

On appeal, appellant contends that improper paperwork was submitted on her behalf as Dr. John H. Cathcart, III, a Board-certified orthopedic surgeon, stated that there had been a mistake by referencing the shoulder regional grip on page 401 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). She further contends that she has 13 percent permanent impairment to her right arm.

FACTUAL HISTORY

OWCP accepted that on May 10, 2010 appellant, then a 49-year-old rural carrier, sustained a sprain of the right shoulder and upper arm and a complete right rotator cuff tear while lifting a tub of mail in the performance of duty. On September 22, 2010 Dr. Cathcart performed an arthroscopic repair of the rotator cuff, biceps tenodesis, subacromial decompression and distal clavicle excision. On April 14, 2011 appellant underwent another arthroscopic shoulder surgery.

On August 31, 2011 appellant underwent a functional capacity evaluation (FCE), which found that she fell within the medium range for overall level of work. He was capable of working an 8-hour day, 40 hours per week, with the following restrictions: exerting 20 to 50 pounds of force occasionally and/or 10 to 25 pounds of force frequently and/or greater than negligible up to 10 pounds of force constantly to move objects.

In a September 2, 2011 report, Dr. Cathcart found that appellant had reached maximum medical improvement. He opined that, according to the sixth edition of the A.M.A., *Guides*, she qualified as a class 1, Table 15-5 and had a 13 percent impairment of the right upper extremity. Dr. Cathcart noted that appellant had an FCE that defined moderate work activity and advised that she follow those guidelines.

Appellant returned to light-duty work effective September 7, 2011. On September 8, 2011 she filed a claim for a schedule award.

In a September 22, 2011 report, Dr. H.P. Hogshead, an OWCP medical adviser, reviewed the medical evidence of record and concurred with Dr. Cathcart that appellant had reached maximum medical improvement as of September 2, 2011. He found that appellant had a 10 percent permanent impairment of the right upper extremity. Dr. Hogshead noted that Dr. Cathcart did not explain the rating method used to reach the recommended 13 percent impairment. In a worksheet, he explained that, under the sixth edition of the A.M.A., *Guides*, Table 15-5, page 403, appellant qualified for class 1 with the default grade C equal to 10 percent upper extremity impairment.³ Utilizing Table 15-5, Dr. Hogshead assigned a grade modifier 1 for diagnosis-based impairment (CDX), Functional History (GMFH) and Physical Examination (GMPE). He indicated that a grade modifier for Clinical Studies (GMCS) was not applicable in this case. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), Dr. Hogshead found that (1-1) + (1-1) + (0-1) resulted in a net grade modifier of 0, resulting in an impairment class 1, grade C, equaling a 10 percent permanent impairment of the right upper extremity.

³ Table 15-5, pages 401-05 of the sixth edition of the A.M.A., *Guides* is entitled *Shoulder Region Grid: Upper Extremity Impairments*.

By letter dated October 21, 2011, OWCP provided Dr. Cathcart with a copy of Dr. Hogshhead's report. Dr. Cathcart was asked to address whether he agreed with the 10 permanent impairment rating and afford 30 days for a response.

In a November 21, 2011 report, Dr. Cathcart explained that he determined appellant's impairment based range of motion from Table 15-34 of the sixth edition of the A.M.A., *Guides*.⁴ He indicated that the total impairment of 13 percent to the upper extremity was based on forward elevation, abduction, extension, internal rotation and external rotation.

In a December 6, 2011 report, a second medical adviser received the November 21, 2011 report of Dr. Cathcart, who stated that the physician did not explain how he rated a 13 percent impairment. Therefore, there was no way to know how Dr. Cathcart applied the A.M.A., *Guides*.

By decision dated December 6, 2011, OWCP granted appellant a schedule award for 10 percent permanent impairment to the right arm, relying on the medical adviser's September 22, 2011 report.

On December 21, 2011 appellant requested reconsideration of OWCP's December 6, 2011 schedule award determination. She resubmitted Dr. Cathcart's November 21, 2011 report.

By decision dated January 9, 2012, OWCP denied appellant's request for reconsideration of the merits finding that she did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA⁵ 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 the 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.⁶ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.⁷

⁴ Table 15-34, page 475 of the sixth edition of the A.M.A., *Guides* is entitled *Shoulder Range of Motion*.

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

⁶ See *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000). See also 5 U.S.C. § 8107.

