United States Department of Labor
Employees' Compensation Appeals Board

T.K., Appellant	)	
and	)	**Docket No. 16-0071**
	)	**Issued: April 12, 2016**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Dallas, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 16, 2015 appellant filed a timely appeal of a September 3, 2015 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.[2]

ISSUE

The issue is whether appellant established more than two percent permanent impairment to the right upper extremity, for which he had previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the issuance of the September 3, 2015 OWCP decision appellant submitted new evidence to OWCP. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

OWCP accepted that appellant, a 54-year-old medical supply technician, sustained a neck sprain, cervical radiculitis, and right impingement syndrome as a result of a syncopal episode on February 18, 2010 when he blacked out while stocking an operating room and hit a case cart on the way to the floor. He was placed on the periodic compensation rolls effective February 13, 2011.

Functional capacity evaluations dated February 8 and March 9, 2011, asserted that appellant was not capable of pushing, pulling, or lifting at work.

OWCP referred appellant to Dr. Marvin Van Hal, a Board-certified orthopedic surgeon, for a second opinion evaluation. In his March 8, 2011 report, Dr. Van Hal opined that appellant was capable of performing a limited-duty job.

OWCP found a conflict in the medical evidence regarding appellant's work capabilities and restrictions and referred appellant to Dr. Bernie McCaskill, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict. In his May 31, 2011 report, Dr. McCaskill reviewed the medical evidence of record and found no objective evidence that appellant continued to suffer residuals from his accepted conditions. He concluded that there was no credible basis for any physical limitations that would prevent appellant from returning to his date-of-injury position and released him to his regular job without restrictions.

In a July 7, 2011 letter, OWCP notified appellant that it proposed to terminate his wage-loss compensation benefits as his accepted conditions had resolved without residuals, relying on Dr. McCaskill's May 31, 2011 report. Appellant submitted additional medical evidence, including a functional capacity evaluation dated July 29, 2011.

By decision dated August 16, 2011, OWCP terminated appellant's wage-loss and medical compensation benefits effective August 28, 2011. It found the weight of the medical evidence was represented by Dr. McCaskill.

Appellant requested that OWCP's Branch of Hearings and Review consider the matter.[3] By decision dated June 26, 2012, an OWCP hearing representative reviewed the written record and affirmed the prior decision, in part finding that OWCP properly terminated his wage-loss compensation benefits, but reversed in part as OWCP had improperly terminated his medical benefits because the July 7, 2011 notice had not included medical benefits and thus he had not received the required due process.[4]

On May 7, 2015 appellant filed a claim for a schedule award (Form CA-7).

[3] Appellant initially requested an oral hearing before an OWCP hearing representative. When he was unable to appear at the scheduled hearing, OWCP changed the oral hearing to a review of the written record.

[4] By decision dated March 18, 2015, OWCP denied appellant's request for authorization of a fusion surgery at C4-7.

In a March 17, 2015 report, Dr. Robert Helsten, a physiatrist and appellant's attending physician, determined that appellant had reached maximum medical improvement as of August 22, 2014. He found that appellant had sharp and aching pain in the neck and right shoulder rated 10 out of 10 on the visual analog pain scale. Appellant's pain was aggravated by any movement of the right arm, cold weather, movement of the head and neck with associated difficulty sleeping, and radiating pain down the right arm. Evaluation of the right shoulder revealed decreased range of motion without end-range pain. Motor strength was five out of five bilaterally. Appellant did not have decreased sensation with light touch. Dr. Helsten reported positive Apprehension, positive Hawkins, and negative Dugas orthopedic testing results. Based on Table 15-5,[5] page 402, of the sixth edition of the A.M.A., *Guides*, Dr. Helsten placed appellant in a class 4 diagnosis for impingement syndrome with residual loss, functional with normal motion. He assigned a grade modifier 2 for Functional History (GMFH) for pain/symptoms with normal activity, medications to control symptoms, and ability to perform self-care activities with modification but unassisted. Dr. Helsten assigned a grade modifier 2 for Physical Examination (GMPE) based on moderate palpatory findings, consistently documented and supported by observed abnormalities. He assigned a grade modifier 1 for Clinical Studies (GMCS) because appellant's GMCS confirmed his diagnosis with mild pathology. Dr. Helsten opined that appellant had four percent permanent impairment of the right arm.[6]

On May 14, 2015 Dr. Michael Katz, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed Dr. Helsten's March 17, 2015 report and found that it was inconsistent and thus of little probative value.

