United States Department of Labor
Employees' Compensation Appeals Board

C.D., Appellant	)	
and	)	**Docket No. 20-0644**
	)	**Issued: July 8, 2021**
U.S. POSTAL SERVICE, CHICAGO POST OFFICE, Chicago, IL, Employer	)	

Appearances:
Stephanie N. Leet, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 30, 2020 appellant, through counsel, filed a timely appeal from an August 16, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than seven percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

FACTUAL HISTORY

On April 19, 2014 appellant, then a 55-year-old sales and associate distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 4, 2014 she sustained a left shoulder injury while stretching to lift a heavy box into a container while in the performance of duty. She stopped work on April 4, 2014. OWCP accepted the claim for a left biceps tendon rupture and left supraspinatus sprain. It paid appellant wage-loss compensation on the supplemental rolls commencing June 2, 2014.

On July 11, 2014 appellant underwent OWCP-authorized arthroscopic left rotator cuff repair with subacromial decompression, performed by Dr. John Sonnenberg, a Board-certified orthopedic surgeon. OWCP placed her on the periodic rolls, effective July 27, 2014.

On March 27, 2015 appellant underwent OWCP-authorized repeat left shoulder arthroscopy, repair of anterior portion of rotator cuff, and biceps tenotomy and tenodesis, performed again by Dr. Sonnenberg. She remained off work.

In a March 21, 2016 report, Dr. Sonnenberg opined that appellant had attained maximum medical improvement (MMI). He returned appellant to light-duty work with permanent restrictions, limiting occasional lifting to 13 pounds below waist level and 8 pounds above shoulder level.

Appellant returned to full-time modified-duty work on April 5, 2016.

On April 7, 2016 appellant filed a claim for a schedule award (Form CA-7) due to her accepted employment conditions.

In a development letter dated April 12, 2016, OWCP requested an impairment rating based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[3] which provided appropriate measurements, findings, and a recommended percentage of permanent impairment of the affected member or members. It afforded 30 days for appellant to submit the requested evidence.

In response, appellant submitted a March 30, 2016 duty status report (Form CA-17) by Dr. Sonnenberg, noting work restrictions.

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

By decision dated May 16, 2016, OWCP denied appellant's schedule award claim, finding that appellant had not submitted an impairment rating from her physician utilizing the A.M.A., *Guides*.

On May 31, 2016 appellant requested reconsideration. She submitted a March 3, 2016 impairment rating by Dr. Robert J. Strugala, Board-certified in sports medicine. Dr. Strugala noted appellant's history of injury and treatment. On examination, he observed shoulder flexion bilaterally to 160 degrees, active shoulder extension bilaterally to 40 degrees, left shoulder abduction to 150 degrees, active right shoulder abduction to 170 degrees, bilateral active shoulder adduction to 40 degrees, internal shoulder rotation to 80 degrees bilaterally, active shoulder external rotation to 50 degrees on the left and 60 degrees on the right, a painful reproducible click with passive left shoulder motion, and moderate weakness with left shoulder abduction and external rotation. Dr. Strugala noted that a left shoulder magnetic resonance imaging (MRI) scan demonstrated a full-thickness tear of the supraspinatus tendon with retraction to the level of the mid humeral head, fatty atrophy of the supraspinatus muscle, a partial tear of the infraspinatus tendon with tendinopathy, and that the longhead biceps tendon was not identified in the groove status post tenodesis. He assessed a *Quick*DASH score of 52.3. Dr. Strugala diagnosed a full-thickness rotator cuff tear status post repair. Referring to the A.M.A., *Guides*, he assigned a class of diagnosis (CDX) 1, grade C, with a default value of five percent. The grade modifier for functional history (GMFH) was 2 for pain with normal activities and a *Quick*DASH score of 52. The grade modifier for physical examination (GMPE) was 2 for reproducible clicking on examination and mild-to-moderate motion restriction from the contralateral shoulder. The grade modifier for clinical studies (GMCS) was 2 based on the rotator cuff tear demonstrated by the January 15, 2016 MRI scan. Applying the net adjustment formula, Dr. Strugala calculated a net modifier of +3, raising the default grade of C upward to grade E, to equal seven percent permanent impairment of the left upper extremity.

