United States Department of Labor
Employees' Compensation Appeals Board

M.J., Appellant	)	
and	)	**Docket No. 22-0685**
	)	**Issued: November 17, 2022**
U.S. POSTAL SERVICE, SOUNDVIEW STATION POST OFFICE, Bronx, NY, 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 March 17, 2022 appellant filed a timely appeal from a February 8, 2022 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 five percent permanent impairment of his left upper extremity for which he previously received a schedule award.

FACTUAL HISTORY

On June 9, 2003 appellant, then a 46-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 6, 2003 he pulled a left chest muscle and experienced sharp pain in his chest and left shoulder when he made a left turn while driving his vehicle, in the

[1] 5 U.S.C. § 8101 *et seq*.

performance of duty. He stopped work on June 6, 2003. OWCP accepted the claim for sprain of shoulder and upper arm, unspecified site, left; other affections of shoulder region not elsewhere classified; and left shoulder impingement. It initially paid appellant wage-loss compensation on the supplemental rolls, effective July 22, 2003, and then on the periodic rolls effective October 5, 2003.

On December 2, 2003 appellant underwent OWCP-authorized left shoulder arthroscopy and subacromial decompression and debridement of labrum, biceps, and rotator cuff. His postoperative diagnoses were listed as left shoulder impingement syndrome with labral tear, biceps fraying, and partial tear of the rotator cuff. Appellant returned to work on August 5, 2004.

In a September 29, 2020 report, Dr. Joshua B. Macht, Board-certified in internal medicine, noted appellant's history of injury and medical treatment. He referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[2] and determined that, using the class of diagnosis (CDX) of left rotator cuff injury with partial thickness tear, appellant met the criteria for a Class 1 impairment of the left upper extremity using the diagnosed-based impairment (DBI) method at Table 15-5, page 402. Dr. Macht noted that appellant completed the *Quick*DASH questionnaire with a score of 64 out of 100 for the left upper extremity and determined that this represented a grade modifier for functional history (GMFH) of 3, according to Table 15-7, page 406. He also noted that appellant met the criteria for a grade modifier for physical examination (GMPE) according to Table 15-8, page 408; however, he explained that, since his GMFH was 2 higher than his GMPE, it could not be used for grade modification. Dr. Macht also explained that the grade modifier for clinical studies (GMCS) could not be used because the clinical studies defined his CDX. He referred to Table 15-5, page 402, and opined that appellant had a Class 1, grade C impairment, which was equivalent to three percent permanent impairment of the left upper extremity, under the DBI methodology of rating permanent impairment.

Dr. Macht also utilized the range of motion (ROM) method, provided three sets of measurements, and referred to Table 15-34, page 475. Regarding the left shoulder, he reported findings of flexion 160/160/155 degrees, extension 60/60/60 degrees, abduction 167/165/155 degrees, adduction 15/12/10 degrees, external rotation 74/74/70 degrees, and internal rotation 75/72/72 degrees. Dr. Macht opined that appellant met the criteria for four percent impairment of the left upper extremity due to limitations in flexion and adduction. He referred to Table 15-35, page 477, and explained that this represented a ROM GMPE of 1. Dr. Macht also referred to Table 15-36, page 477, and explained that, since the GMFH is higher than the ROM score, appellant's total impairment was increased by a margin of 10 percent. He opined that appellant had a 4.4 percent impairment using the ROM method, which rounded down to 4 percent permanent impairment of the left upper extremity.

Dr. Macht explained, "Since the diagnosis-based impairment model and the range of motion model both yield the same impairment figure, either model is appropriate to be used for defining his impairment." He opined that appellant had four percent permanent impairment of the

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

left upper extremity due to his left shoulder condition.[3] Dr. Macht further opined that appellant reached maximum medical improvement (MMI) prior to his evaluation on September 22, 2020.

