

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

M.H., Appellant)	
)	
and)	Docket No. 24-0499
)	Issued: June 18, 2024
U.S. POSTAL SERVICE, PEACHTREE)	
PROCESSING & DISTRIBUTION CENTER,)	
Atlanta, GA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 26, 2024 appellant filed a timely appeal from a February 22, 2024 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 greater than five percent permanent impairment of the left upper extremity, for which she previously received a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 4, 2022 appellant, then a 62-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed a rotator cuff tear due to factors of her federal employment, including repetitive lifting, reaching, and pushing and pulling heavy equipment. She alleged that she first became aware of this condition and its relationship to her federal employment on April 4, 2020. By decision dated January 12, 2023, OWCP accepted the claim for left shoulder sprain and left rotator cuff strain. It authorized left shoulder arthroscopy, extensive debridement including labral debridement, subscapularis debridement, rotator cuff debridement from the articular and bursal side, partial synovectomy, distal clavicle coplaning, subacromial decompression, rotator cuff repair, and subpectoral biceps tenodesis. which was performed on April 3, 2023. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective April 3, 2023, and on the periodic rolls effective May 21, 2023.

In a report dated September 20, 2023, Dr. John Steven Andrachuk, a Board-certified orthopedic surgeon, opined that appellant had three percent whole person permanent impairment. He advised that she had reached maximum medical improvement (MMI) as of the date of the report.

On October 3, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On December 7, 2023 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF) and a series of questions, to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation. It requested that he provide an opinion regarding her left upper extremity permanent impairment under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

In a report dated December 28, 2023, Dr. Doman noted appellant's employment history and that the claim was accepted for left shoulder rotator cuff strain and a left shoulder sprain. On physical examination he observed appellant's left shoulder which revealed no swelling, no instability, and symmetric rotator cuff strength. His range of motion (ROM) examination of her left shoulder, repeated on three measurements, revealed forward flexion of 150 degrees, abduction of 150 degrees, internal rotation of 80 degrees, adduction of 40 degrees, and external rotation of 60 degrees.

Dr. Doman referred to the sixth edition of the A.M.A., *Guides* and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 15-5 (Shoulder Regional Grid), page 402, the class of diagnosis (CDX) for left shoulder rotator cuff partial thickness tear resulted in a Class 1 impairment with a default value of three percent. He assigned a grade modifier for functional history (GMFH) of 1; a grade modifier for physical examination (GMPE) of 1; and a grade modifier for clinical studies (GMCS) of 1. Dr. Doman utilized the net adjustment formula, $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (1 - 1) + (1 - 1) = 0$, which resulted in a net adjustment of zero. Next, he utilized Table 15-34 (Shoulder Range of Motion), page 475,

² A.M.A., *Guides* (6th ed. 2009).

and determined that appellant had three percent permanent impairment due to 150 degrees abduction, three percent permanent impairment due to 150 degrees forward flexion, and zero percent permanent impairment for the other ranges of motion, for a total of six percent permanent impairment of the left upper extremity. Dr. Doman concluded that since the ROM rating method yielded the higher percentage rating, appellant had six percent permanent impairment of the left upper extremity. He reported that appellant reached MMI on December 28, 2023.

On January 11, 2024 OWCP routed Dr. Doman's December 28, 2023 report and the case record to Dr. Jack L. Miller, a Board-certified physiatrist serving as an OWCP district medical adviser (DMA), for review and a determination of appellant's date of MMI and the permanent impairment of her left upper extremity under the sixth edition of the A.M.A., *Guides*. It requested that Dr. Miller review Dr. Doman's December 28, 2023 report, and provide an opinion discussing whether he agreed with its findings.

In a January 20, 2024 report, Dr. Miller reviewed the findings in Dr. Doman's December 28, 2023 report. He diagnosed left shoulder partial thickness rotator cuff tear. Dr. Miller referred to the sixth edition of the A.M.A., *Guides*, and utilized the DBI rating method to find that, under Table 15-5 (Shoulder Regional Grid), page 402, the CDX for appellant's partial-thickness rotator cuff tear resulted in a Class 1 impairment with a default value of 3. Dr. Miller assigned a GMFH of 1, a GMPE of 1 and a GMCS of 4. He noted that he assigned a grade modifier of 4 to clinical studies based on appellant's magnetic resonance imaging (MRI) report which demonstrated involvement of the rotator cuff, labral tendon, and biceps tendon pathology. After applying the net adjustment formula, $(1 - 1) + (1 - 1) + (4 - 1) = +3$, noting that the maximum is +2, he indicated that the impairment rating moved to a grade E and increased to five percent permanent impairment of the left shoulder. Regarding the ROM method, he noted that there was insufficient information contained in the case record to calculate permanent impairment utilizing that method as Dr. Doman's report did not obtain baseline measurements of the right shoulder.

By decision dated February 22, 2024, OWCP granted appellant a schedule award for five percent permanent impairment of the left upper extremity. The award ran for 15.6 weeks from December 28, 2023 through April 15, 2024, and was based on the December 28, 2023 report of Dr. Doman and the January 20, 2024 report of Dr. Miller, the DMA.

