United States Department of Labor
Employees' Compensation Appeals Board

J.H., Appellant	)	
and	)	**Docket No. 10-1927**
	)	**Issued: June 1, 2011**
DEPARTMENT OF DEFENSE, DEFENSE FINANCE & ACCOUNTING SERVICE, Columbus, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 19, 2010 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs dated June 7, 2010. Pursuant to the Federal Employees' Compensation Act[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 19 percent impairment of the left upper extremity for which she received a schedule award.

FACTUAL HISTORY

On September 19, 1989 appellant, then a 37-year-old payroll supervisor, filed a traumatic injury claim, alleging that on September 16, 1989 she experienced back pain while bending over

[1] 5 U.S.C. §§ 8101-8193.

to lift boxes. The claim was accepted for low back and left shoulder strains. Appellant worked intermittently until October 26, 1989 and was placed on the periodic compensation rolls.[2] On December 3, 1990 she had left shoulder acromioplasty and had a second procedure with resection of the distal clavicle on October 2, 1999.

The Office continued to develop the claim and in May 2008 referred appellant for vocational rehabilitation. Appellant returned to a full-time accounting technician position at the employing establishment on September 29, 2008. On October 8, 2008 she filed a schedule award claim. By decision dated December 15, 2008, the Office found that appellant's actual earnings fairly and reasonably represented her wage-earning capacity and reduced her compensation accordingly.

On January 19, 2009 Dr. Judith K. Held, an internist, advised that maximum medical improvement was reached on September 29, 2008. She provided left shoulder range of motion findings of 90 degrees of left shoulder rotation, 120 degrees of external rotation, 90 degrees of forward elevation, 0 degrees of back elevation, 90 degrees of retained abduction, and 5 degrees of retained adduction. Dr. Held stated that appellant had an 80 percent left upper extremity impairment because she had decreased strength and constant pain and advised that, for a more exact evaluation, a surgeon should be consulted.

In a February 11, 2009 report, Dr. Nabil F. Angley, a Board-certified orthopedic surgeon and Office medical adviser, noted his review of the medical record including Dr. Held's report and provided an impairment rating in accordance with the fifth edition of the of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[3] finding a 24 percent left upper extremity impairment. He also advised that, if further information was needed, appellant should be referred for a second-opinion evaluation.

In March 2009, the Office referred appellant to Dr. Karl V. Metz, a Board-certified orthopedic surgeon, for a second opinion and impairment evaluation. In a March 25, 2009 report, Dr. Metz provided examination findings and advised that, as maximum medical improvement had not been reached, an impairment rating was not appropriate but that, in accordance with the fifth edition of the A.M.A., *Guides*, appellant had a 22 percent impairment due to loss of shoulder range of motion, and a 10 percent impairment due to a distal clavicle resection, for a total 30 percent left upper extremity impairment.

In an undated report, Dr. Richard M. Ward, an attending Board-certified orthopedist, advised that he examined appellant on March 26, 2009. He provided physical examination findings including left shoulder flexion of 90 degrees, abduction of 90 degrees, internal rotation of 30 degrees and external rotation of 30 degrees. Dr. Ward advised that, in accordance with the fifth edition of the A.M.A., *Guides*, appellant had a 15 percent left upper extremity impairment

[2] On April 29, 1990 appellant was in a nonemployment-related motor vehicle accident when she sustained trauma to her left shoulder and upper back. She developed nonwork-related tendinitis of the right shoulder with partial rotator cuff tear.

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

due to loss of shoulder motion and a 10 percent impairment for shoulder surgery which, when combined, yielded a total 24 percent left upper extremity impairment.

By report dated May 28, 2009, Dr. Raymond Tesner, an osteopath, noted that he had last seen appellant nine years previously, provided examination findings, and diagnosed chronic left shoulder dysfunction. He advised that appellant was at maximum medical improvement. In a July 15, 2009 report, Dr. Angley noted that Dr. Tesner did not provide an impairment rating, and that Dr. Ward provided an impairment rating in accordance with the fifth edition of the A.M.A., *Guides*, and the sixth edition of the A.M.A., *Guides* was the appropriate edition to be used.[4] He advised that he was unable to provide an impairment rating based on the current medical evidence and recommended referring appellant for an impairment rating based on the sixth edition.

On July 24, 2009 the Office asked that Dr. Ward reevaluate appellant's impairment in accordance with the sixth edition of the A.M.A., *Guides*. In an undated report, Dr. Ward repeated the physical findings of his previous report and referred to the sixth edition of the A.M.A., *Guides*, stating:

> "From Table 15-5 and [Table] 15-6 noting a Grade 3 modified and considering the surgery on her shoulder and her decreased range of motion and my physical findings on today's evaluation yields a combined 24 percent upper extremity impairment. Therefore, in my opinion, based upon the history and my examination, I believe she has a current 24 percent upper extremity impairment all as a result of the injury that occurred as described on [September 16, 1989]."