On September 7, 2016 OWCP referred the medical record, a statement of accepted facts (SOAF), and Dr. Strugala's impairment rating to Dr. James W. Butler, a Board-certified occupational medicine physician who served as an OWCP district medical adviser (DMA). In a September 27, 2016 report, Dr. Butler reviewed the medical record and SOAF. He concurred with Dr. Strugala's determination that appellant had attained MMI and his calculation of seven percent permanent impairment of the left upper extremity.

By decision dated October 17, 2016, OWCP granted appellant a schedule award for seven percent permanent impairment of the left upper extremity. The award ran for 15.28 weeks, for the period April 5 through September 4, 2016.[4]

On December 29, 2017 appellant claimed an additional schedule award (Form CA-7). In support of her claim, she submitted a September 28, 2017 impairment rating by Dr. Neil Allen, Board-certified in neurology and internal medicine. Dr. Allen provided a history of injury and treatment. He opined that appellant had attained MMI. On examination of the left shoulder, Dr. Allen observed well-healed surgical scars, and mild crepitus with passive range of motion. He noted the following range of left shoulder motion based on the highest of three trials: 150 degrees

[4] By decision dated December 2, 2016, OWCP determined that appellant had no loss of wage-earning capacity based on her actual earnings since her return to full-time work on April 5, 2016.

flexion; 50 degrees extension; 120 degrees abduction; 60 degrees adduction; 50 degrees internal rotation; 80 degrees external rotation. Dr. Allen also noted the following range of motion for the right, unaffected shoulder: 140 degrees flexion; 50 degrees extension; 150 degrees abduction; 70 degrees adduction; 20 degrees internal rotation; 70 degrees external rotation. He referred to Table 15-34, page 475 of the A.M.A., *Guides* (Shoulder Range of Motion), and calculated an impairment rating based on the ROM method. Dr. Allen found three percent upper extremity for flexion at 150 degrees, three percent impairment for abduction at 120 degrees, and two percent impairment for internal rotation at 50 degrees. He added these impairments to equal an eight percent permanent upper extremity impairment. Dr. Allen found a grade modifier of 1 for range of motion according to Table 15-35, page 477 (Range of Motion Grade Modifiers), a GMFH of 2 for pain with normal activity, a *Quick*DASH score of 75, and ability to perform self-care activities with modification, but unassisted. Dr. Allen concluded that appellant had eight percent permanent impairment of the left upper extremity.

On January 16, 2019 OWCP referred the medical record, an updated SOAF, and Dr. Allen's impairment rating to Dr. Butler for calculation of the appropriate percentage of permanent impairment. In a February 28, 2019 report, Dr. Butler reviewed Dr. Allen's impairment rating and opined that appellant had not sustained greater than the seven percent permanent impairment previously awarded as the maximum diagnosis-based impairment (DBI) for a full-thickness rotator cuff tear was seven percent. He noted that appellant's condition had not changed significantly from his September 27, 2016 review. Dr. Butler explained that according to Section 15.7a, page 461 of the A.M.A., *Guides* (Clinical Measurements of Motion), a ROM rating was inappropriate as the range of motion compared to the contralateral side differed by only two percent.

By decision dated March 19, 2019, OWCP determined that appellant had not met her burden of proof to establish greater than seven percent permanent impairment of her left upper extremity for which she previously received a scheduled award. It based its determination on Dr. Butler's review of Dr. Allen's clinical findings.

