

during a training exercise while in the performance of duty. He explained that he was attempting to perform a takedown technique shown by the instructor when his right shoulder and upper arm bent awkwardly. OWCP accepted the claim for right shoulder joint sprain, unspecified right shoulder rotator cuff muscle/tendon injury, and right shoulder lesion.

On October 9, 2020 Dr. Ty Endean, an osteopath Board-certified in orthopedic surgery, performed an authorized right arthroscopic-assisted labral reconstruction based on a diagnosis of right labral tear.

In a January 5, 2021 progress report, Dr. Endean reported that appellant had exceptional success regarding his right shoulder status following labral reconstruction in October 2020. Appellant was currently asymptomatic, and his right shoulder physical examination revealed no wing, asymmetry, or crepitus; nontender to palpation; no erythema, ecchymosis, or lesions; essentially full range of motion (ROM); and negative Neer and Hawkins sign.

In a report dated September 1, 2021, Dr. Endean advised that appellant had reached maximum medical improvement (MMI) for his right shoulder. He noted that appellant had undergone right shoulder surgery on October 9, 2020 had been rehabilitated, and was now permanent and stationary. Dr. Endean concluded that, pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*,² appellant had six percent permanent impairment of the right shoulder using Table 15-5.

On September 23, 2021 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In an October 21, 2021 report, Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), reviewed appellant's medical records and statement of accepted facts. He determined that appellant had no permanent impairment using either the diagnosis-based impairment (DBI) method or the ROM method. In support of this conclusion, Dr. Hammel reported that appellant had undergone labral tear surgery and exhibited normal ROM. He explained that Dr. Endean provided no permanent impairment rating calculations, and that in his September 1, 2021 report, as well as in a prior clinical visit note he had related that appellant was completely asymptomatic with a normal physical examination.

By decision dated February 11, 2022, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish that he had permanent impairment of a scheduled member or function of the body due to his accepted employment injury.

In an October 27, 2022 report, Dr. John R. Klein, a Board-certified orthopedic surgeon, related that on physical examination appellant had no bilateral upper extremity ROM impairment, some deltoid atrophy, intact bilateral motor strength, and negative apprehension sign with right shoulder ROM, especially with external rotation in abduction. Using the sixth edition of the A.M.A., *Guides*, he determined that the class of diagnosis (CDX) for unidirectional shoulder instability resulted in a Class 1, grade C permanent impairment, with a default value of six percent. Dr. Klein assigned a grade modifier for physical examination (GMPE) of 1 for deltoid atrophy, a

² A.M.A., *Guides* (6th ed. 2009).

grade modifier for clinical studies (GMCS) of 1, and a grade modifier for functional history (GMFH) of 2. He noted that appellant had a *QuickDASH* score of 41. Using the net adjustment formula, Dr. Klein found that appellant had seven percent permanent impairment as the impairment rating for the right shoulder had shifted one place to the right, grade D. He found that the ROM method was inapplicable as appellant had full ROM.

On February 17, 2023 appellant filed a claim for a schedule award.

In a report dated March 17, 2023, Dr. Hammel reviewed Dr. Klein's report and related that appellant had zero percent permanent impairment using the sixth edition of the A.M.A., *Guides*. He explained that, pursuant to the DBI methodology, in applying Table 15-5 of the A.M.A., *Guides*, appellant should be placed in Class 0 for unidirectional shoulder instability without residual instability. Dr. Hammel explained that a Class 1 impairment required objective instability, and that Dr. Klein's report contained no evidence of instability or apprehension on examination, and no subjective occurrences of stability. He also noted that appellant had no permanent impairment under the ROM methodology as his ROM "is full." Dr. Hammel concluded, "[b]oth methods agree no impairment."

By decision dated April 13, 2023, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body due to his accepted employment injury.

LEGAL PRECEDENT

The schedule award provisions of FECA,³ and its implementing federal regulations,⁴ 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. For consistent results and to ensure equal justice, OWCP has adopted 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 specified edition of the A.M.A., *Guides*, published in 2009.⁵ 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.⁶

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

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.404.

⁵ 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 Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id.* at Chapter 3.700, Exhibit 1 (January 2010).

⁶ *A.W.*, Docket No.22-1075 (issued April 10, 2023); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidor Rivera*, 12 ECAB 348 (1961).

to be rated. With respect to the shoulders, the relevant portions 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 a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$.⁷ Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids, and calculations of modifier scores.⁸

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.⁹ 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.)¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish permanent impairment of the right upper extremity, warranting a schedule award.

In support of his claim for a schedule award, appellant submitted a September 1, 2021 report from Dr. Endean. Dr. Endean concluded that appellant had a six percent right shoulder permanent impairment using Table 15-5 of the A.M.A., *Guides*.

The record also contains October 27, 2022 report from Dr. Klein who utilized the DBI method, and identified the CDX for the diagnosis of unidirectional shoulder instability under Table 15-5 resulted in a Class 1 impairment. Dr. Klein assigned a GMFH of 2, a GMPE of 1, and a GMCS of 1 in accordance with Table 15-6. He applied the net adjustment formula, resulting in movement from the default grade of C to D and corresponding to seven percent impairment of the right upper extremity. Dr. Klein advised the ROM method was not applicable because appellant had full ROM.

OWCP properly routed appellant’s case, including the reports from Dr. Endean and Dr. Klein to its DMA, Dr. Hammel. The DMA, in an October 21, 2021 report, found that appellant

⁷ See A.M.A., *Guides* (6th ed. 2009).

⁸ *Id.*

⁹ FECA Bulletin No. 17-06 (issued May 8, 2017).

¹⁰ *Id.*

had no permanent right upper extremity permanent impairment. In support of this conclusion, he noted that appellant had undergone labral tear surgery. The DMA properly explained that Dr. Endean had provided no calculations in his September 1, 2021 report, and had related that appellant had normal physical examination findings. In a March 17, 2023 report, he reviewed Dr. Klein's report and utilized the DBI method. The DMA identified the CDX for the diagnosis of unilateral shoulder instability, without residual instability under Table 15-5 as Class 0 impairment. He explained that a Class 1 impairment required objective instability, and that Dr. Klein's report contained no evidence of objective instability. The DMA found no permanent impairment under the ROM methodology as his ROM "is full." He concluded, "[b]oth methods agree no impairment." The DMA opined that appellant had reached MMI on October 27, 2022.

The Board finds that the opinions of the DMA, Dr. Hammel were based on a proper factual and medical history, and on the appropriate tables and grading schemes of the A.M.A., *Guides*. The DMA accurately applied the standards of the A.M.A., *Guides* to the physical examination findings of record. He provided rationale for his impairment rating for the class of impairment for the diagnosis from the regional grid. Consequently, the Board finds that the weight of the medical evidence is accorded to the DMA's finding of zero percent permanent impairment of appellant's right upper extremity.¹¹

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 permanent impairment of the right upper extremity, warranting a schedule award.

¹¹ See *V.G.*, Docket No. 19-1728 (issued September 2, 2020).

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 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