In a May 18, 2015 letter, OWCP requested a supplemental report from Dr. Helsten clarifying his impairment rating.

Subsequently, Dr. Helsten submitted another report dated March 17, 2015 diagnosing cervical sprain, cervical radiculitis, and right shoulder impingement. He found that appellant had severe pain in his neck and both shoulders with radiating pain down his right upper extremity. Dr. Helsten opined that appellant had reached maximum medical improvement as of March 17, 2015, his date of examination. He noted that the A.M.A., *Guides* did not provide impairment ratings for lumbar injuries and found no evidence of peripheral neuropathy based on an electromyography and nerve conduction studies. Thus, Dr. Helsten concluded that appellant had no ratable impairment related to his accepted cervical sprain. Based on Table 15-5,[7] page 401, of the A.M.A., *Guides*, he placed appellant in a class 1 diagnosis for shoulder contusion or crush injury with residual symptoms and consistent objective findings at maximum medical improvement. Dr. Helsten assigned a grade modifier 4 based on appellant's *Quick*DASH score of 84 and calculated that his GMFH was therefore 3. He assigned a grade modifier 1 for GMPE based on appellant's residual pain and limited range of motion and found that a grade modifier

[5] Table 15-5, page 401-05, of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) is entitled *Shoulder Regional Grid: Upper Extremity Impairments*.

[6] Dr. Helsten also calculated seven percent permanent impairment on an accompanying impairment worksheet.

[7] *Id.*

for GMCS was not applicable since they were not used to make his diagnosis. Dr. Helsten concluded that appellant had three percent permanent impairment of the right upper extremity.

Appellant further submitted progress reports from Dr. Helsten dated June 9 through July 28, 2015.

On August 13, 2015 OWCP's medical adviser, Dr. Katz, reviewed a statement of accepted facts and the medical evidence. He found that appellant had reached maximum medical improvement as of March 17, 2015, the date of Dr. Helsten's impairment examination. Dr. Katz concurred with Dr. Helsten's class 1 diagnosis of shoulder contusion with residual symptoms and consistent objective findings based on Table 15-5 of the sixth edition of the A.M.A., *Guides*. The medical adviser, however, found that Dr. Helsten incorrectly utilized a grade modifier 4 for GMFH in his calculation of a net adjustment for the shoulder impairment. Dr. Katz explained that section 15.3a of the A.M.A., *Guides*, page 406,[8] provided that if the grade for GMFH differed by two or more grades from that described by the GMPE or GMCS, it should be assumed to be unreliable, and if the functional history was unreliable or inconsistent with other documentation, it was to be excluded from the grading process. As the grade modifier 4 for GMFH was two or more grades from the grade modifier 1 for GMPE, the medical adviser found that it should be excluded from the calculation. Dr. Katz concluded that appellant's impairment resulted in a default, class 1C rating for shoulder contusion, equaling two percent permanent impairment of the right arm.

By decision dated September 3, 2015, OWCP granted appellant a schedule award for two percent permanent impairment to the right upper extremity for 6.24 weeks and a fraction of a day for the period March 17 to April 29, 2015.

LEGAL PRECEDENT

The schedule award provisions of FECA[9] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized 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 OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[10] For schedule awards after

[8] Section 15.3a, page 406-07, of the sixth edition of the A.M.A., *Guides* is entitled *Adjustment Grid: Functional History*.

