United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 23-0832**
	)	**Issued: December 27, 2023**
DEPARTMENT OF VETERANS AFFAIRS, JOSEPH MAXWELL CLELAND ATLANTA VA MEDICAL CENTER, Decatur, GA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On March 13, 2023 appellant, through counsel, filed a timely appeal from a February 23, 2023 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 one percent permanent impairment of her right upper extremity (right arm), for which she previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 7, 2020 appellant, then a 62-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on November 3, 2020 she sustained injuries to her right shoulder and arm when a coworker suddenly opened a door and hit her as she was leaving an office. OWCP accepted her claim for right shoulder contusion and cervical contusion. It subsequently expanded the acceptance of appellant's claim to include right shoulder incomplete rotator cuff tear and cervicalgia.

In a report dated June 2, 2022, Dr. Scott Gillogly, a Board-certified orthopedic surgeon, indicated that appellant sought treatment for complaints of periscapular paracervical myofascial pain, and intermittent numbness that went down to her elbows medially. On physical examination, he observed pain to palpation, with trigger points and spasm within the trapezius, rhomboids, and paracervical musculature. Examination of appellant's cervical spine demonstrated limited range of motion (ROM), particularly with lateral bend to the left and rotation. Dr. Gillogly reported good shoulder ROM. He diagnosed myofascial pain syndrome of the neck and thorax, partial thickness right rotator cuff tear, and shoulder pain. Dr. Gillogly opined that appellant had five percent whole person permanent impairment for the cervical spine, pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[2]

On June 22, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On September 23, 2022 OWCP referred appellant's case to Dr. Herbert White, Jr., a physician Board-certified in occupational medicine serving as an OWCP district medical adviser (DMA). In a September 30, 2022 report, Dr. White advised that the case record did not contain adequate physical examination findings upon which to base a permanent impairment rating.

On November 4, 2022 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF) and a series of questions, to Dr. Alexander Doman, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation. It requested that he provide an opinion on her upper extremity permanent impairment under the standards of the sixth edition of the A.M.A., *Guides*[3] and *The Guides Newsletter*, *Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*).

In a November 22, 2022 report, Dr. Doman described the November 3, 2020 employment injury and noted that appellant's claim was accepted for right shoulder contusion, cervical contusion, and incomplete right shoulder rotator cuff tear. On physical examination of appellant's cervical spine, he observed excellent ROM. ROM examination of her right shoulder, taken on three separate occasions, revealed forward flexion of 180 degrees, abduction of 180 degrees, and extension of 60 degrees. Dr. Doman reported normal muscle strength and no swelling. He

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

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

diagnosed right shoulder contusion with minimal interstitial partial tear of the rotator cuff, and opined that appellant's cervical contusion had resolved.

Dr. Doman referred to the sixth edition of the A.M.A., *Guides* and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 15-5 (Shoulder Regional Grid), page 402, the class of diagnosis (CDX) for right shoulder rotator cuff partial thickness tear resulted in a Class 1 impairment with a default value of one percent. He assigned a grade modifier for functional history (GMFH) of 1; a grade modifier for physical examination (GMPE) of 1; and a grade modifier for clinical studies (GMCS) of 1. Dr. Doman utilized the net adjustment formula, (GMFH – CDX) + (GMPE – CDX) + (GMCS – CDX) = (1 – 1) + (1 – 1) + (1 – 1) = 0, which resulted in no net adjustment. Regarding the ROM rating method, he performed three measurements and explained that it was not applicable as there was no loss of ROM of the right upper extremity. Dr. Doman also reported that there was no permanent impairment with respect to contusion of the cervical spine because there were no neurologic deficits. He reported that appellant reached maximum medical improvement (MMI) on November 22, 2022.

OWCP again referred appellant's case to Dr. White in his role as DMA and requested that he review Dr. Doman's November 22, 2022 report, and provide an opinion on the permanent impairment of her right upper extremity. In a December 11, 2022 report, Dr. White referenced the sixth edition of the A.M.A., *Guides* and utilized the DBI rating method to find that, under Table 15-5 (Shoulder Regional Grid), page 402, the CDX for right shoulder rotator cuff, partial thickness tear resulted in a Class 1 impairment with a default value of one percent. He assigned a GMFH of 1 and a GMPE of 0 due to normal examination. Dr. White indicated that a GMCS was not applicable. He utilized the net adjustment formula, (GMFH – CDX) + (GMPE – CDX) = (1 – 1) + (0 – 1) = -1, which resulted in a grade B or one percent permanent impairment of the right upper extremity. Under the ROM rating method, Dr. White referred to Table 15-34 (Shoulder Range of Motion) on page 475 and found zero percent permanent impairment for flexion of 180 degrees, extension of 60 degrees, abduction of 180 degrees, adduction of 40 degrees, internal rotation of 80 degrees, and external rotation of 60 degrees. As the DBI-rating method produced the higher impairment rating, he concluded that appellant had one percent permanent impairment of the right upper extremity. Regarding upper extremity impairment for the cervical nerve root, Dr. White indicated that she had zero percent permanent impairment for normal sensory and motor findings. He reported that appellant reached MMI on November 22, 2022.

By decision dated February 23, 2023, OWCP granted appellant a schedule award for one percent permanent impairment of the right upper extremity (right arm). The award ran for 3.12 weeks from November 22 through December 13, 2022 and was based on the November 22, 2022 report of Dr. Doman and the December 11, 2022 report of Dr. White.

