United States Department of Labor
Employees' Compensation Appeals Board

J.P., Appellant	)	
and	)	**Docket No. 22-0196**
	)	**Issued: June 8, 2022**
U.S. POSTAL SERVICE, DOWNTOWN SAN DIEGO POST OFFICE, San Diego, CA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On November 12, 2021 appellant filed a timely appeal from an August 31, 2021 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 August 31, 2021 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 greater than four percent permanent impairment of the left upper extremity for which she previously received a schedule award.

FACTUAL HISTORY

On October 25, 2018 appellant, then a 53-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 23, 2018 she injured her back, shoulders, neck, hands, right wrist, chest, and right buttocks when she fell backwards with a dolly she was tilting while in the performance of duty. OWCP accepted the claim for an aggravation of preexisting adhesive capsulitis of the left shoulder.[3] It subsequently expanded its acceptance of the claim to include an incomplete rotator cuff tear or rupture of the left shoulder, not specified as traumatic, right arm strain, neck strain, and lumbar sprain. Following her injury, appellant performed limited-duty work. OWCP paid her wage-loss compensation for intermittent disability from work for medical treatment.

A magnetic resonance imaging (MRI) scan of the left shoulder, obtained on March 15, 2019, revealed a small partial tear of the supraspinatus tendon and mild tendinosis of the long biceps tendon.

On August 12, 2019 Dr. David G. Smith, a Board-certified orthopedic surgeon, performed a left shoulder manipulation to treat severe adhesive capsulitis. Appellant returned to her date-of-injury position on January 22, 2020.

In a report dated July 15, 2020, Dr. Smith advised that appellant was status post left shoulder manipulation for adhesive capsulitis and status post right shoulder strain and cervical and lumbar strains due to her employment duties. He measured range of motion (ROM) of the shoulders, elbows, and wrists, and found full motor strength of the upper extremities. Referencing the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[4] Dr. Smith found no cervical or lumbar impairment, no permanent impairment of the right upper extremity, and seven percent permanent impairment of the left upper extremity due to loss of ROM of the shoulder.

In a letter dated September 17, 2020, OWCP requested that Dr. Smith provide an impairment evaluation in accordance the sixth edition of the A.M.A., *Guides*.[5] It advised that he should rate any impairment using both the diagnosis-based impairment (DBI) method and ROM

[3] OWCP had previously accepted that on February 14, 2011 appellant sustained a contusion of the face, scalp, and neck, bilateral wrist sprain, back sprain, bilateral knee and leg sprain, right ankle sprain, and unspecified dyschromia, assigned OWCP File No. xxxxxx428. It has not administratively combined this file with OWCP File No. xxxxxx828, the one currently on appeal.

[4] A.M.A., *Guides* (5th ed. 2001).

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

method, where applicable. OWCP added that, in situations where both methods were applied to calculate an impairment rating, "the method using the higher rating should be used."

On October 9, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On May 12, 2021 OWCP referred appellant to Dr. William P. Curran, Jr., a Board-certified orthopedic surgeon, for a second opinion examination regarding the extent of any employment-related permanent impairment.

In a report dated July 26, 2021, Dr. Curran discussed appellant's complaints of stiffness and pain in her cervical spine and noted that she was currently undergoing physical therapy for her neck. He indicated that she had bilateral stiffness and pain in the shoulders that increased with activity and bilateral pain and weakness in the lower extremities. On examination Dr. Curran found a positive impingement test of the shoulders and measured ROM of the bilateral shoulders three times with maximum measurements for flexion of 170 degrees on the right and 180 degrees on the left, abduction of 170 degrees on the right and 180 degrees on the left, adduction of 40 degrees bilaterally, extension of 40 degrees bilaterally, external rotation of 70 degrees bilaterally, and internal rotation of 60 degrees bilaterally. He further measured ROM for the elbows and wrists. Dr. Curran found a negative Tinel's sign, Phalen's test of the wrists, and a positive Finkelstein's test bilaterally. He diagnosed resolved cervical and lumbar strains/sprains, a resolved right shoulder contusion, and minimally symptomatic postoperative manipulation of the left shoulder for adhesive capsulitis. Dr. Curran opined that appellant had reached maximum medical improvement (MMI) on January 22, 2020.

Referencing Table 15-5 on page 405 of the sixth edition of A.M.A., *Guides*, Dr. Curran identified the class of diagnosis (CDX) using the diagnosis-based impairment (DBI) method as class 1 post-traumatic degenerative joint disease (adhesive capsulitis), which yielded a default impairment value of five percent. He applied a grade modifier for functional history (GMFH) of two for pain and stiffness, a grade modifier for physical examination (GMPE) of one for tenderness without spams and slightly reduced motion and found a grade modifier for clinical studies (GMCS) was inapplicable as there were no post-surgical studies. Dr. Curran found an adjustment of one after application of the net adjustment formula, for seven percent permanent impairment of the left upper extremity.

Applying the ROM method set forth at Table 15-34 on page 475 of the A.M.A., *Guides*, Dr. Curran found 180 degrees flexion yielded no impairment, 40 degrees extension yielded one percent impairment, 180 degrees abduction yielded no impairment, 40 degrees adduction yielded no impairment, 70 degrees internal rotation yielded two percent impairment, and 60 degrees external rotation yielded no impairment, for a total impairment due to loss of ROM of three percent. As the DBI method provided the higher rating, he concluded that appellant had seven percent permanent impairment of the left upper extremity. Dr. Curran found that she had no ratable impairment of the cervical spine, lumbar spine, or right shoulder.