On April 18, 2019 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She submitted an April 8, 2019 impairment rating by Dr. Allen based on the DBI rating method. Referring to Table 15-5, page 403 of the A.M.A., *Guides* (Shoulder Regional Grid), Dr. Allen found a CDX of 1 for a full-thickness rotator cuff tear, with a default value of five percent. He assessed a GMFH of 2 for a *Quick*DASH score of 75, pain with normal activity, and the ability to perform self-care with modification, but unassisted, a GMPE of 1 for mild palpatory findings and mild motion deficits, and a GMCS of 2 for a full-thickness postoperative tear visible on MRI scan. Applying the net adjustment formula, (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), or (2-1) + (1-1) + (2-1) resulted in a net modifier of +2, raising the default CDX from five to seven percent. Dr. Allen concluded that appellant therefore had seven percent permanent impairment of the left upper extremity.

By decision dated August 16, 2019, OWCP determined that appellant had not met her burden of proof to establish greater than seven percent permanent impairment of her left upper extremity for which she previously received a scheduled award. The hearing representative based

the determination on Dr. Allen's April 8, 2019 impairment rating, which found seven percent permanent impairment of the left upper extremity, equal to that previously paid.

LEGAL PRECEDENT

The schedule award provisions of FECA,[5] and its implementing federal regulations,[6] 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 appropriate standard applicable to all claimants.[7] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[8]

In addressing upper extremity impairments, the sixth edition requires identification of the impairment CDX condition, which is then adjusted by grade modifiers or GMFH, GMPE, and GMCS.[9] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[10]

OWCP's 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 permanent impairment in accordance with the A.M.A., *Guides*.[11]

ANALYSIS

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

OWCP accepted appellant's traumatic injury claim for a left biceps tendon rupture and left supraspinatus sprain. It authorized arthroscopic rotator cuff repair performed on July 11, 2014 and March 27, 2015.

Appellant filed a schedule award claim on April 7, 2016. On October 17, 2016 OWCP granted appellant a schedule award for seven percent permanent impairment of the left upper

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id*. *See also T.T.*, Docket No. 18-1622 (issued May 14, 2019).

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

[9] A.M.A., *Guides* 383-492.

[10] *Id*. at 411.

[11] *Supra* note 8 at Chapter 2.808.6(e) (March 2017); *see also A.K.*, Docket No. 19-1927 (issued March 31, 2021); *K.S.*, Docket No. 20-1397 (issued March 19, 2021); *Tommy R. Martin*, 56 ECAB 273 (2005).

extremity, based on Dr. Strugala's March 3, 2016 impairment rating as reviewed by Dr. Butler, a DMA.

On December 29, 2017 appellant claimed an additional schedule award, based on a September 18, 2017 impairment rating by Dr. Allen utilizing the ROM rating method. Dr. Butler reviewed Dr. Allen's report on February 28, 2019 and opined that a ROM rating was inappropriate, and that there was no indication of additional impairment. OWCP denied the claim by March 19, 2019 decision, based on Dr. Butler's opinion.

Appellant, through counsel, requested a review of the written record by an OWCP hearing representative. She submitted an April 8, 2019 impairment rating by Dr. Allen based on the DBI rating method. OWCP then issued its August 16, 2019 decision, in which the hearing representative found that Dr. Allen's April 8, 2019 report did not indicate an increased impairment of the left upper extremity. The hearing representative did not, however, provide a copy of Dr. Allen's report to an OWCP DMA prior to making the determination. As noted, if the claimant's physician provides an impairment evaluation, the case should be referred to an OWCP medical adviser for review.[12] OWCP procedures provide that an OWCP medical adviser should verify the calculations of the attending physician and determine the percentage of permanent impairment according to the sixth edition of the A.M.A., *Guides*.[13]

Consequently, the Board finds that further development of the medical evidence is required to determine the extent of appellant's permanent impairment for schedule award purposes.[14] After such further development as deemed necessary, it shall issue a *de novo* merit decision.

CONCLUSION

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

[12] *V.B.*, Docket No. 17-1326 (issued October 19, 2017).

[13] *Id.*

[14] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2019 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: July 8, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board