manshadi's average ROM measurements to find that, for the right shoulder, 135 degrees flexion yielded three percent impairment, 58 degrees extension yielded no impairment, 111 degrees abduction yielded three percent impairment, 45 degrees adduction yielded no impairment, 68 degrees internal rotation yielded two percent impairment, and 71 degrees external rotation yielded no impairment, which he added to find a total impairment

¹⁹ *V.L.*, Docket No. 18-0760 (issued November 13, 2018); *supra* note 4.

²⁰ *S.J.*, Docket No. 16-1162 (issued February 8, 2017) (a medical opinion not based on the appropriate edition of the A.M.A., *Guides* is of diminished probative value in determining the extent of permanent impairment).

²¹ Utilizing the net adjustment formula discussed above, (GMFH-CDX) + (GMPE-CDX), or (2-1) + (1-1) = 1, yielded an adjustment of one.

²² GMFH-CDX) + (GMPE-CDX), or (2-1) + (2-1) = 2, yielded an adjustment of two.

due to loss of ROM of eight percent.²³ For the right wrist, Dr. Slutsky found that 53 degrees of flexion yielded three percent impairment, 54 degrees extension yielded three percent impairment, 22 degrees radial deviation yielded no impairment, and 30 degrees ulnar deviation yielded no impairment, for a total ROM impairment of six percent.²⁴

On December 8, 2018 Dr. Slutsky opined that appellant had four percent permanent impairment of the right upper extremity using the DBI method and six percent permanent impairment of the upper extremity using the ROM method due to her right wrist condition. He further found 12 percent permanent impairment of the upper extremity using the DBI method and 8 percent permanent impairment of the upper extremity using the ROM method for her right shoulder condition. Dr. Slutsky used the DBI method to rate appellant's right shoulder impairment and the ROM method to rate her right wrist impairment as those methods yielded the higher permanent impairment rating.²⁵ He combined the 12 percent permanent impairment of the right upper extremity due to her shoulder condition using the DBI method with the 6 percent permanent impairment of the right upper extremity due to her wrist condition using the ROM method to find 17 percent permanent impairment of the right upper extremity.

As there is no current medical evidence of record conforming to the sixth edition of the A.M.A., *Guides* demonstrating greater than 17 percent permanent impairment of the right upper extremity, appellant has not met her burden of proof to establish entitlement to a greater schedule award.²⁶

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 greater than 17 percent permanent impairment of the right upper extremity, for which she received schedule award compensation.

²³ A.M.A., *Guides* 475.

²⁴ *Id.* at 473, Table 15-32.

²⁵ *Supra* note 4; *N.A.*, Docket No. 19-0248 (issued May 17, 2019).

²⁶ *See J.F.*, Docket No. 19-0166 (issued July 29, 2019).

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 24, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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