In a September 17, 2009 report, Dr. Angley advised that Dr. Ward did not show how he reached his impairment finding of 24 percent, noting that pursuant to Table 15-5, for a full thickness tear of the rotator cuff, the maximum impairment was 7 percent. He suggested that the Office obtain an addendum report from Dr. Ward and ask that he explain how he reached his impairment rating. Dr. Ward's office refused to furnish a third report. Dr. Held continued to submit reports describing appellant's condition and treatment.[5]

The Office referred appellant to Dr. David K. Halley, Board-certified in orthopedic surgery, provided an October 23, 2009 report in which he noted his review of the medical record, the history of injury and appellant's complaint of diffuse pain throughout the left shoulder with left upper extremity weakness and difficulty performing activities of daily living. Examination of the left shoulder demonstrated atrophy over the musculature of the anterior portion and significant limitation of range of motion with abduction of 30 degrees, adduction of 14 degrees, external rotation of 70 degrees, internal rotation of 85 degrees, flexion of 78 degrees, and extension of 22 degrees. No sensory changes or ankylosis were noted. Dr. Halley advised that

[4] A.M.A., *Guides* (6th ed. 2008).

[5] The September 11, 2009 claim was adjudicated by the Office under file number xxxxxx932 and accepted for right toe contusion. In the instant case, in the interim, appellant requested a review by the Branch of Hearings and Review, who denied her request on October 30, 2009 because a final decision had not been issued. She then filed an appeal with the Board, and by order dated January 29, 2010, the Board dismissed the appeal on the grounds that the Board was without jurisdiction to review the appeal. Docket No. 10-45 (issued January 10, 2010).

maximum medical improvement occurred one to one-and-a-half years after her second shoulder surgery. He advised that in accordance with Table 15-34 of the sixth edition of the A.M.A., *Guides*, abduction of 30 degrees yielded a grade 2 impairment for 6 percent; adduction of 14 degrees yielded a grade 1 impairment of 1 percent; flexion of 78 degrees yielded a grade 2 impairment of 9 percent; extension of 22 degrees yielded a grade 1 impairment of 1 percent; with internal rotation of 86 degrees and external rotation of 70 degrees yielding no impairment, for a total 17 percent left upper extremity impairment. Dr. Halley found a net modifier of grade 2 and advised that, under Table 15-36, appellant was deserving of an increase due to range of motion impairment of 10 percent which when multiplied by the 17 percent impairment, yielded an additional 1.7 percent which, when rounded up yielded an additional 2 percent impairment, for a total 19 percent left upper extremity impairment. On a March 28, 2010 he provided a permanent impairment worksheet for the left shoulder, in which he advised that appellant had 19 percent upper extremity impairment.

On May 13, 2010 Dr. Angley reviewed Dr. Halley's reports. He found that maximum medical improvement was reached in April 2001 and agreed that under Table 15-34, appellant's range of motion impairments yielded a 17 percent left upper extremity impairment, and that under Table 15-36, utilizing the net modifier of 2, appellant was entitled to an increased impairment of 1.7 percent, adjusted to 2 percent, for a total left upper extremity impairment of 19 percent.

By decision dated June 7, 2010, appellant was granted a schedule award for a 19 percent impairment of the left upper extremity, for 414.96 days, to run from June 6, 2010 to July 25, 2011.

LEGAL PRECEDENT

The schedule award provision of the Act,[6] and its implementing federal regulations,[7] 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, the Act 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[8] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[9] For decisions issued after May 1, 2009, the sixth edition will be used.[10]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id.* at § 10.404(a).

[9] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[10] FECA Bulletin No. 09-03 (issued March 15, 2009).

and Health (ICF).[11] Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[12] The net adjustment formula is (GMFH-CDX) + (GMPE - CDX) + (GMCS- CDX).[13]

Although the diagnosis-based approach is the preferred method of evaluating permanent impairment under the sixth edition of the A.M.A., *Guides*,[14] Table 15-5, Shoulder Regional Grid, provides that, if loss of motion is present, the impairment may alternatively be assessed under section 17-7, range of motion impairment.[15] A range of motion impairment stands alone and is not combined with a diagnosis-based impairment.[16]

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the Office medical adviser providing rationale for the percentage of impairment specified.[17]

ANALYSIS

The Board finds that appellant is entitled to a schedule award for a 20 percent impairment of the left upper extremity. Dr. Tenser did not provide an impairment rating. While Dr. Held generally advised that appellant had an 80 percent left upper extremity impairment, she provided no analysis or explanation to support her conclusion. It is well established that, when the attending physician fails to provide an estimate of impairment conforming with the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of permanent impairment.[18] Thus, neither report is of sufficient probative value to establish entitlement to a schedule award. Moreover, Dr. Metz and Dr. Ward, in his first report, provided an impairment rating in accordance with the fifth edition of the A.M.A., *Guides*. As noted above, the sixth edition of A.M.A., *Guides* is to be used in calculating impairment after

[11] A.M.A., *Guides*, *supra* note 4 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

[12] *Id*. at 385-419.