On August 24, 2021 Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), found that appellant had no impairment using the ROM method as the motion was "symmetric side to side." He identified the CDX as impingement

syndrome using Table 15-5 on page 402, which yielded a default impairment of three percent. Dr. Hammel applied a GMFH of two, and a GMPE of one, and determined that a GMCS was not applicable, which yielded a net adjustment of one, for a total four percent permanent impairment of the left upper extremity. He noted that the A.M.A., *Guides* required asymmetric ROM loss compared to the uninjured member. Dr. Hammel disagreed with Dr. Curran's rating of appellant's impairment using the CDX of post-traumatic degenerative joint disease, as it required "asymmetric arthritic changes noted on imaging," which he found were not available.

By decision dated August 31, 2021, OWCP granted appellant a schedule award for four percent permanent impairment of the left upper extremity. The period of the award ran for 12.48 weeks from July 26 to October 21, 2021.

LEGAL PRECEDENT

The schedule award provisions of FECA,[6] and its implementing federal regulations,[7] 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 way 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.[8] 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.[9]

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): A Contemporary Model of Disablement*.[10] Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by GMFH, GMPE, and GMCS.[11] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12] Evaluators are

[6] *Supra* note 1.

[7] 20 C.F.R. § 10.404.

[8] 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 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

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

[10] A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3.

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

[12] *Id*. 411.

directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[13]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[14]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than four percent permanent impairment of the left upper extremity for which she previously received a schedule award.

In a July 15, 2020 impairment evaluation, Dr. Smith found that appellant had seven percent permanent impairment due to loss of ROM of the shoulder pursuant to the fifth edition of the A.M.A., *Guides*. However, since he utilized the fifth edition of the A.M.A., *Guides* in reaching his impairment rating, instead of the sixth edition, and thus his opinion is of diminished probative value.[15]

On July 26, 2021 Dr. Curran, an OWCP referral physician, found that appellant had bilateral pain and stiffness of the shoulders and a positive impingement test on examination. He measured ROM of the bilateral shoulders, elbows, and wrists. Dr. Curran diagnosed resolved cervical and lumbar strains/sprains, a resolved right shoulder contusion, and minimally symptomatic postoperative manipulation of the left shoulder for adhesive capsulitis. He determined that appellant had three percent permanent impairment of the left upper extremity due to loss of ROM, finding that 40 degrees extension yielded one percent impairment and 60 degrees internal rotation yielded two percent impairment, according to Table 15-35 on page 477 of the A.M.A., *Guides*. In rating appellant's impairment using the DBI method, Dr. Curran found a CDX of class 1 post-traumatic degenerative joint disease, which yielded a default value of five percent. He applied a GMFH of two, a GMPE of one, and found a GMCS was not applicable. However, a CDX for post-traumatic joint disease under Table 15-5 requires asymmetric arthritic change noted on imaging.[16] Dr. Curran did not rely upon imaging studies in rating appellant's impairment due to post-traumatic joint disease and, thus, his opinion is not in accordance with the A.M.A., *Guides*.[17]

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

[14] *See supra* note 8 at Chapter 2.808.6(f). *See also J.T.*, Docket No. 17-1465 (issued September 25, 2019); *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

[15] *See W.H.*, Docket No. 20-0562 (issued August 6, 2020); *S.J.*, Docket No. 16-1162 (issued February 8, 2017).

[16] A.M.A., *Guides* 405, Table 15-5.

[17] *See S.M.*, Docket No. 20-1667 (issued June 24, 2021); *N.A.*, Docket No. 19-0248 (issued May 17, 2019).

Dr. Hammel, the DMA, reviewed Dr. Curran's report and identified the CDX under Table 15-5 on page 402 of the A.M.A., *Guides* as impingement syndrome, which yielded a default value of three percent. He applied the same grade modifiers as found by Dr. Curran of a GMFH of two, a GMPE of one, and determined that a GMCS was not applicable. Dr. Hammel found a net adjustment of one, resulting in a four percent permanent impairment of the left upper extremity.[18] Regarding ROM, he noted that the loss for the left upper extremity was symmetrical with the right side.[19] Additionally, the Board notes that the impairment due to loss of ROM found by Dr. Curran was less than that found by the DMA using the DBI method.[20] The Board finds that the evidence supports that appellant has no more than four percent permanent impairment of the left upper extremity.

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 four percent permanent impairment of the left upper extremity for which she previously received a schedule award.

[18] Utilizing the net adjustment formula discussed above, (GMFH - CDX) + (GMPE - CDX), or (2 - 1) + (1 - 1) = 1, yielded a net adjustment of one.

[19] The A.M.A., *Guides* at page 461 provides that if the opposite extremity is not involved or previously injured, it "must be used to define normal for that individual; any losses should be made in comparison to the opposite normal extremity."

[20] If more than one method is available to rate a particular impairment condition, the method producing the higher rating must be used. A.M.A., *Guides* 20; Table 2-1; *see D.C.*, Docket No. 20-1655 (issued August 9, 2021).

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board