United States Department of Labor
Employees' Compensation Appeals Board

T.J., Appellant	)	
and	)	**Docket No. 11-1452**
	)	**Issued: February 3, 2012**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Tomah, WI, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 1, 2011 appellant filed a timely appeal from a May 23, 2011 decision of the Office of Workers' Compensation Programs (OWCP) granting a schedule award. 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 schedule award issue.[2]

ISSUE

The issue is whether appellant sustained more than six percent permanent impairment of the right upper extremity for which he received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant concurrently requested an oral telephonic hearing, but was advised by OWCP that he could not request more than one avenue of appeal simultaneously. OWCP subsequently cancelled the hearing.

FACTUAL HISTORY

On July 22, 2009 appellant, then a 55-year-old psychiatric nursing assistant, injured his right shoulder in the performance of duty. OWCP accepted his traumatic injury claim for right shoulder joint pain and complete rotator cuff rupture.[3]

A December 10, 2009 magnetic resonance imaging (MRI) scan obtained by Dr. Joseph R. Hooyman, a Board-certified diagnostic radiologist, exhibited a full-thickness rotator cuff tear involving the anterior supraspinatus tendon and moderate acromioclavicular joint hypertrophy. In December 28, 2009 and January 13, 2010 reports, Dr. John W. McDonough, an osteopath and Board-certified orthopedic surgeon, observed right shoulder pain and discomfort on physical examination. He noted that appellant's range of motion (ROM) was symmetrical bilaterally. Dr. McDonough reviewed the results of the December 10, 2009 MRI scan and added that additional x-rays of the right shoulder demonstrated a Type 2 acromion process, acromioclavicular joint space narrowing and reactive sclerosis. OWCP also received reports from Dr. Katherine L. Kostamo, an employing establishment physician Board-certified in internal and nuclear medicine, who noted appellant's status and work restrictions.

On January 19, 2011 OWCP inquired of Dr. Kostamo regarding the extent of appellant's accepted conditions, the type of impairments that he had and whether he had reached maximum medical improvement. In a February 7, 2011 work capacity evaluation form, Dr. Kostamo noted appellant's permanent work restrictions and advised that maximum medical improvement had been reached as there was no change in appellant's full-thickness supraspinatus tear on the right.

On January 31, 2011 appellant filed a claim for a schedule award.

In a February 14, 2011 report, Dr. David H. Garelick, an OWCP medical adviser and Board-certified orthopedic surgeon, reviewed appellant's file. He pointed out that Dr. McDonough was the most recent orthopedic surgeon to examine appellant and that his January 13, 2010 report indicated that right shoulder pain and weakness was elicited during several orthopedic maneuvers and that the December 10, 2009 MRI scan confirmed a large rotator cuff tear with retraction. Dr. Garelick also noted "essentially normal" ROM and the absence of muscular atrophy in the shoulder girdle. Applying Table 15-5 (Shoulder Regional Grid) on page 403 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[4] he assigned a right upper extremity impairment rating of six percent. Dr. Garelick explained that an adjustment was "due to grade 2 modifiers issued for the MRI scan findings as well as the functional component (pain with activities of daily living. A grade 0 modifier was issued for the normal physical examination." He listed

[3] On April 14, 2010 OWCP notified appellant that he erroneously received a check in the amount of $1,729.80 for the period January 3 to March 27, 2010 and advised him to return it to avoid an overpayment. The disbursement was not returned. By decision dated June 2, 2010, OWCP finalized that an overpayment of $1,729.80 occurred and that appellant was at fault in the creation of the overpayment. In a November 3, 2010 wage-earning capacity decision, it took into account his new job with the employing establishment and reduced his disability compensation effective September 23, 2010.

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

January 13, 2010 as the date of maximum medical improvement, the date of Dr. McDonough's most recent examination.

By decision dated February 24, 2011, OWCP granted a schedule award for six percent permanent impairment of the right upper extremity for the period February 13 to June 24, 2011.[5] On May 23, 2011 it reissued the February 24, 2011 decision.[6]

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss of or loss of use of scheduled members or functions of the body.[7] 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.[8]

The A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF). 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). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[9] Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[10]

ANALYSIS

The Board finds that the case is not in posture for decision.

Appellant filed a traumatic injury claim, which OWCP accepted for right shoulder joint pain and complete rotator cuff rupture. He thereafter filed a claim for a schedule award on January 31, 2011. In a February 14, 2011 report, following a review of the medical file, Dr. Garelick, an OWCP medical adviser, cited Table 15-5 of the A.M.A., *Guides* and calculated

[5] OWCP pointed out that it deducted a portion of appellant's schedule award to settle the remaining balance of the overpayment. *See supra* note 2.

[6] OWCP corrected two typographical errors found in the earlier decision.

[7] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[8] *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

[9] *R.Z.*, Docket No. 10-1915 (issued May 19, 2011).

[10] *J.W.*, Docket No. 11-289 (issued September 12, 2011).

a right upper extremity impairment rating of six percent. He assigned a value of 2 for both GMFH and GMCS based on Dr. McDonough's January 13, 2010 report documenting appellant's complaints of pain and the December 10, 2009 MRI scan results, respectively. On the other hand, Dr. Garelick selected a GMPE of 0 because Dr. McDonough's report revealed normal ROM and the lack of muscular atrophy on examination.

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guide*s, with the adviser providing rationale for the percentage of impairment specified.[11] In the instant case, it appears that Dr. Garelick used a class one diagnosis for a full-thickness rotator cuff tear on page 403 of the A.M.A., *Guides*, which provides for a default value of five percent impairment where there is residual loss, functional with normal motion. The medical adviser noted moving the default value one place to the right, for six percent impairment, but he did not sufficiently explain specifically how he calculated each grade modifier score or use the net adjustment formula.[12] In the absence of a detailed impairment rating report comporting with the standards of the A.M.A., *Guides*, the Board cannot determine whether appellant sustained more than six percent permanent impairment of the right upper extremity.[13]

On remand OWCP should refer the matter to an appropriate Board-certified specialist to determine the extent of appellant's right upper extremity impairment in accordance with the A.M.A., *Guides*. After conducting such further development as deemed necessary, it shall issue an appropriate merit decision on the issue of his entitlement to a schedule award.[14]

CONCLUSION

The Board finds that the case is not in posture for decision.

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010).

[12] *See J.H.*, Docket No. 10-1927 (issued June 1, 2011). *See* A.M.A., *Guides* 411-12 (describes the method for determining impairment).

[13] *See R.G.*, Docket No. 10-2236 (issued July 8, 2011).

[14] The Board notes that appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2011 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this decision of the Board.

Issued: February 3, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board