United States Department of Labor
Employees' Compensation Appeals Board

T.W., Appellant	)	
and	)	**Docket No. 24-0836**
	)	**Issued: September 23, 2024**
U.S. POSTAL SERVICE, MCDONOUGH POST OFFICE, McDonough, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On August 12, 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 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 met his burden of proof to establish greater than one percent permanent impairment of his right upper extremity, for which he previously received a schedule award.

FACTUAL HISTORY

On July 20, 2023 appellant, then a 64-year-old distribution window clerk, filed an occupational disease claim (Form CA-2) alleging that he injured both knees, left hip, back, and

[1] 5 U.S.C. § 8101 *et seq*.

right shoulder, due to factors of his federal employment. He noted that he first became aware of his condition and realized its relation to his federal employment on July 7, 2020.[2] OWCP accepted the claim for right shoulder lesions, right knee primary osteoarthritis, left side lumbago with sciatica, and lumbar radiculopathy.

On October 10, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On November 9, 2023 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. Alexander Doman, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation. It requested that Dr. Doman evaluate appellant's accepted conditions and provide permanent impairment ratings under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3]

In a November 28, 2023 report, Dr. Doman recounted appellant's history of injury and medical treatment. He examined appellant and provided physical examination findings. Dr. Doman observed that appellant had excellent range of motion (ROM) of the right shoulder and that it was normal and symmetric as compared to the left shoulder. He noted that these ROM measurements were repeated three times. Dr. Doman recorded that appellant's right shoulder forward flexion was 180 degrees, external rotation was 50 degrees, abduction was 170 degrees, adduction was 40 degrees, internal rotation was 80 degrees, and external rotation was 60 degrees. Appellant's rotator cuff strength was excellent with respect to the left and right shoulder and there was no instability, swelling, or deformity of the right shoulder.

With regard to the lower extremity, Dr. Doman noted symptom magnification with complaints of low back pain on a non-physiologic basis in the prone position with simple attempts to flex the knees. He found a negative straight leg raising test and that graded muscle strength testing of the quadriceps, hamstrings, and hip flexor muscles was normal. On examination of the left and right knee, Dr. Doman observed full extension to 0 degrees, flexion of both knees was symmetric at 110 degrees, no instability or effusion of either knee, and collateral ligaments were intact. He noted these measurements were repeated three times. Dr. Doman explained that the current diagnosis with respect to the left and right knee was age-related progressive degenerative arthritis and opined that the accepted condition of primary osteoarthritis of the right knee represented a temporary aggravation of the underlying condition which "long ago ceased." He further explained that the diagnosis upon which an impairment was based was the lumbago of the lumbar spine; however, there was no evidence of radiculopathy or nerve injury related to the lumbar spine. Dr. Doman opined that in the absence of nerve impairment of the lumbar spine, there was a zero percent impairment to the left and right lower extremities.

Dr. Doman utilized the A.M.A., *Guides* to determine a diagnosis-based impairment (DBI) method rating of the right shoulder, referring to Table 15-5 on page 401, the Shoulder Regional Grid. He found that the class of diagnosis (CDX) of nonspecific shoulder pain was CDX 1 with a

[2] Appellant retired from the employing establishment on August 1, 2020.

[3] A.M.A., *Guides* (6th ed. 2009).

default grade C, resulting in a 1 percent permanent impairment to the right upper extremity. Dr. Doman further found a grade modifier for clinical studies (GMCS) of 1, a grade modifier for physical examination (GMPE) of 1, and a grade modifier for functional history (GMFH) of 1, which resulted in grade C or 1 percent permanent impairment of the right upper extremity. He also used the ROM method and found no impairment of the right shoulder based upon Table 15-34 on page 475, Shoulder Range of Motion, as there was full ROM of the right shoulder. Dr. Doman opined that the impairment rating based upon the accepted conditions was one percent permanent impairment of the right upper extremity and noted maximum medical improvement (MMI) on the date of his examination, November 28, 2023.

On January 10, 2024 OWCP referred the case record and the SOAF to Dr. Nathan Hammel, Board-certified in orthopedic surgery, serving as OWCP's district medical adviser (DMA).

