United States Department of Labor
Employees' Compensation Appeals Board

P.N., Appellant	)	
and	)	**Docket No. 11-110**
	)	**Issued: July 22, 2011**
DEPARTMENT OF THE AIR FORCE, OKLAHOMA CITY AIR LOGISTICS CENTER, TINKER AIR FORCE BASE, OK, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 19, 2010 appellant filed a timely appeal from the June 30, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) granting her a schedule award. Pursuant to the Federal Employees' Compensation Act (FECA)[1] 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 met her burden of proof to establish that she has more than a 14 percent permanent impairment of her left arm, for which she received a schedule award.

FACTUAL HISTORY

On March 15, 2000 appellant, a 52-year-old workload manager, sustained injury due to a fall on a concrete floor at work. OWCP accepted her claim for left elbow and forearm

[1] 5.U.S.C. § 8101 *et seq.*

contusions, left rotator cuff sprain and other symptoms of her left shoulder. In August 2000 she underwent left rotator cuff and distal clavicle excision surgery which was authorized by OWCP.[2] Appellant sustained additional employment injuries in 2004 and 2005 and OWCP accepted her claim for bilateral carpal tunnel syndrome, bilateral trigger finger and bilateral hand tenosynovitis.[3]

In a December 14, 2009 report, Dr. John W. Ellis, an attending Board-certified family practitioner, determined that appellant had a 16 percent impairment of her left arm under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). He stated that under Table 15-5 appellant had a 5 percent impairment due to her rotator cuff surgery and a 12 percent impairment due to her acromioclavicular joint and distal clavicle resection. Appellant did not have any impairment due to her left elbow condition. Dr. Ellis used the Combined Values Chart starting on page 604 to combine the 5 percent and 12 percent values and concluded that appellant had a total left arm impairment of 16 percent under the sixth edition of the A.M.A., *Guides*. He listed September 20, 2001 as the date of maximum medical improvement, *i.e.*, one year after appellant's left shoulder surgery.

OWCP referred appellant to Dr. Christopher Jordan, a Board-certified orthopedic surgeon, for examination and an opinion on the extent of her left arm impairment.

In a February 20, 2010 report, Dr. Jordan determined that appellant had a 14 percent permanent impairment of her left arm. He used Table 15-5 (Regional Shoulder Grid) to identify the diagnostic category of a full-thickness rotator cuff tear which fell under class 1 with a default value of five percent. Appellant had a grade modifier 2 for functional history (pain or symptoms with normal activity), a grade modifier 1 for physical findings (minimal palpatory findings) and there was no grade modifier for clinical studies due to the lack of such studies. Applying the net adjustment formula to these figures meant that it was appropriate under Table 15-5 to move one place to the right of the five percent default value to a six percent impairment rating.

Dr. Jordan felt that using Table 15-5 was also relevant for appellant's distal clavicle excision because assessing only her rotator cuff condition would not accurately or completely reflect the limitations in her left arm. This produced a class 1 diagnostic category with a default value of 10 percent. Dr. Jordan assigned a grade modifier 0 for functional history and a grade modifier 0 for physical examination and there was no grade modifier for clinical studies. Applying the net adjustment formula to these figures meant that it was appropriate under Table 15-5 to move two places to the left of the 10 percent default value to an 8 percent impairment rating. Dr. Jordan used the Combined Values Chart starting on page 604 to combine the above-described 6 percent and 8 percent values to conclude that appellant had a total left arm impairment of 14 percent under the sixth edition of the A.M.A., *Guides*.

In a May 5, 2010 report, Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as OWCP's medical adviser, indicated that he agreed with Dr. Jordan's assessment of

[2] Diagnostic testing showed a full-thickness left rotator cuff tear.

[3] Appellant underwent OWCP-authorized left and right carpal tunnel releases in 2007 and 2008.

appellant's left shoulder impairment. He listed the date of maximum medical improvement as December 14, 2009, the date of Dr. Ellis' evaluation.

