United States Department of Labor
Employees' Compensation Appeals Board

E.M., Appellant	)	
and	)	**Docket No. 23-0531**
	)	**Issued: October 25, 2023**
DEPARTMENT OF VETERANS AFFAIRS, WILLIAM JENNINGS BRYAN DORN VA MEDICAL CENTER, Columbia, SC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On March 7, 2023 appellant filed a timely appeal from a December 20, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than 11 percent permanent impairment of the left upper extremity, for which she previously received a schedule award.

[1] On appeal, appellant also raised contentions regarding an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2). The Board notes that as there is no final adverse OWCP decision on this issue, it is not properly before the Board on this appeal. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

[2] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On January 16, 2018 appellant, then a 65-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on January 12, 2018 she sustained injuries to her left upper and lower extremities when her right foot caught on a chair leg and she fell to the floor while in the performance of duty. She stopped work on January 16, 2018 and returned to limited-duty work on May 1, 2018. OWCP accepted the claim for strain of muscle, fascia and tendon at the neck level, and cervical spondylosis without myelopathy or radiculopathy.[3]

On December 4, 2019 appellant underwent OWCP-authorized arthroscopic debridement of the left shoulder with arthroscopic distal claviculectomy including the distal articular surface (Mumford procedure), decompression of the subacromial space with partial acromioplasty, and coracoacromial ligament release. OWCP subsequently expanded the acceptance of the claim to include impingement syndrome of the left shoulder. It paid appellant wage-loss compensation on the supplemental rolls, effective December 4, 2019, and on the periodic rolls, effective March 29, 2020.

Appellant separated from the employing establishment, effective March 31, 2021.

On June 23, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated June 24, 2022, OWCP requested that appellant submit an impairment evaluation from her attending physician addressing the extent of a permanent impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). It afforded her 30 days to respond.

In response, appellant submitted a July 21, 2022 report by Dr. Chason S. Hayes, a Board-certified orthopedic surgeon, who evaluated appellant for schedule award purposes under the A.M.A., *Guides*. He recounted a history of injury and treatment, with residual left shoulder symptoms without consistent objective findings. On examination, Dr. Hayes noted full strength and sensation throughout the left upper extremity. Regarding the left shoulder, he observed well-healed arthroscopic scars, no crepitus, and negative Adson's, crossed arm, drop arm, Hawkins', impingement, lift off, O'Brien's, Speed's, stability, and supination tests. Dr. Hayes measured three trials of range of motion of the left shoulder, each of which demonstrated 110 degrees of forward elevation, 60 degrees of extension, 110 degrees of abduction, 50 degrees of adduction, and 90 degrees of internal and external rotation. He also noted a negative Spurling's test for cervical radiculopathy. Dr. Hayes referred to the sixth edition of the A.M.A., *Guides*,[4] and utilized the diagnosis-based impairment (DBI) rating method to find that under Table 15-5 (Shoulder

[3] A January 11, 2019 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated multilevel foraminal joint narrowing, most notable at C5-6 on the right due to an uncovertebral joint osteophyte, without evidence of central canal stenosis or a focal herniated nucleus pulposus. A January 31, 2019 electromyogram and nerve conduction velocity (EMG/NCV) study of the left upper extremity demonstrated median nerve entrapment at the wrist consistent with carpal tunnel syndrome, and no electrodiagnostic evidence of ulnar neuropathy or cervical radiculopathy.

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

Regional Grid; Upper Extremity Impairments), page 402, the class of diagnosis (CDX) for appellant's rotator cuff injury/partial thickness tear resulted in a Class 1 impairment with a default value of one. 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. Hayes utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 – 1) + (1 – 1) + (1 – 1) = +0, which resulted in a grade C or a one percent permanent impairment of her left upper extremity due to rotator cuff injury or partial thickness tear. He also applied the range of motion (ROM) rating method[5] to find three percent permanent impairment due to loss of flexion and three percent permanent impairment due to loss of abduction, resulting in six percent permanent impairment of the left upper extremity.

On September 7, 2022 OWCP routed Dr. Hayes' report for review by its district medical adviser (DMA), Dr. Morley Slutsky, Board-certified in occupational medicine. In his September 17, 2022 report, Dr. Slutsky referred to the sixth edition of the A.M.A., *Guides*,[6] and utilized the DBI rating method to find 11 percent permanent impairment of the left upper extremity for Class 1 acromioclavicular (AC) joint disease status-post distal clavicle excision, a permanent impairment, which was greater than the six percent permanent impairment under the ROM rating method or the one percent permanent impairment under the DBI rating method for rotator cuff impairment found by Dr. Hayes. Under Table 15-5, page 403, he found that appellant's DBI resulted in a CDX of Class 1 with a default value of 10. Dr. Slutsky assigned a GMFH of 1, a GMPE of 1, and GMCS of 2. He applied the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (1 - 1) + (2 - 1) = +1, which resulted in a net adjustment of one, and moving one place to the right of the default grade C position to grade D, to find that appellant had 11 percent permanent impairment of the left upper extremity. Additionally, Dr. Slutsky concurred with Dr. Hayes' calculation of six percent permanent impairment of the left upper extremity utilizing the ROM rating method but noted that the DBI rating method should be used as it provided the higher impairment rating. He determined that appellant reached maximum medical improvement (MMI) as of July 21, 2022, the date of Dr. Hayes' examination.

