United States Department of Labor
Employees' Compensation Appeals Board

DEBRA M. PETERSEN, Appellant	)	
and	)	**Docket Nos. 06-604 & 06-605**
	)	**Issued: June 13, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Columbus, NC, Employer	)	

Appearances:
Debra M. Petersen, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On January 18, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 6, 2005 merit decision concerning her entitlement to schedule award compensation and the Office's December 30, 2005 merit decision denying her claim for reimbursement for medical expenses. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.[1]

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained more than a 13 percent permanent impairment of her right arm, for which she received a schedule award; and (2) whether the Office properly denied her claim for reimbursement of medical prescription and travel expenses from 2002 and 2003.

[1] Under Docket No. 06-604 appellant appealed the Office's December 6, 2005 decision and under Docket No. 06-605 appellant appealed the Office's December 30, 2005 decision.

FACTUAL HISTORY

On June 1, 2002 appellant, then a 41-year-old mail carrier, filed a traumatic injury claim after her postal vehicle was struck from behind by another vehicle on that date. The Office accepted that appellant sustained a closed fracture of the upper end of the right radius/ulna.[2] On June 19, 2003 appellant underwent a lateral epicondylar release and exploration of a right radial fracture, a procedure which was authorized by the Office.

In a report dated November 11, 2003, Dr. Stephen M. Kana, an attending Board-certified orthopedic surgeon, stated that appellant was initially seen after a vehicular accident for a right radial head fracture. She later developed right lateral epicondylitis for which she underwent lateral epicondylar release. Dr. Kana noted that appellant continued to have pain in her neck and right shoulder, that the right shoulder was consistent with impingement syndrome, and that her neck has disc osteophytes at C4-5 and C5-6 as well as foraminal stenosis. He indicated that he would defer an assessment of the impairment of appellant's neck and stated:

> "With regard to the elbow, I think she has reached maximum medical improvement. She has an eight percent impairment to the upper extremity from this injury.
>
> "With regard to the shoulder she probably has not reached maximum medical improvement. If I were to rate her, at this point, she would have a 20 percent impairment to the upper extremity."

In June 2004 appellant claimed a schedule award for impairment related to her June 1, 2002 employment injury.

In a report dated July 16, 2004, an Office medical adviser, Dr. Harry L. Collins, Jr.,[3] indicated that Dr. Kana's impairment rating was not made in accordance with the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

The Office referred appellant to Dr. Glenn Scott, a Board-certified orthopedic surgeon, for further evaluation of her impairment.

In a report dated September 28, 2004, Dr. Scott indicated that appellant had mild motor strength deficit in the right shoulder and was lacking eight degrees of extension in the right elbow. He noted that appellant had a well-healed scar along the right epicondyle and diagnosed

[2] Diagnostic testing revealed that appellant sustained a nondisplaced fracture of her right radial head. Appellant also reported neck, back and right shoulder pain after the accident. She stopped work in June 2002 and returned to limited-duty work for the employing establishment in September 2002. Appellant's claim was later accepted for right shoulder impingement syndrome and aggravation of cervical spondylosis.

[3] Dr. Collins is a Board-certified orthopedic surgeon.

postoperative lateral epicondylitis, healed fracture of the right radial head, cervical spondylosis, right shoulder impingement syndrome and carpal tunnel syndrome. Dr. Scott stated:

> "Based on her current findings, I would rate impairment to the right upper extremity at 10 percent as a result of her elbow injury and subsequent surgery. This is derived from a seven percent impairment in strength, one percent loss of extension and two percent scaring. I would rate impairment to the right upper extremity as a result of her shoulder injury at 10 percent. She has full range of motion but I do feel that she has demonstrable loss of strength with an ongoing shoulder impingement syndrome.
>
> "Her cervical spondylosis falls into category number 2 in the A.M.A., *Guides,* 5th edition. There are significant preexisting changes here and I would rate impairment to the whole person at seven percent apportioning four percent to the work[-]related injury and three percent to the preexisting condition.
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> "Using the conversion guide in the A.M.A., *Guides,* 5th ed., combing her elbow and shoulder impairments, would give an 11 percent whole person impairment as a result of her upper extremity. Combining this with her cervical spine impairment, she would have a 15 percent whole person impairment as a result of her injury."

The Office referred appellant to Dr. Andrew Rudins, a Board-certified physical medicine and rehabilitation physician, for a second opinion evaluation regarding her right arm impairment.

In a report dated July 12, 2005, Dr. Rudins reported the findings of his examination of appellant. He noted that appellant exhibited some sensitivity, but not hypersensitivity or allodynia, of the right lateral epicondylar scar. Dr. Rudins stated that range of motion testing of the right elbow revealed 140 degrees of flexion, 15 degrees short of full extension, 90 degrees of pronation, and 80 degrees of supination. He noted that range of motion testing of the right shoulder revealed 140 degrees of flexion, 50 degrees extension, 125 degrees of abduction, 125 degrees of abduction, 40 degrees of adduction, 60 degrees of internal rotation, and 90 degrees of external rotation.[4] Dr. Rudins stated:

> "Based on the limitations in elbow extension, according to Figure 16-34 [of the A.M.A., *Guides*], she has a two percent impairment of the upper extremity. In addition, she has a mildly painful scar around the right lateral elbow, which is secondarily causing some limitations in activities. According to Table 8-2, this is classified as a [C]lass 1 impairment due to skin disorder, which in her case would correspond to a three percent impairment of the whole person, or equivalently five percent of the upper extremity. There are no significant sensory or strength deficits related to the elbow injury. Any potential weaknesses related to the pain are already incorporated in the impairment related to a painful scar. Therefore, combining the five percent and two percent results in a total impairment of seven

[4] Dr. Rudins stated that he believed that appellant injured her right shoulder at the time of her June 1, 2002 injury and asserted that this opinion was consistent with the mechanism of injury and the medical record provided.

percent of the right upper extremity based on the [statement of accepted facts] of the right radial fracture and subsequent surgery to the lateral epicondyle."

