United States Department of Labor
Employees' Compensation Appeals Board

PAMELA K. BECK, Appellant	)	
and	)	**Docket No. 05-730**
	)	**Issued: July 19, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Shelby, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 7, 2005 appellant filed a timely appeal from the November 5, 2004 merit decision of the Office of Workers' Compensation Programs, which awarded her compensation for a three percent permanent impairment of her right arm. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this schedule award.

ISSUE

The issue is whether appellant has more than a three percent permanent impairment of her right arm.

FACTUAL HISTORY

On May 5, 2002 appellant, then a 43-year-old rural mail carrier, sustained an injury in the performance of duty when she lifted a bundle of catalogs over the front seat of her motor vehicle. The Office accepted her claim for right rotator cuff tear with surgical repair, right shoulder impingement syndrome and a right shoulder supraspinatus partial tear. On September 3, 2003 she filed a claim for a schedule award.

On December 8, 2004 Dr. Bradley D. Youse, an attending orthopedic surgeon, reported that appellant had shoulder arthroscopy in March, went through physical therapy and continued to do home exercises. He indicated that she had reached maximum medical improvement: "Certainly at eight months, [she] should be recovered from this type of surgical procedure. I do feel that she is as good as she is going to get." On January 11, 2004 Dr. Richard J. Watkins, an orthopedic surgeon and Office referral physician, estimated that appellant would not reach maximum medical improvement before July 2004.

To support her claim, appellant submitted a July 2, 2004 report from Dr. Charles J. Kistler, a family practice physician, who noted her history and described his findings on examination of the extremities. He stated:

> "The extremities show the patient is right-hand dominant. The right shoulder shows diminished range of motion by 15 degrees flexion and 15 degrees extension. There is pain in the right rotator cuff. There is diminished abduction and adduction by 10 degrees in each direction. There is crepitus in the right shoulder. The patient has weakness to two and one-half out of five on the left arm and left shoulder. It is four out of five on the right. The patient continues to have weakness and [symptomatology] indicative of right rotator cuff tear. She has diminished motion. She has numbness, tingling, weakness and pain. She has diminished abduction and adduction."

Dr. Kistler diagnosed right rotator cuff tear and stated that appellant had a 26 percent permanent impairment to her right upper extremity according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

On August 26, 2004 an Office medical adviser reviewed Dr. Kistler's findings and determined that appellant had a three percent permanent impairment based on loss of shoulder motion. He noted that Dr. Kistler had reported range of motion as a lack in degrees from unstated normal values. It was not clear to the Office medical adviser what Dr. Kistler considered normal shoulder motion or how Dr. Kistler arrived at his rating.

In a decision dated November 4, 2004, the Office awarded appellant compensation for a three percent permanent impairment of her right arm.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.[1] Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[2]

[1] 5 U.S.C. § 8107. Section 8107(c)(1) provides 312 weeks' compensation for an "arm lost."

[2] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001). Chapter 16 of the A.M.A., *Guides* addresses impairment of the "upper extremities."

ANALYSIS

According to the A.M.A., *Guides*, the normal range of shoulder motion is considered to be from 180 degrees flexion to 50 degrees extension.[3] Dr. Kistler reported diminished range of motion by 15 degrees flexion and 15 degrees extension, or active shoulder flexion of 165 degrees and her maximum active shoulder extension of 35 degrees. At Figure 16-40, page 476, of the A.M.A., *Guides*, each of these loss of range of motions represents a one percent impairment of the upper extremity.

The normal range of shoulder motion is also considered to be from 180 degrees abduction to 50 degrees adduction.[4] Dr. Kistler's report is of diminished abduction and adduction "by 10 degrees in each direction." This can be read to find that appellant's maximum active shoulder abduction was 170 degrees and maximum active shoulder adduction was 40 degrees. In Figure 16-43, page 477, each of these motions represents no impairment of the upper extremity.

The upper extremity impairment resulting from abnormal shoulder motion is calculated from the pie-charts by adding directly the upper extremity impairment values contributed by each motion unit.[5] Appellant therefore has a two percent impairment of her right upper extremity based on loss of motion.

Dr. Kistler's findings fail to support a greater impairment. He did not address external and internal shoulder rotation. He noted numbness, tingling, weakness and pain, but he did not use the A.M.A., *Guides* to provide any impairment estimate due to these findings.[6]

Because Dr. Kistler's findings support no more than a two percent permanent impairment of the right upper extremity, the Board finds that appellant is entitled to no greater schedule award than she has received. On this basis the Board will affirm the Office's November 5, 2004 decision.

CONCLUSION

The Board finds that appellant has no more than a three percent permanent impairment of her right arm. The medical evidence of record supports only a two percent impairment due to loss of motion.

[3] A.M.A., *Guides* at 475.

[4] *Id*. at 476.

[5] *Id*. at 474.

[6] The Board notes that Dr. Youse, the attending orthopedist, reported on January 19, 2004 that an electromyogram came out to be negative.

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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