

**United States Department of Labor
Employees' Compensation Appeals Board**

N.A., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Mexico, MO, Employer

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**Docket No. 19-0248
Issued: May 17, 2019**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 1, 2018 appellant filed a timely appeal from an August 24, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 met her burden of proof to establish more than seven percent permanent impairment of her right upper extremity, for which she previously received a schedule award.

FACTUAL HISTORY

On December 17, 2013 appellant, then a 55-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a right shoulder injury due to

¹ 5 U.S.C. § 8101 *et seq.*

performing her repetitive work duties, including casing and delivering mail. She indicated that she first became aware of her claimed injury and of its relationship to factors of her federal employment on November 1, 2013.

OWCP initially accepted that appellant sustained a partial tear of the rotator cuff of her right shoulder.² Appellant stopped work on January 25, 2014. OWCP paid her disability compensation on the daily rolls commencing January 25, 2014 and on the periodic rolls commencing May 4, 2014.

On March 28, 2014 appellant underwent OWCP-approved right shoulder surgery, including arthroscopy with subacromial decompression, and mini-arthrotomy with repair of rotator cuff tear and supraspinatus tendon. She continued to have right shoulder problems and underwent additional OWCP-approved right shoulder surgeries. On March 24, 2015 appellant had repeat rotator cuff repair performed with supraspinatus tendon double-row technique and cell graft matrix placement. On January 6, 2016 she underwent another rotator cuff repair with loose body/material removal, synovectomy, acromioplasty, allograft reconstruction, subacromial decompression, and debridement of the labrum/glenohumeral joint. The report of the January 6, 2016 surgical procedures indicated that appellant had a full-thickness right rotator cuff tear.

On June 5, 2017 appellant filed a claim for a schedule award (Form CA-7).

In a September 7, 2017 report, Dr. Matthew J. Smith, an attending Board-certified orthopedic surgeon, indicated that appellant presented with complaints of burning pain in her right shoulder and difficulty raising her right arm. He diagnosed chronic rotator cuff tear and cervical region spondylosis, and he indicated that further evaluation of appellant's condition was needed.

In a development letter dated October 5, 2017, OWCP advised appellant that the medical evidence of record did not establish that she had reached maximum medical improvement (MMI) with respect to her right shoulder condition. It informed appellant, that once the medical evidence of record establishes that she reached MMI, she should submit additional medical evidence in support of her schedule award claim.

In a November 6, 2017 report, Dr. Smith indicated that appellant had reached MMI with respect to her right shoulder condition, as the condition had been static and well-stabilized for several months.

In a letter dated November 21, 2017, OWCP requested that Dr. Smith provide an opinion on the extent of permanent impairment of appellant's right upper extremity under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ It afforded Dr. Smith 30 days to provide his opinion.

In a December 18, 2017 letter, Dr. Smith noted that he estimated 18 percent permanent impairment of appellant's right upper extremity related to her accepted rotator cuff condition,

² OWCP later expanded the accepted conditions to include sprain of the right shoulder (rotator cuff) and right upper arm.

³ A.M.A., *Guides* (6th ed. 2009).

shoulder/upper arm sprain, and need for surgery. He advised that appellant last visited him on September 7, 2017. Dr. Smith found that appellant had reached MMI on November 6, 2017 and he released her from his care.

In March 2018 OWCP referred appellant for a second opinion examination to Dr. Richard T. Katz, a Board-certified physical medicine and rehabilitation physician, and requested that he provide an opinion on the extent of permanent impairment of appellant's right upper extremity under the standards of the sixth edition of the A.M.A., *Guides*.

In an April 19, 2018 report, Dr. Katz discussed appellant's factual and medical history, noting that appellant reported being unable to lift heavy objects with her right arm. He reported findings of the physical examination he conducted on April 19, 2018 and he noted that appellant had a *QuickDASH* score of 89 based on her responses to a survey regarding her functional capacity. Dr. Katz indicated that he obtained range of motion (ROM) findings for appellant's right shoulder under the instructions of the sixth edition of the A.M.A., *Guides*, including taking three active measurements for each type of ROM. He noted that appellant had 180 degrees of right shoulder flexion, 50 degrees of extension, 90 degrees of internal rotation, 90 degrees of external rotation, 180 degrees of abduction, and 50 degrees of adduction.⁴ Dr. Katz reported that appellant had 5/5 strength in the deltoid and biceps muscles of both upper extremities.