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

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

loss or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage of loss of a member 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 uniform standard applicable to all claimants and the Board has concurred in such adoption.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.[7]

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated.[8] With respect to the shoulder, the relevant portion of the arm for the present case, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the CDX is determined from the Shoulder Regional Grid (including identification of the default grade value), the net adjustment formula is applied using GMFH, GMPE, and GMCS.[9] The net adjustment formula is (GMFH – CDX) + (GMPE – CDX) + (GMCS – CDX).[10] Under Chapter 2.3, 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 provide that the ROM impairment 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.[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 impairment 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

[6] *Id*. at § 10.404 (a); *see also T.T.*, Docket No. 18-1622 (issued May 14, 2019); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id*. at Chapter 3.700.2 and Exhibit 1 (January 2010).

[8] *K.R.*, Docket No. 20-1675 (issued August 19, 2022); *M.P.*, Docket No. 13-2087 (issued April 8, 2014).

[9] A.M.A., *Guides* 405-12; *see M.P.*, *id*.; Docket No. 13-2087 (issued April 8, 2014).

[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).

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

[13] *Id*. at 473.

[14] *Id*. at 474.

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 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* allows 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 CE."[16]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than one percent permanent impairment of her right upper extremity (right arm), for which she previously received a schedule award.

Appellant submitted a June 2, 2022 report from Dr. Gillogly, an attending physician, who indicated that right shoulder ROM examination findings were good, and cervical spine ROM findings were limited. Without explanation, Dr. Gillogly opined that she had five percent whole person permanent impairment for the cervical spine, pursuant to the fifth edition of the A.M.A., *Guides*. However, the Board finds that this report is of limited probative value because he did not provide a rating that conformed to the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*.[17] Moreover, FECA does not allow schedule awards for impairment of the body as a whole.[18] Accordingly, Dr. Gillogly's opinion is insufficient to show that appellant is entitled to an additional schedule award.

In a November 22, 2022 report, Dr. Doman, serving as an OWCP second-opinion examiner, noted right shoulder physical examination findings of normal muscle strength and no swelling. He initially utilized DBI method and found a net adjustment formula of zero. Dr. Doman

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

[16] *Id*.

[17] *L.J.*, Docket No. 20-1044 (issued July 9, 2021); *S.R.*, Docket No. 18-1307 (issued March 27, 2019); *J.G.*, Docket No. 09-1128 (issued December 7, 2009).

[18] *J.U.*, Docket No. 21-1298 (issued February 16, 2023); *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

then reported that ROM examination of appellant's right shoulder, having taken three separate measurements, revealed forward flexion of 180 degrees, abduction of 180 degrees, and extension of 60 degrees. He indicated that examination of her cervical spine demonstrated excellent ROM, and opined that her cervical contusion had resolved. Dr. Doman diagnosed right shoulder contusion with minimal interstitial partial tear of the rotator cuff.

In accordance with its procedures, OWCP properly routed the case record back to Dr. White in his role as DMA, who indicated in a December 11, 2022 report that he had reviewed Dr. Doman's November 22, 2022 report. Dr. White referenced the sixth edition of the A.M.A., *Guides* and utilized the DBI rating method to find that, under Table 15-5 (Shoulder Regional Grid), the CDX for right shoulder rotator cuff, partial thickness tear resulted in a Class 1 impairment with a default value of one percent. He assigned a GMFH of 1 and a GMPE of 0 due to normal examination. Dr. White indicated that a GMCS was not applicable. He utilized the net adjustment formula, (GMFH – CDX) + (GMPE – CDX) = (1 – 1) + (0 – 1) = -1, which resulted in a grade B or one percent permanent impairment of the right upper extremity. Under the ROM rating method, Dr. White referred to Table 15-34 (Shoulder Range of Motion) and determined that appellant had zero percent permanent impairment for flexion of 180 degrees, extension of 60 degrees, abduction of 180 degrees, adduction of 40 degrees, internal rotation of 80 degrees, and external rotation of 60 degrees. As the DBI-rating method produced the higher impairment rating, he concluded that she had one percent permanent impairment of the right upper extremity. Regarding upper extremity impairment for the cervical nerve root, Dr. White determined that appellant had zero percent permanent impairment for normal sensory and motor findings.

The Board finds that OWCP properly relied on the opinion of Dr. White, the DMA, to find that appellant had no greater than one percent permanent impairment of her right upper extremity. Dr. White properly applied the standards of the A.M.A., *Guides* to the physical examination findings of Dr. Doman, and properly referred to the A.M.A., *Guides* in calculating appellant's percentage of permanent impairment of the right upper extremity.[19] The Board finds that, in the above-described calculations, Dr. White reached conclusions regarding her permanent impairment that are in accordance with the standards of the sixth edition of the A.M.A., *Guides*.[20] There is no medical evidence of record utilizing the appropriate tables of the sixth edition of the A.M.A., *Guides*, demonstrating a greater percentage of permanent impairment of the right upper extremity. Accordingly, the Board finds that, as appellant has not submitted medical evidence establishing more than one percent permanent impairment of the right upper extremity (right arm), she has not met her burden of proof.

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.

[19] *See R.G.*, Docket No. 21-0491 (issued March 23, 2023).

[20] *See T.S.*, Docket No. 22-0924 (issued April 27, 2023).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish greater than one percent permanent impairment of her right upper extremity (right arm), for which she previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 27, 2023
Washington, DC

Alec J. Koromilas, 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