United States Department of Labor
Employees' Compensation Appeals Board

A.T., Appellant	)	
and	)	**Docket No. 20-0370**
	)	**Issued: September 27, 2021**
U.S. POSTAL SERVICE, CHICAGO BULK MAIL CENTER, Chicago, IL Employer	)	

Appearances:
Appellant, pro se
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 December 3, 2019 appellant filed a timely appeal from an October 30, 2019 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 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 August 22, 2002 appellant, then a 36-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that, on August 21, 2002, she developed severe left elbow pain when

[1] 5 U.S.C. § 8101 *et seq*.

throwing skids of mail while in the performance of duty. She returned to light-duty work on August 22, 2002. On August 4, 2003 OWCP accepted appellant's claim for left arm tendinitis.[2]

On April 7, 2004 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated September 3, 2004, OWCP granted appellant a schedule award for seven percent permanent impairment of the left upper extremity.

On June 13, 2019 appellant filed a claim for an additional schedule award (Form CA-7).

In a June 24, 2019 development letter, OWCP informed appellant that additional evidence was needed to establish her additional schedule award claim. It advised her of the type of medical evidence necessary and afforded her 30 days to respond.

In a report dated July 22, 2019, Dr. David Barnes, a Board-certified family practitioner, diagnosed left medial epicondylitis. He noted appellant's surgery and reported that she was experiencing a loss of function due to muscle atrophy and weakness. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[3] Dr. Barnes found that, under Table 15-4, page 399, appellant's diagnosis was consistent with status post-surgical release of flexor or extensor origins with residual symptoms, which is a class of diagnosis (CDX) of 1, with a default value of 5. He further found: a grade modifier for functional history (GMFH) of 3 (severe) as defined on page 406, Table 15-7 of the A.M.A., *Guides*; a grade modifier for physical examination (GMPE) of 1 (mild decreased from uninjured side) in accordance with page 408, Table 15-8; and a grade modifier for clinical studies (GMCS) of 2, moderate pathology as found on page 410, Table 15-9 of that A.M.A., *Guides*. Dr. Barnes applied the net adjustment formula from page 411 of the A.M.A., *Guides* to reach a final rating of seven percent permanent impairment of the left upper extremity.

Dr. Barnes also calculated appellant's loss of range of motion (ROM) of the left elbow, finding that she exhibited 2 degrees of elbow extension and 78 degrees of elbow supination by averaging three repetitions. He applied page 474, Table 15-33, of the A.M.A., *Guides*, to determine that appellant had no permanent impairment due to loss of extension, no permanent impairment due to loss of supination, and no permanent impairment based on loss of ROM.

On September 11, 2019 OWCP referred the medical evidence, including Dr. Barnes' July 22, 2019 report, and a statement of accepted facts (SOAF) to Dr. Jovito Estaris, a physician Board-certified in occupational medicine serving as an OWCP district medical adviser (DMA). In a September 29, 2019 report, Dr. Estaris found that the GMFH applied by Dr. Barnes was more than two grades higher than that of GMPE, rendering it unreliable and excluding it from the net adjustment formula in accordance with page 406 of the A.M.A., *Guides*. He applied the amended net adjustment formula and determined that appellant had no more than five percent permanent

[2] On September 24, 2003 appellant underwent a left elbow medial epicondylectomy and debridement of the medial epicondyle.

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

impairment of the left upper extremity. The DMA further determined that appellant had no permanent impairment due to loss of range of motion and, as such, the diagnosis-based impairment rating was appropriate.

By decision dated October 30, 2019, OWCP found that appellant had not met her burden of proof to establish greater than seven percent permanent impairment of her right upper extremity for which she had previously received a schedule award.

LEGAL PRECEDENT

The schedule award provisions 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 sixth edition of the A.M.A., *Guides*, published in 2009.[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 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 the GMFH, GMPE, and GMCS.[9] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10] 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 provides that the ROM impairment method is to be used as a stand-alone rating for upper extremity impairment when other grids direct its use or when no other

[4] *Supra* note 2 at 8107.

[5] 20 C.F.R. § 10.404.

[6] For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* (2009) is used. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* 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] *See* A.M.A., *Guides* (6th ed. 2009), at 3, section 1.3.

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

[10] *Id.* at 411.

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

diagnosis-based sections are applicable.[12] 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.[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 in pertinent part that: "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*." (Emphasis in the original.)[15]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.[16]

ANALYSIS

The Board finds that appellant has 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 schedule award.

In his July 22, 2019 report, Dr. Barnes opined that appellant had seven percent permanent impairment of the left upper extremity based on the DBI methodology set forth in the sixth edition of the A.M.A., *Guides*. He also used the ROM methodology of the sixth edition of the A.M.A., *Guides* and found that, in accordance with this methodology, she had no permanent impairment of the left upper extremity. Dr. Barnes' impairment rating did not exceed that previously received by appellant on September 3, 2004. Therefore, his July 22, 2019 report does not support that appellant is entitled to greater left upper extremity permanent impairment than was previously awarded. Furthermore, Dr. Barnes' DBI evaluation of appellant's permanent impairment was inconsistent with the sixth edition of the A.M.A., *Guides* as he did not exclude the GMFH, which was unreliable in accordance with the A.M.A., *Guides*, page 406 and, thus, excluded from the net

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

[13] *Id*. at 473.

[14] *Id*. at 474.

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

[16] *Id*.

adjustment formula. The Board, therefore, finds that Dr. Barnes' report lacks probative value and is insufficient to establish appellant's claim for an additional schedule award.[17]

The DMA, Dr. Estaris, reviewed Dr. Barnes' July 22, 2019 report and determined that it provided sufficient findings, but an incorrect application of the A.M.A., *Guides*. He applied the appropriate tables and pages in the A.M.A., *Guides* and found that appellant had five percent permanent impairment of the left upper extremity based upon the DBI rating method.

The Board finds that the DMA's opinion constitutes the weight of the medical evidence.[18] The Board further finds that there is no current medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant has greater than seven percent permanent impairment of the left upper extremity. Accordingly, appellant has not established entitlement to a schedule award greater than that previously awarded.[19]

Appellant may request a schedule award or increased schedule award at any time based on evidence of 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 seven percent permanent impairment of her left upper extremity for which she previously received a schedule award.

[17] *L.C.*, Docket No. 19-0564 (issued September 16, 2019).

[18] *See K.A.*, Docket No. 20-1463 (issued March 16, 2021); *O.F.*, Docket No. 19-0986 (issued February 12, 2020); *M.C.*, Docket No. 15-1757 (issued March 17, 2016) (the only medical evidence that demonstrated a proper application of the A.M.A., *Guides* was the report of the DMA).

[19] *D.L.* Docket No. 20-1016 (issued December 8, 2020); *J.K.*, Docket No. 19-1420 & 19-1422 (issued August 12, 2020).

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 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