Dr. Katz indicated that, because appellant had normal ROM of her right shoulder, he would evaluate appellant's right upper extremity permanent impairment using the diagnosis-based impairment (DBI) rating method found at Table 15-5 (Shoulder Regional Grid) on page 403 of the sixth edition of the A.M.A., *Guides*. He found that appellant's diagnosis of full-thickness rotator cuff tear fell within class 1 with a default value of five percent on Table 15-5. Dr. Katz indicated that appellant had a functional history grade modifier (GMFH) of 4 (based on the *QuickDASH* score of 89) and a physical examination grade modifier (GMPE) of 1 (mild problem).⁵ Application of the net adjustment formula required movement two spaces to the right of the default value on Table 15-5 to a permanent impairment value of seven percent. Dr. Katz concluded that, based on the DBI rating method, appellant had seven percent permanent impairment of her right upper extremity. He found that appellant had reached MMI on November 6, 2017.

OWCP referred appellant's case to Dr. David H. Garelick, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), and requested that, based on the medical evidence of record, he provide an opinion on the extent of permanent impairment of appellant's right upper extremity under the standards of the sixth edition of the A.M.A., *Guides*. It requested that Dr. Garelick provide permanent impairment ratings under both the DBI and ROM methods and identify the method which produced the higher rating.

In an April 25, 2018 report, the DMA indicated that he had reviewed the medical evidence of record, including Dr. Katz' April 19, 2018 report. Applying the standards of the sixth edition

⁴ Dr. Katz indicated that all ROM measurements fell within 10 degrees of the mean of each set of three measurements.

⁵ Clinical studies were used to place appellant in the proper diagnosis, and thus Dr. Katz did not provide a grade modifier for clinical studies. A.M.A., *Guides* 407.

of the A.M.A., *Guides* to the April 19, 2018 findings of Dr. Katz, he noted that he agreed with his assessment that appellant had seven percent permanent impairment of her right upper extremity under the DBI rating method. Dr. Garelick applied the standards of Table 15-34 (Shoulder ROM) on page 475 to the right shoulder ROM findings obtained by Dr. Katz and concluded that appellant did not have a permanent impairment of her right upper extremity under the ROM rating method.⁶ He advised that the DBI rating method yielded a higher value for permanent impairment of appellant's right upper extremity (seven percent) than the ROM rating method (zero percent), and therefore he determined that the DBI rating method should be used to calculate appellant's schedule award. Dr. Garelick concluded that appellant had seven percent permanent impairment of her right upper extremity under the standards of the sixth edition of the A.M.A., *Guides*.⁷

By decision dated August 24, 2018, OWCP granted appellant a schedule award for seven percent permanent impairment of her right upper extremity. The award ran for 21.84 weeks for the period April 19 to September 18, 2018. It was based on the April 25, 2018 calculations of the DMA, who applied the sixth edition of the A.M.A., *Guides* to the April 19, 2018 examination findings of Dr. Katz, the second opinion medical examiner.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁸ and its implementing federal regulation,⁹ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.¹⁰ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹¹

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. The sixth edition requires identifying the impairment class for the class of diagnosis (CDX), which is then

⁶ The DMA noted that Dr. Katz had obtained three measurements for each type of ROM of the right shoulder.

⁷ The DMA determined that appellant reached MMI on April 19, 2018, the date of Dr. Katz' evaluation.

⁸ 5 U.S.C. § 8107.

⁹ 20 C.F.R. § 10.404.

¹⁰ *Id.* at § 10.404(a).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

adjusted by GMFH, GMPE, and GMCS.¹² The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹³

Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides:

“As the [A.M.A.,] *Guides* caution that if it is clear to the evaluator evaluating loss of ROM that a restricted ROM has an organic basis, three independent measurements should be obtained and the greatest ROM should be used for the determination of impairment, the CE [claims examiner] should provide this information (*via* the updated instructions noted above) to the rating physician(s).