[9] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[10] *See Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000). *See also* 5 U.S.C. § 8107.

May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.[11]

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).[12] Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE, and GMCS.[13] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[14]

ANALYSIS

OWCP accepted that appellant sustained a neck sprain, cervical radiculitis, and right impingement syndrome as a result of a syncopal episode at work on February 18, 2010. In a September 3, 2015 award of compensation, it granted him a schedule award for two percent permanent impairment to the right upper extremity. It is appellant's burden to submit sufficient evidence to establish the extent of permanent impairment.[15]

In a March 17, 2015 report, Dr. Helsten opined that appellant had reached maximum medical improvement as of March 17, 2015, his date of examination. Utilizing Table 15-5,[16] page 401, of the A.M.A., *Guides*, he placed appellant in a class 1 diagnosis for shoulder contusion or crush injury with residual symptoms and consistent objective findings at maximum medical improvement. Dr. Helsten assigned a grade modifier 4 based on appellant's *Quick*DASH score of 84 and calculated that his GMFH was therefore 3. He assigned a grade modifier 1 for GMPE based on appellant's residual pain and limited range of motion and found that a grade modifier for clinical studies was not applicable since they were not used to make his diagnosis. Dr. Helsten concluded that appellant had three percent permanent impairment of the right upper extremity.

In accordance with its procedures, OWCP properly referred the evidence of record to Dr. Katz, an OWCP medical adviser who reviewed the clinical findings of Dr. Helsten on August 13, 2015 and determined that appellant had two percent permanent impairment of the

[11] *See D.T.*, Docket No. 12-503 (issued August 21, 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

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

[13] *Id.* at 494-531.

[14] *See R.V.*, Docket No. 10-1827 (issued April 1, 2011).

[15] *See Annette M. Dent*, 44 ECAB 403 (1993).

[16] *Id.*

right upper extremity under the sixth edition of the A.M.A., *Guides*. Dr. Katz found that appellant had reached maximum medical improvement as of March 17, 2015, the date of Dr. Helsten's impairment examination. He concurred with Dr. Helsten's class 1 diagnosis of shoulder contusion with residual symptoms and consistent objective findings based on Table 15-5 of the sixth edition of the A.M.A., *Guides*. The medical adviser, however, explained that Dr. Helsten incorrectly utilized a grade modifier 4 for GMFH in his calculation of a net adjustment for the shoulder impairment.

The medical adviser discussed how he arrived at his conclusion by listing specific tables and pages in the A.M.A., *Guides*. According to section 15.3a of the sixth edition of the A.M.A., *Guides*, page 406,[17] if the grade for GMFH differed by two or more grades from that described by the GMPE or GMCS, it should be assumed to be unreliable, and if the GMFH was unreliable or inconsistent with other documentation, it was to be excluded from the grading process. As the grade modifier 4 for GMFH was two or more grades from the grade modifier 1 for GMPE, Dr. Katz properly found that it should be excluded from the calculation. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), the medical adviser found a net grade modifier zero, resulting in an impairment class 1, default grade C, equaling a two percent permanent impairment of the right upper extremity. Dr. Katz properly interpreted Table 15-5 and section 15.3a of the A.M.A., *Guides* to find that appellant qualified for two percent permanent impairment to the right upper extremity. The Board finds that the medical adviser in this case properly applied the standards of the A.M.A., *Guides*. Dr. Katz' opinion is the weight of medical evidence and supports that appellant does not have a greater right upper extremity impairment than the two percent previously awarded. Thus, the Board finds that OWCP properly relied upon the opinion of its medical adviser in denying appellant's claim for an additional schedule award.

There is no current medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant has more than two percent permanent impairment to the right arm. Accordingly, appellant has not met his burden of proof to establish a schedule award greater than that previously awarded.

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 has not established more than two percent permanent impairment to the right upper extremity, for which he had previously received a schedule award.

[17] *Supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the September 3, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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