LEGAL PRECEDENT

The schedule award provisions of FECA³ and its implementing regulations⁴ 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 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. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

standard for evaluating schedule losses.⁵ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).⁶ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.⁷

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): A Contemporary Model of Disablement*.⁸ Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by a GMFH, GMPE, and/or GMCS.⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰ Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹¹

FECA Bulletin No. 17-06 provides guidance in applying ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities.¹² Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides in pertinent part:

“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*

⁵ *Id.* See also Ronald R. Kraynak, 53 ECAB 130 (2001).

⁶ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *id.* at Chapter 2.808.5a (March 2017).

⁷ *K.D.*, Docket No. 23-0901 (issued February 27, 2024); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

⁸ A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3.

⁹ *Id.* at 494-531.

¹⁰ *Id.* at 411

¹¹ *K.D.*, *supra* note 7; *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹² FECA Bulletin No. 17-06 (issued May 8, 2017).

impairment rating for the diagnosis in question, the method producing the higher rating should be used.” (Emphasis in the original.)¹³

The Bulletin further provides:

“If the medical evidence of record is [in]sufficient for the DMA to render a rating on ROM where allowed, the DMA should advise as to the medical evidence necessary to complete the rating. However, the DMA should still render an impairment rating using the DBI method, if possible, given the available evidence.”¹⁴

OWCP’s procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.¹⁵

ANALYSIS

The Board finds that this case is not in posture for decision.¹⁶

OWCP initially received a September 20, 2023 report wherein Dr. Andrachuk opined that appellant had a three percent whole person permanent impairment. Neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the body as a whole.¹⁷ Dr. Andrachuk’s report was therefore insufficient to establish appellant’s schedule award claim.

On December 7, 2023 OWCP referred appellant for a second opinion evaluation with Dr. Doman. Utilizing the DBI method, Dr. Doman calculated three percent permanent impairment of the left upper extremity.¹⁸ Next, Dr. Doman used the ROM method to calculate a six percent permanent impairment.¹⁹ He noted that he had performed three measurement trials of the left shoulder. OWCP referred the matter to a DMA, Dr. Miller, for an opinion regarding her permanent impairment in accordance with the A.M.A., *Guides*.

¹³ *Id.*

¹⁴ *Id.*; *R.L.*, Docket No. 19-1793 (issued August 7, 2020).

¹⁵ *Id.*; *see also B.T.*, Docket No. 24-0174 (issued April 12, 2024).

¹⁶ *M.A.*, Docket No. 19-1732 (issued September 9, 2020); *A.R.*, Docket No. 19-1284 (issued January 14, 2020); *D.B.*, Docket No. 18-0409 (issued October 28, 2019).

¹⁷ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

¹⁸ A.M.A., *Guides* 402, Table 15-15.

¹⁹ A.M.A., *Guides* 475, Table 15-34.

Dr. Miller, the DMA, opined that appellant had five percent permanent impairment of the left upper extremity for left shoulder partial thickness rotator cuff tear under the DBI methodology. Dr. Miller advised that Dr. Doman's report did not contain right shoulder motion measurements for use as a baseline normal, which was inconsistent with the validity criteria in Section 15.7, page 464 of the A.M.A., *Guides*, for measuring ROM. The Board notes that this referenced section of the A.M.A., *Guides* provides that both extremities should be examined whenever possible, since right vs left comparisons between the affected and unaffected side are useful to help determine the "normal" baseline.²⁰ The DMA therefore concluded that appellant's permanent impairment could not be rated using the ROM methodology.

Pursuant to FECA Bulletin No. 17-06, if the ROM method of rating permanent impairment is allowed, after review of the DBI rating, and the ROM findings are incomplete, the DMA should advise as to the medical evidence necessary to complete the ROM method of rating if the medical evidence of record is insufficient to rate appellant's impairment using ROM.²¹

The Board finds that OWCP did not follow the procedures as outlined in FECA Bulletin No. 17-06 after the DMA advised that the measurements had not been obtained for the right shoulder to determine appellant's baseline ROM shoulder measurements.²²

On remand, OWCP shall request that Dr. Doman provide the necessary ROM measurements regarding appellant's right shoulder, and that he provide an opinion as to whether these measurements affect the ROM measurements of appellant's left shoulder. After it obtains the evidence necessary to complete the rating as described above, the case shall be referred to a DMA to calculate appellant's impairment of the left shoulder using both ROM and DBI methods.²³ If Dr. Doman does not fully comply with the A.M.A., *Guides*, OWCP shall refer appellant to a new specialist in the appropriate field of medicine for a second opinion evaluation.²⁴ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.²⁵

CONCLUSION

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

²⁰ See *D.H.*, Docket No. 18-0457 (issued September 18, 2019).

²¹ *Supra* note 12; *K.R.*, Docket No. 20-1675 (issued August 19, 2022); *R.L.*, Docket No. 19-1793 (issued August 7, 2020); *E.P.*, Docket No. 19-1708 (issued April 15, 2020).

²² *Id.*

²³ *J.V.*, Docket No. 18-1052 (issued November 8, 2018); *M.C.*, Docket No. 18-0526 (issued September 11, 2018).

²⁴ See *A.J.*, Docket No. 23-0404 (issued September 8, 2023); *T.B.*, Docket No. 22-1170 (issued April 24, 2023); see also *M.W.*, Docket No. 21-1260 (issued September 9, 2022).

²⁵ *J.F.*, Docket No. 17-1726 (issued March 12, 2018).

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2024 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 18, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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