In a January 22, 2024 report, Dr. Hammel reviewed Dr. Doman's November 28, 2023 report and concurred with his permanent impairment calculations under both the DBI and ROM rating methods of the A.M.A., *Guides*. He explained that the ROM method resulted in no impairment rating for the right shoulder as he had full range of motion. For the DBI method, the DMA noted that the diagnosis of nonspecific shoulder pain was CDX 1 with default grade C under Table 15-5. Dr. Hammel assigned grade modifiers of 1 for GMFH, based on continued pain; and GMPE, based on tenderness; and he noted a GMCS was not applicable. Using the net adjustment formula, he found no change to the DBI rating of CDX 1, default grade C, which resulted in a rating of 1 percent permanent impairment of the right upper extremity.

Dr. Hammel further found that with regard to the left shoulder, the ROM method provided no impairment as the motion was full, and there were no objective findings for a rating using the DBI method. He noted that spinal nerve impairment was 0, as there was no objective evidence of impingement leading to objective strength or sensory deficits. For the knees, Dr. Hammel explained that the A.M.A., *Guides* only allow for a use of the ROM method for the lower extremity in the setting of severe organic motion loss not ascribable to a specific DBI-based impairment, which was not applicable in this case. He further found that there was no DBI method rating for the knees as there was no objective medical imaging to support a rating based on arthritis. Dr. Hammel noted that appellant had reached MMI on November 28, 2023, the date of Dr. Doman's examination.

By decision dated February 22, 2024, OWCP granted appellant a schedule award for one percent permanent impairment of the right upper extremity. The award ran for 3.12 weeks from November 28 to December 19, 2023. OWCP accorded the weight of the evidence to the November 28, 2023 report of Dr. Doman, the second opinion examiner, and the January 22, 2024 report of the DMA, Dr. Hammel.

LEGAL PRECEDENT

The schedule award provisions of FECA[4] and its implementing regulations[5] 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. FECA, however, does not specify the manner in which the percentage of loss of a member 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 and the Board has concurred in such adoption.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.[7]

OWCP issued FECA Bulletin No. 17-06 to explain the use of the DBI methodology versus the ROM methodology for rating of upper extremity impairments.[8] 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:

> "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.)[9]

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 shoulders, the relevant portions of the arm for the present case, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the CDX is determined from the Shoulder Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and/or GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10] Under Chapter 2.3, evaluators

---

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id.* at § 10.404(a); *see R.M.*, Docket No. 20-1278 (issued May 4, 2022); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

[7] 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).

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

[9] *Id.*

[10] *See* A.M.A., *Guides* (6th ed. 2009) 405-12. Table 15-5 also provides that, if motion loss is present for a claimant with certain diagnosed shoulder conditions, permanent impairment may alternatively be assessed using Section 15.7 (ROM impairment). Such an ROM rating stands alone and is not combined with a DBI rating. *Id.* at 398-05, 475-78.

are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[11]

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.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than one percent permanent impairment of his right upper extremity, for which he previously received a schedule award.

On January 22, 2024 Dr. Hammel, the DMA, reviewed and concurred with Dr. Doman's November 28, 2023 permanent impairment rating under the sixth edition of the A.M.A., *Guides*. He applied the DBI rating method to Dr. Doman's examination findings and determined that under Table 15-5, the Shoulder Regional Grid, appellant's nonspecific right shoulder pain was a CDX 1, default grade C, with a one percent impairment rating. Dr. Hammel applied the grade modifiers and assigned a GMFH of 1, a GMPE of 1, and related that GMCS was not applicable. He utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (1 - 1) + (N/A) = 0, and calculated a final grade C, which resulted in a one percent permanent impairment of the right upper extremity. Dr. Hammel also applied the ROM method to Dr. Doman's examination findings of full ROM and found no impairment under Table 15-34, Shoulder Range of Motion. He opined that appellant had a one percent permanent impairment of the right upper extremity and noted that appellant had reached MMI on November 28, 2023, the date of Dr. Doman's examination.

The Board finds that Dr. Hammel properly calculated appellant's right upper extremity permanent impairment in accordance with the standards of the sixth edition of the A.M.A., *Guides* and that OWCP properly relied on the opinion of the DMA.[13]

As the medical evidence of record is insufficient to establish greater than one percent permanent impairment of appellant's right upper extremity, for which he previously received schedule award compensation, the Board finds that appellant has not met his burden of proof.[14]

[11] *Id*. at 23-28.

[12] *See supra* note 7 at Chapter 2.808.6(f) (March 2017); *see also B.C.*, Docket No. 21-0702 (issued March 25, 2022); *D.L.*, Docket No. 20-1016 (issued December 8, 2020); *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

[13] *Id*.

[14] The Board notes that OWCP has not issued a schedule award decision addressing appellant's other accepted conditions.

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 permanent impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than one percent permanent impairment of his right upper extremity, for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board