By decision dated December 20, 2022, OWCP granted appellant a schedule award for 11 percent permanent impairment of the left upper extremity. The period of the award ran for 34.32 weeks from July 21, 2022 through March 18, 2023.

LEGAL PRECEDENT

The schedule award provisions of FECA[7] and its implementing regulations[8] 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

[5] *Id*. at 475, Table 15-34, Shoulder Range of Motion.

[6] *Supra* note 3.

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

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 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 has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[9] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[10] 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.[11]

Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment for the CDX, which is then adjusted by grade modifiers based on GMFH, GMPE, and GMCS and the net adjustment formula is applied. The grade modifiers are used on the net adjustment formula described above to calculate a net adjustment. The final impairment grade is determined by adjusting the grade up or down the default value C, by the calculated net adjustment.[12] OWCP 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 impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of permanent impairment specified.[13]

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.[14] 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.[15] 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.[16]

[9] *Id. See also Ronald R. Kraynak*, 53 ECAB 130 (2001).

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

[11] *T.G.*, Docket No. 20-0660 (issued June 3, 2021); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[12] A.M.A., *Guides* 387.

[13] *T.G., supra* note 11; *M.S.*, Docket No. 19-0282 (issued August 2, 2019); *supra* note 10 at Chapter 2.808.6f (March 2017).

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

[15] *Id.* at 473.

[16] *Id.* at 474.

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.[17] 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:

> "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 measurements should be obtained and the greatest ROM should be used for the determination of impairment, the [claims examiner] should provide this information (via the updated instructions noted above) to the rating physician(s).
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> "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.)[18]
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> The Bulletin further advises:
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> "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]."[19]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than 11 percent permanent impairment of the left upper extremity, for which she previously received a schedule award.

In a July 21, 2022 report, Dr. Hayes, appellant's treating physician, opined that appellant had six percent permanent impairment of the left upper extremity for limited shoulder motion.

In accordance with its procedures, OWCP properly routed the case record to its DMA, Dr. Slutsky, who indicated in a September 17, 2022 report that he had reviewed Dr. Hayes' July 21, 2022 report. Under Table 15-5, page 403, of the sixth edition of the A.M.A., *Guides*,

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

[18] *See* A.M.A., *Guides* 477.

[19] *Id.* at 474; *K.C.*, Docket No. 21-0662 (issued February 22, 2023); *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *A.R.*, Docket No. 19-1284 (issued January 14, 2020); *V.L.*, Docket No. 18-0760 (issued November 13, 2018); *A.G.*, Docket No. 18-0329 (issued July 26, 2018).

Dr. Slutsky found that appellant's DBI resulted in a CDX of Class 1 with a default value of 10. He assigned a GMFH of 1, a GMPE of 1, and a GMCS of 2. Dr. Slutsky applied the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (1 - 1) + (2 - 1) = +1, which resulted in a net adjustment of one, and moving one place to the right of the default grade C position to grade D, to find that appellant had 11 percent permanent impairment of the left upper extremity. Additionally, Dr. Slutsky concurred with Dr. Hayes' calculation of a six percent permanent impairment of the left upper extremity utilizing the ROM rating method but noted that the DBI rating method should be used as it provided the higher impairment rating.

The Board finds that Dr. Slutsky, the DMA, properly applied the standards of the A.M.A., *Guides* to the physical examination findings of Dr. Hayes. Dr. Slutsky accurately summarized the relevant medical evidence including findings on examination and reached conclusions about appellant's conditions that comported with these findings.[20] He properly referred to the A.M.A., *Guides* and correctly applied the DBI rating method of evaluating permanent impairment to find 11 percent permanent impairment of the left upper extremity due to AC joint disease status-post distal clavicle excision. Dr. Slutsky provided a detailed explanation of why the DBI rating method offered the greater percentage of impairment and was thus preferable to the ROM rating method. As his report is detailed, well rationalized, and based on a proper factual background, his opinion represents the weight of the medical evidence. 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 either upper extremity. Accordingly, the Board finds that, as appellant has not submitted medical evidence establishing more than 11 percent permanent impairment of the left upper extremity, 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish greater than 11 percent permanent impairment of the left upper extremity, for which she previously received a schedule award.

[20] *R.G.*, Docket No. 21-0491 (issued March 23, 2023); *K.K.*, Docket No. 20-1532 (issued January 24, 2022); *M.S.*, Docket No. 19-1011 (issued October 29, 2019); *W.H.*, Docket No. 19-0102 (issued June 21, 2019); *J.M.*, Docket No. 18-1387 (issued February 1, 2019).

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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