In a June 30, 2010 decision, OWCP granted appellant a schedule award for a 14 percent permanent impairment of her left arm. The award ran for 43.68 weeks from December 14, 2009 to October 15, 2010. OWCP based its schedule award on the opinions of Dr. Jordan and Dr. Katz.

LEGAL PRECEDENT

The schedule award provision 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[6] For Office decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6th ed. 2009) is used for evaluating permanent impairment.[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. 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 Class of Diagnosis (CDX) is determined from the shoulder regional grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for Functional History (GMFH), grade modifier for Physical Examination (GMPE) and grade modifier for Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[8] 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.[9]

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999).

[6] *Id*.

[7] *See* FECA Bulletin No. 9-03 (issued March 15, 2009). For Office decisions issued before May 1, 2009, the fifth edition of the A.M.A., *Guides* (5th ed. 2001) is used.

[8] *See* A.M.A., *Guides* 401-11 (6th ed. 2009).

[9] *Id.* at 23-28.

ANALYSIS

In the present case, OWCP accepted several conditions affecting appellant's left arm and granted her a schedule award for a 14 percent permanent impairment of her left arm. The Board finds that OWCP properly based its schedule award on the opinions of Dr. Jordan, a Board-certified orthopedic surgeon serving as OWCP's referral physician, and Dr. Katz, a Board-certified orthopedic surgeon serving as OWCP's medical adviser. The record does not contain a rationalized impairment rating clearly showing that appellant has a higher degree of left arm impairment than 14 percent.

In his February 20, 2010 report, Dr. Jordan used Table 15-5 to identify the diagnostic category of a full-thickness rotator cuff tear which fell under class 1 with a default value of five percent. Appellant had a grade modifier 2 for functional history, a grade modifier 1 for physical findings and there was no grade modifier for clinical studies. Applying the net adjustment formula to these figures meant that it was appropriate under Table 15-5 to move one place to the right of the five percent default value to a six percent impairment rating. Dr. Jordan further explained that using Table 15-5 was also relevant for appellant's distal clavicle excision because assessing only her rotator cuff condition would not accurately or completely reflect the limitations in her left arm. This produced a class 1 diagnostic category with a default value of 10 percent. Dr. Jordan then described his choice of grade modifiers and his application of the net adjustment formula to find that appellant had an eight percent impairment rating due to her clavicle condition. He used the Combined Values Chart to combine the above-described 6 percent and 8 percent values to conclude that appellant had a total left arm impairment of 14 percent under the sixth edition of the A.M.A., *Guides*.

On May 5, 2010 Dr. Katz indicated that he agreed with Dr. Jordan's assessment of appellant's left shoulder impairment. He listed the date of maximum medical improvement as December 14, 2009, the date of an evaluation by Dr. Ellis, an attending Board-certified family practitioner. In his December 14, 2009 report, Dr. Ellis determined that appellant had a 16 percent impairment of her left arm under the standards of the sixth edition of the A.M.A., *Guides*. However, he provided an extremely limited discussion of how he reached this conclusion under the A.M.A., *Guides* and consequently it is not possible to determination whether the rating was made in accordance with the relevant standards.[10]

On appeal appellant took issue with the method of Dr. Jordan's impairment rating and questioned whether she had reached maximum medical improvement. However, she did not adequately explain why Dr. Jordan's rating was not in accordance with the relevant standards. Appellant asserted that Dr. Jordan did not have all the relevant medical records to review, but he did not specify what important documents he failed to review.

For these reasons, appellant did not show that she has more than a 14 percent permanent impairment of her left arm.

[10] *See J.G.*, Docket No. 09-1128 (issued December 7, 2009) (an attending physician's report is of little probative value where the A.M.A., *Guides* are not properly followed).

Appellant may request a schedule award or increased schedule award 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 did not meet her burden of proof to establish that she has more than a 14 percent permanent impairment of her left arm, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board