[13] *Id*. at 411.

[14] *Id*. at 461, section 15.7.

[15] *Id*. at 401-05.

[16] *Supra* note 14.

[17] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

[18] *Linda Beale*, 57 ECAB 429 (2006).

May 1, 2009.[19] Since Dr. Metz's report and Dr. Ward's first report were not in accordance with the appropriate edition of the A.M.A., *Guides*, neither constitutes probative medical evidence.[20]

On July 24, 2009 the Office asked that Dr. Ward provide an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*, and in an undated report, he advised that, in accordance with Table 15-5 and Table 15-6, appellant had a grade 3 modifier and, considering the left shoulder surgery, decreased range of motion, and his physical findings, she had a combined 24 percent left upper extremity impairment. Table 15-5 of the sixth edition, Shoulder Regional Grid, provides for diagnosis-based impairment classes of the shoulder region.[21] Table 15-6 provides an adjustment grid summary which is identified by considering functional history, physical examination findings, and the results of relevant clinical studies.[22] Dr. Ward did not identify a specific impairment class for the diagnosed condition in accordance with Table 15-5 and did not provide analysis of the grade modifiers of Table 15-6, based on functional history, physical examination, and did not use the net adjustment formula as described in section 15.3 of the sixth edition.[23]

The only medical reports of record that properly referenced the applicable tables and grids of the sixth edition and provided a sufficient explanation were those of Dr. Halley, the Office referral physician, and Dr. Angley, an Office medical adviser, in a May 13, 2010 report. Dr. Halley and Dr. Angley agreed the range of motion method for determining impairment was applicable in this case, and Dr. Angley agreed with Dr. Halley's impairment analysis and his conclusion that appellant had a 19 percent left upper extremity impairment.

As noted above, Table 15-5 provides that, if loss of motion is present, the impairment may alternatively be assessed under section 17-7, range of motion impairment.[24] Dr. Halley provided left shoulder range of motion findings of 30 degrees of abduction, 14 degrees of adduction, 70 degrees of external rotation, 85 degrees of internal rotation, 78 degrees of flexion and 22 degrees of extension. He properly determined that, under Table 15-34 of the sixth edition of the A.M.A., *Guides*, internal rotation of 86 degrees and external rotation of 70 degrees yielded no impairment, and that abduction of 30 degrees yielded a grade 2 impairment for 6 percent; adduction of 14 degrees yielded a grade 1 impairment of 1 percent; flexion of 78 degrees yielded a grade 2 impairment of 9 percent. Dr. Halley also advised that extension of 22 degrees yielded a grade 1 impairment of 1 percent. A review of Table 15-34 indicates, however, that extension of 22 degrees would yield a grade 2 impairment of two percent.[25] Adding the range of motion measurements yields an 18 percent left upper extremity impairment, rather than the 17 percent

[19] *Supra* note 10.

[20] *See A.A.*, 59 ECAB 726 (2008).

[21] A.M.A., *Guides*, *supra* note 4 at 401-05.

[22] *Id*. at 406; *see id*. at 405, section 15.3.

[23] *Id*. at 405-09.

[24] *Id*. at 401-05.

[25] *Id*. at 475.

found by Dr. Halley who also adjusted the range of motion measurement for functional history, as provided in Table 15-36, finding that appellant deserved a 10 percent increase based on a net modifier of 2.

Table 15-36 provides that a range of motion impairment may be adjusted by functional history. A net modifier of 2 provides that the range of motion impairment is to be multiplied by 10 percent.[26] Multiplying the 10 percent increase by the 18 percent range of motion impairment, yields an additional 1.8 percent which, when rounded up, yields an additional 2 percent impairment, for a total 20 percent left upper extremity impairment. Accordingly, the competent medical evidence of record, the reports of Dr. Halley and Dr. Angley, establishes that appellant has a 20 percent left upper extremity impairment.

CONCLUSION

The Board finds that appellant has a 20 percent impairment of the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2010 decision of the Office of Workers' Compensation Programs be affirmed as modified.

Issued: June 1, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[26] *Id*. at 477.