“Upon initial review of a referral for upper extremity impairment evaluation, the DMA should identify (1) the methodology used by the rating physician (*i.e.*, DBI or ROM) and (2) whether the applicable tables in Chapter 15 of the [A.M.A.,] *Guides* identify a diagnosis that can alternatively be rated by ROM. *If the [A.M.A.,] Guides allow for the use of both the DBI and ROM methods to calculate an impairment rating for the diagnosis in question, the method producing the higher rating should be used.*” (Emphasis in the original.)¹⁴

The Bulletin further advises:

“If the rating physician provided an assessment using the ROM method and the [A.M.A.,] *Guides* allow for use of ROM for the diagnosis in question, the DMA should independently calculate impairment using both the ROM and DBI methods and identify the higher rating for the CE.”¹⁵

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish more than seven percent permanent impairment of her right upper extremity, for which she previously received a schedule award.

The Board finds that OWCP properly based its August 24, 2018 schedule award for seven percent permanent impairment of the right upper extremity on the April 25, 2018 calculations of Dr. Garelick, the DMA, who applied the sixth edition of the A.M.A., *Guides* to the April 19, 2018 examination findings of Dr. Katz, an OWCP referral physician.

¹² See A.M.A., *Guides* (6th ed. 2009) 401-12. Table 15-5 also provides that, if motion loss is present for a claimant who has a rotator cuff injury (full-thickness tear), impairment may alternatively be assessed using section 15.7 (ROM impairment). Such an ROM impairment stands alone and is not combined with a DBI impairment. *Id.* at 403, 475-78.

¹³ *Id.* at 411-12.

¹⁴ FECA Bulletin No. 17-06 (May 8, 2017).

¹⁵ *Id.*

In his April 25, 2018 report, the DMA properly concluded that appellant had seven percent permanent impairment of her right upper extremity under the standards of the sixth edition of the A.M.A., *Guides*. He correctly agreed with Dr. Katz' assessment that, under the DBI rating method, appellant's diagnosis of full-thickness rotator cuff tear fell within class 1 with a default value of five percent on Table 15-5. The DMA properly agreed with Dr. Katz's calculation of grade modifiers and his application of the net adjustment formula which necessitated movement two spaces to the right of the default value on Table 15-5 to the right upper extremity permanent impairment value of seven percent.¹⁶ He applied the standards of Table 15-34 to the right shoulder ROM findings obtained by Dr. Katz and concluded that appellant did not have any permanent impairment of her right upper extremity under the ROM rating method.¹⁷ The DMA advised that the DBI rating method yielded a higher value for permanent impairment of appellant's right upper extremity (seven percent) than the ROM rating method (zero percent) and, therefore, he concluded that the DBI rating method should be used to calculate appellant's schedule award for seven percent permanent impairment of the right upper extremity.

The Board finds that Dr. Garelick's permanent impairment calculation was in accordance with FECA Bulletin No. 17-06 as the ROM rating method was available for appellant's rotator cuff tear diagnosis under Table 15-5 on page 403 of the sixth edition of the A.M.A., *Guides*, there were adequate ROM findings available for his review, and he properly chose the higher permanent impairment rating after conducting impairment ratings under both the DBI and ROM methods.¹⁸

In a December 18, 2017 letter, Dr. Smith, an attending physician, noted that he estimated 18 percent permanent impairment for appellant's right upper extremity related to her rotator cuff condition, shoulder/upper arm sprain, and need for surgery. However, this report is of no probative value on the underlying issue of this case because Dr. Smith did not explain how his permanent impairment rating was calculated in accordance with the sixth edition of the A.M.A., *Guides*. The Board has held that an opinion on permanent impairment lacks probative value if it is not derived in accordance with the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses.¹⁹

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

¹⁶ See *supra* notes 12 and 13.

¹⁷ A.M.A., *Guides* 475, Table 15-34.

¹⁸ See *supra* note 14. Dr. Garelick had adequate ROM findings available to him because Dr. Katz obtained three active measurements for each type of right shoulder motion and all ROM measurements fell within 10 degrees of the mean of each set of three measurements. See A.M.A., *Guides* 464.

¹⁹ See *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses lacks probative value in determining the extent of a claimant's permanent impairment).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish more than seven percent permanent impairment of her right upper extremity, for which she previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2019
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board