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

In a development letter dated November 30, 2020, OWCP requested that appellant submit a permanent impairment rating based on the sixth edition of the A.M.A., *Guides*, which addressed whether appellant had reached maximum medical improvement, indicated the diagnosis on which the impairment as based, and provided appropriate measurements, findings, as well as a recommended percentage of permanent impairment of the affected member or members. It afforded appellant 30 days to submit the requested evidence.

On December 1, 2020 appellant filed a claim for Form CA-7 for a schedule award.

On January 12, 2022 OWCP prepared a statement of accepted facts (SOAF), noting the accepted condition as left shoulder impingement. It noted that appellant underwent left shoulder arthroscopy and subacromial decompression and debridement of the labrum, biceps, and rotator cuff. OWCP also noted that he stopped work on June 6, 2003 and returned to work on August 5, 2004. It referred the case record to Dr. Morley Slutsky, a Board-certified orthopedic surgeon serving as the OWCP district medical adviser (DMA), for review. In the referral letter, OWCP indicated that the accepted conditions were sprain of the left shoulder and upper arm, unspecified site, and other affections of the left shoulder, not otherwise classified.

In a January 23, 2022 report, Dr. Slutsky related that, according to the SOAF, OWCP had accepted the claim for sprain of the left shoulder and upper arm, unspecified site, other affections of the left shoulder, not elsewhere classified. He also noted that on December 2, 2003 appellant's left shoulder was diagnosed with impingement syndrome, labral tear, biceps fraying, and partial tear of the rotator cuff. Appellant underwent an arthroscopy, subacromial decompression, and debridement of the labrum and biceps, as well as the rotator cuff. Dr. Slutsky reviewed Dr. Macht's impairment rating and found that appellant had reached MMI on September 22, 2020, the date of Dr. Macht's impairment evaluation. He referred to the sixth edition of the A.M.A., *Guides* in determining the CDX, appellant's partial-thickness rotator cuff tear with residual dysfunction in the left shoulder region. The DMA opined that the CDX resulted in a Class 1 impairment with a default value of 5, according to Table 15-5 (Shoulder Regional Grid), page 401-405. He determined that the GMFH was deemed unreliable, according to page 406 of the A.M.A., *Guides*, as the *Quick*DASH score of 64 percent equaled a grade modifier of 3 which was 2 grade modifiers greater than the GMPE of 1. Regarding the GMCS, the DMA assigned a GMCS of 4, based upon the magnetic resonance imaging scan which showed acromioclavicular joint hypertrophic changes and down sloping acromion, supraspinatus tendinosis, and tendinopathy with partial tears. He utilized the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), and calculated (unreliable) + (1-1) + (4-1) = 3, which resulted in moving 2 grades to the right of the default grade C, for a final grade of E or 5 percent permanent impairment of the left upper extremity, according to Table 15-5, page 401-405. The DMA noted that the A.M.A., *Guides*, Table 15-5, page 301-405, allowed for utilization of the ROM method for appellant's left

[3] Dr. Macht also provided an impairment rating of two percent for the right knee.

shoulder condition; however, he found that the DBI method yielded the higher rating of five percent permanent impairment of the left upper extremity.

By decision dated February 8, 2022, OWCP granted appellant a schedule award for five percent permanent impairment of the left upper extremity. The award ran for 15.6 weeks for the period September 22, 2020 through January 9, 2021.

LEGAL PRECEDENT

The schedule award provisions of FECA[4] and its implementing 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. 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[6] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.[7] 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.[8]

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

The A.M.A., *Guides* also provide that ROM impairment methodology is to be used as a stand-alone rating for upper extremity impairments when other grids direct its use or when no other DBI sections are applicable.[11] 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.[12] Adjustments for functional history may be made if the evaluator determines that the

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id. See K.R.*, Docket No. 21-0247 (issued February 25, 2022); *see also Ronald R. Kraynak*, 53 ECAB 130 (2001).