⁷ 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 2.808.6.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

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).⁸ Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.⁹ 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.¹⁰

ANALYSIS -- ISSUE 1

OWCP accepted that on May 10, 2010 appellant sustained a sprain of the shoulder and upper arm, right rotator cuff and a right rotator cuff tear complete. Appellant underwent surgery on September 22, 2010 and April 14, 2011. In a December 6, 2011 award of compensation, OWCP granted her a schedule award for 10 percent permanent impairment to the right arm. On December 21, 2011 appellant requested reconsideration of the schedule award determination, claiming a 13 percent permanent impairment to her right arm. It is her burden to submit sufficient evidence to establish the extent of permanent impairment.¹¹

Appellant submitted reports from Dr. Cathcart addressing her right arm impairment. However, the reports are not sufficient to establish that she has more than 10 percent right arm impairment. The Board notes that none of Dr. Cathcart's reports clearly explain how he rated appellant's impairment under the sixth edition of the A.M.A., *Guides*. On September 2, 2011 Dr. Cathcart did not address the method used to make his rating under specific tables in the A.M.A., *Guides*.¹² On November 21, 2011 he indicated that a mistake was made by referencing page 401. Dr. Cathcart stated that he used the range of motion method but failed to provide a rationalized medical opinion as to how a mistake was or its implications to total impairment. His reports are of diminished probative value regarding the extent of permanent impairment under the sixth edition of the A.M.A., *Guides*.¹³

Dr. Hogshead reviewed the medical evidence of record and properly concluded that appellant had a 10 percent permanent impairment of the right arm. He noted that Dr. Cathcart had not explained the method used to determine a 13 percent permanent impairment and there was no way to know how he applied the A.M.A., *Guides*. Dr. Hogshead interpreted Table 15-5 to find that appellant qualified for class 1 with the default grade C equal to 10 percent upper

⁸ A.M.A., *Guides* (6th ed., 2009), section 1.3, International Classification of Functioning, Disability and Health (ICF): *A Contemporary Model of Disablement*.

⁹ *Id.* at 494-531.

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

¹¹ See *Annette M. Dent*, 44 ECAB 403 (1993).

¹² A.M.A., *Guides* 411. See also *M.B.*, Docket No 12-361 (issued September 10, 2012).

¹³ See *Richard A. Neidert*, 57 ECAB 474 (2006) (an attending physician's report is of little probative value where the A.M.A., *Guides* are not properly followed).

extremity impairment.¹⁴ He then applied the appropriate grade modifiers to adjust the impairment rating and concluded that appellant had a 10 percent permanent impairment of the right upper extremity.

The Board has held that when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides* or does not discuss how he arrives at the degree of impairment based on physical findings, his opinion is of diminished probative value in establishing the degree of impairment and OWCP may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.¹⁵ The medical adviser properly applied the standards of the A.M.A., *Guides*. His opinion is the weight of medical evidence and supports that appellant does not have a greater right arm impairment than the 10 percent previously awarded.

There is no probative medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant has more than 10 percent permanent impairment of the right arm. Accordingly, appellant has not established that she is entitled to a schedule award greater than that previously received.¹⁶

On appeal, appellant contends that improper paperwork was submitted on her behalf as Dr. Cathcart stated in his November 21, 2011 report that there had been a mistake by referencing the shoulder regional grip on page 401 of the A.M.A., *Guides*. She further contends that the medical record established a 13 percent permanent impairment to her right arm. For the reasons stated above, the Board finds that appellant's arguments are not substantiated.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review

¹⁴ Table 15-5, pages 401-05 of the sixth edition of the A.M.A., *Guides* is entitled *Shoulder Region Grid: Upper Extremity Impairments*.

¹⁵ *L.M.*, Docket No. 12-868 (issued September 4, 2012); see *John L. McClanic*, 48 ECAB 552 (1997).

¹⁶ FECA provides for reduction of compensation for subsequent injury to the same body member. It provides that schedule award compensation is reduced by the compensation paid for an earlier injury where the compensation in both cases are for impairment of the same member or function and where it is determined that the compensation for the later disability in whole or part would duplicate the compensation payable for the preexisting disability. 5 U.S.C. § 8108; 20 C.F.R. § 10.404(c).

an award for or against compensation.¹⁷ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).¹⁸

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁹ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.²⁰ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.²¹

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record²² and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.²³

ANALYSIS -- ISSUE 2

The Board finds that appellant did not submit pertinent new and relevant evidence, did not show that OWCP erroneously applied or interpreted a point of law and did not advance a relevant legal argument not previously considered by OWCP.

In support of her December 21, 2011 reconsideration request, appellant resubmitted a November 21, 2011 report by Dr. Cathcart. The Board finds that the submission of this report did not require reopening her case for merit review because it was previously reviewed by OWCP in the decision dated December 6, 2011. As the report repeats evidence already in the case record, it is duplicative and does not constitute relevant and pertinent new evidence. Therefore, appellant has not established a basis for reopening her case.²⁴

Because appellant only submitted repetitive and duplicative evidence with her request for reconsideration, the Board finds that OWCP properly denied merit review.

¹⁷ *Supra* note 1. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

¹⁸ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

¹⁹ 20 C.F.R. § 10.606(b)(3). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

²⁰ *Id.* at § 10.607(a).

²¹ *Id.* at § 10.608(b).

²² See *A.L.*, *supra* note 19. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²³ *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

²⁴ See *D.K.*, 59 ECAB 141 (2007).

CONCLUSION

The Board finds that appellant has not established that she sustained more than a 10 percent permanent impairment to her right upper extremity, for which she received a schedule award. The Board further finds that OWCP properly denied her request for reconsideration under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2012 and December 6, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 19, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board