United States Department of Labor
Employees' Compensation Appeals Board

B.B., Appellant	)	
and	)	**Docket No. 14-631**
	)	**Issued: August 6, 2014**
DEPARTMENT OF THE INTERIOR, SEQUOIA NATIONAL PARK SERVICES, Three Rivers, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 27, 2014 appellant filed a timely appeal from a January 15, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 merits of this case.

ISSUE

The issue is whether appellant has greater than four percent left upper extremity permanent impairment, for which he received a schedule award.

On appeal appellant contends that his impairment is greater than the four percent he was awarded.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 28, 2009 appellant, then a 38-year-old lead forestry technician, injured his left shoulder and arm while throwing boxes of paper away from the back of a truck. OWCP accepted the claim for left bicipital tenosynovitis, left shoulder calcifying tendinitis and a left shoulder and upper arm sprain. It authorized left shoulder arthroscopic surgeries, which were performed on March 23, 2010 and January 26, 2011.

On May 9, 2013 appellant filed a claim for a schedule award.

OWCP referred appellant on September 16, 2013 for a second opinion evaluation to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, to determine whether he had any permanent impairment due to his accepted employment injury.

In a September 30, 2013 report, Dr. Swartz reviewed the medical evidence and statement of facts and conducted a physical examination. The physical examination revealed tenderness posteriorly and anterolaterally in the left shoulder, negative impingement test, and pain with the O'Brien test and Abbot-Saunders test. Dr. Swartz noted 5/5 bilateral flexion, abduction, adduction and external rotation strength and 4+5/ left shoulder internal strength. He noted left shoulder range of motion as 125 degrees for flexion, 115 degrees for abduction and 30 degrees for adduction, which was less than the right shoulder. Dr. Swartz noted that appellant was status post two operations on his left shoulder. He rated a four percent left upper extremity permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Using Table 15-5, page 404, Dr. Swartz placed appellant under a class 1 with a three percent default impairment for labral lesions. For functional history he assigned a grade modifier of 1 for painful symptoms with vigorous or strenuous activities pursuant to Table 15-7, page 406. Under physical examination findings, Dr. Swartz assigned a grade modifier of 2 pursuant to Table 15-8, page 408. As imaging studies were not required for the diagnosis, he determined that an adjustment for clinical studies was not applicable. Dr. Swartz noted a *Quick*DASH score of 32, pointing out that this was a grade modifier of 1 which was consistent with his findings. Using the net adjustment formula, he explained that the default position was modified by +1 moving to the right to grade D which represented four percent impairment.

In a November 4, 2013 report, Dr. Ellen Pichey, an OWCP medical adviser, reviewed appellant's claim. She agreed with Dr. Swartz's application of the A.M.A., *Guides* and the impairment rating of four percent for the left upper extremity.

By decision dated January 15, 2014, OWCP granted appellant a schedule award for four percent impairment of the left upper extremity. The award covered a period of 12.48 weeks and ran from February 7 to May 5, 2013.

LEGAL PRECEDENT

Under section 8107 of FECA[2] and section 10.404 of the implementing federal regulations,[3] schedule awards are payable for permanent impairment of specified body members,

[2] 5 U.S.C. § 8107.

functions or organs. FECA, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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.[4]

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 and Health (ICF).[5] Under the sixth edition, 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).[6] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[7]

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 percentage of impairment using the A.M.A., *Guides*.[8]

ANALYSIS

OWCP accepted appellant's claim for left bicipital tenosynovitis, left shoulder calcifying tendinitis and left shoulder and upper arm sprain. It authorized two arthroscopic surgeries, which were performed on March 23, 2010 and January 26, 2011**.** On May 9, 2013 appellant requested a schedule award.

OWCP referred appellant for a second opinion evaluation to Dr. Swartz who provided a September 30, 2013 report. In accordance with Table 15-4, shoulder regional grid, page 404, Dr. Swartz rated appellant's class 1 with a three percent default impairment for labral lesions. He applied the modifiers for functional history and physical examination found in Table 15-7, page 406 and Table 15-8, page 408, respectively. Dr. Swartz found that the clinical studies adjustment was not applicable. He assigned a grade modifier of 1 for painful symptoms with vigorous or strenuous activities pursuant to Table 15-7, page 406 under functional history. Under physical examination findings, Dr. Swartz assigned a grade modifier of 2 pursuant to Table 15-8, page 408. Using the net adjustment formula, he explained that the default position was modified by +1 moving to the right to grade D and an impairment of four percent under the sixth edition of the A.M.A., *Guides*.

[3] 20 C.F.R. § 10.404

[4] *D.J.*, 59 ECAB 620 2008); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[5] A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[6] *Id.* at 383-419.

[7] *Id.* at 411.

[8] *Tommy R. Martin*, 56 ECAB 273 (2005).

Dr. Swartz properly explained his calculations under the sixth edition of the A.M.A., *Guides*. Dr. Pichey, an OWCP medical adviser, reviewed his report and agreed with his impairment rating. There is no other medical evidence of record in accordance with the A.M.A., *Guides* supporting a higher impairment. The Board finds that the weight of the medical evidence establishes that he has a four percent left shoulder impairment.

On appeal appellant contends that he has greater impairment rating due to his limited motion and pain. He alleged that Dr. Swartz provided an incorrect impairment rating as he was only seen by the doctor for 10 minutes, which he believed was insufficient to evaluate his impairment. As noted, Dr. Swartz and OWCP's medical adviser properly applied the A.M.A., *Guides* to determine appellant's left upper extremity impairment rating. The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of an arm, the maximum number of weeks of compensation is 312 weeks. Since appellant has four percent impairment to his left arm, he is entitled to four percent of 312 weeks or 12.48 weeks of compensation as granted in the January 15, 2014 decision.

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 appellant has failed to establish greater than four percent left upper extremity permanent impairment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 15, 2014 is affirmed.

Issued: August 6, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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