[7] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *id.* at Chapter 2.808.5a (March 2017).

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

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

[10] *Id.* at 411.

[11] *Id.* at 461.

[12] *Id.* at 473.

resulting impairment does not adequately reflect functional loss and functional reports are determined to be reliable.[13]

OWCP issued FECA Bulletin No. 17-06 to explain the use of the DBI methodology *versus* the ROM methodology for rating of upper extremity impairments.[14] Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides in pertinent part:

> "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]

The Bulletin further advises:

> "If the rating physician provided an assessment using the ROM method and the [A.M.A.,] *Guides* allow for use of ROM for the diagnosis in question, the DMA should independently calculate impairment using both the ROM and DBI methods and identify the higher rating for the [claims examiner] CE."[16]

The Board has held that where the residuals of an injury to a member of the body specified in the schedule award provisions of FECA[17] extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, or a hand into the arm, or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member.[18]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[19]

---

[13] *Id.* at 474.

[14] FECA Bulletin No. 17-06 (issued May 8, 2017).

[15] A.M.A., *Guides* at 477.

[16] FECA Bulletin No. 17-06 (May 8, 2017); *V.L.*, Docket No. 18-0760 (issued November 13, 2018); *A.G.*, Docket No. 18-0329 (issued July 26, 2018).

[17] 5 U.S.C. § 8107.

[18] *C.W.*, Docket No. 17-0791 (issued December 14, 2018); *Asline Johnson*, 42 ECAB 619 (1991); *Manuel Gonzales*, 34 ECAB 1022 (1983). *See supra* note 7 at Chapter 2.808.5(e) (March 2017).

[19] *See supra* note 7 at Chapter 2.808.6(f) (March 2017); *see D.J.*, Docket No. 19-0352 (issued July 24, 2020).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than five percent permanent impairment of his left upper extremity, for which he previously received a schedule award.

In support of his claim, appellant submitted a September 29, 2020 report from Dr. Macht, who opined that appellant had three percent permanent impairment of the left upper extremity using the DBI method and four percent permanent impairment of the left upper extremity using the ROM method.

The Board finds that OWCP properly routed Dr. Macht's report to Dr. Slutsky, the DMA, for review.[20]

In his January 23, 2022 report, Dr. Slutsky reviewed the SOAF and medical evidence and noted that appellant had reached MMI on September 22, 2020, the date of Dr. Macht's evaluation. He applied the DBI method and determined that the CDX, appellant's partial thickness rotator cuff tear with residual dysfunction in the left shoulder, resulted in a Class 1, grade C impairment, with a default value of five percent impairment, under Table 15-5, page 402. Dr. Slutsky assigned a GMPE of 1 under Table 15-8, page 408, and a GMCS of 4, under Table 15-9, page 410. He noted that the GMFH was deemed unreliable, according to page 406 of the A.M.A., *Guides*, as the *Quick*DASH score of 64 percent equaled a grade modifier of 3, which was 2 grade modifiers greater that the GMPE of 1. Dr. Slutsky applied the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (unreliable) + (1-1) + (4-1) = 3, which resulted in moving 2 grades to the right of the default grade C for a final grade of E or 5 percent permanent impairment of the left upper extremity. He noted that the impairment rating of five percent using the DBI method yielded a higher result than the four percent impairment rating using the ROM method.

The Board finds that Dr. Slutsky properly applied DBI rating method under the standards of the sixth edition of the A.M.A., *Guides* to determine that appellant had five percent permanent impairment of his left upper extremity. There is no other current medical evidence in conformance with the sixth edition of the A.M.A., *Guides* establishing greater than five percent permanent impairment of the left upper extremity. Accordingly, appellant has not met his burden of proof to establish greater than five percent permanent impairment of his left upper extremity, for which he previously received a schedule award.

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 permanent impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than five percent permanent impairment of his left upper extremity, for which he previously received a schedule award.

[20] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 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