In a report dated August 25, 2005, an Office medical adviser, Dr. James W. Dyer,[5] stated that he agreed with Dr. Rudins' assessment that appellant had a two percent impairment due to loss of elbow extension. He found that appellant had a two percent, rather than a five percent, impairment due to her surgical scar because it was only proper to apply Tables 16-10 and 16-15 of the A.M.A., *Guides* to this condition. The Office medical adviser noted that appellant had a Grade 3 sensory impairment of 30 percent which multiplied by the 5 percent maximum value for sensory loss associated with the radial nerve at the elbow equaled 2 percent. He noted that combining the two impairment ratings yielded a four percent impairment of the right arm.

The Office referred appellant to Dr. Byron P. Marsh, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding her right arm impairment.[6]

In a report dated October 26, 2005, Dr. Marsh concluded that appellant sustained a 13 percent permanent impairment of his right arm. He noted that appellant's right elbow, right shoulder and cervical conditions had been accepted as employment related. Dr. Marsh indicated that appellant's full range of motion of the right shoulder with mild subacromial crepitus and that she had 140 degrees of flexion of the right elbow, 15 degrees of extension, and unimpaired pronation and supination. He also noted that mobility of the wrists and digits was unimpaired and that manual muscle testing was slightly less on the right compared to the left in forward flexion and lateral abduction. Dr. Marsh indicated that appellant had a 2 percent impairment due to her 15 degrees of right elbow extension and indicated that he agreed with Dr. Dyer's assessment that appellant had a 2 percent impairment due to the surgical scar on her right elbow as calculated by applying Tables 16-10 and 16-15 of the A.M.A., *Guides.* He then concluded that appellant had a total impairment of her right elbow of four percent. Dr. Marsh then stated:

"Regarding the patient's right shoulder, I have reviewed the upper extremity section, Chapter 16, in the A.M.A., *Guides*, 5th ed. [Appellant] has no loss of motion in the shoulder. There is no impairment of the shoulder due to peripheral nerve disorders. There is no impairment due to vascular disorder…. Consequently, assessment of [appellant's] residual impairment to the shoulder is limited to strength deficit. According to Example 16-72 on page 511, the individual with full range of motion with strength rated at 'good' ([G]rade [4]) according to Table 16-35 on page 510 with a slight weakness in forward flexion of the shoulder (six percent upper extremity impairment) and a slight weakness in

[5] Dr. Dyer is a Board-certified orthopedic surgeon.

[6] The Office had determined that there was a conflict in the medical evidence regarding appellant's impairment between Dr. Rudins, an Office referral physician, and Dr. Dyer, an Office district medical adviser, which required referral of appellant for an impartial medical examination. However, there was no conflict in the medical evidence as 5 U.S.C. § 8123(a) provides that there only is a conflict requiring referral for an impartial medical examination if there is a disagreement between the physician making the examination for the United States and the physician of the employee. 5 U.S.C. § 8123(a). Therefore, Dr. Marsh served as an Office referral physician.

abduction (three percent upper extremity impairment) results in an impairment of nine percent to the upper extremity due to weakness about the shoulder."

Dr. Marsh indicated that appellant had no objective neurological impairment of the cervical spine extending into the extremities and stated that she was not entitled to any impairment rating due to her cervical problems. He applied the Combined Values Charts to combine the 4 percent rating for the right elbow with the 9 percent rating for the right shoulder to conclude that appellant had a total impairment of the right arm of 13 percent.

In a report dated November 23, 2005, Dr. Collins, serving as an Office medical adviser, indicated that he agreed with the impairment rating of Dr. Marsh.

In a letter dated November 22, 2005, appellant indicated that she was requesting reimbursement for medical prescription and travel expenses from 2002 and 2003 and stated that she was enclosing documentation of the amounts of the expenses.[7]

By decision dated December 6, 2005, the Office granted appellant a schedule award for a 13 percent permanent impairment of her right arm.

By decision dated December 30, 2005, the Office denied appellant's claim for reimbursement of medical prescription and travel expenses on the grounds that she untimely requested reimbursement.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act[8] and its implementing regulation[9] sets 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, the Act 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. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[10]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained an employment-related closed fracture of the upper end of the right radius/ulna, right shoulder impingement syndrome and aggravation of

[7] Appellant submitted a November 22, 2005 statement in which the postmaster at her work site included the following notation under her name, "October 26, 2005, 68.1 miles, rate: .42 per mile."

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404 (1999).

[10] *Id.*

cervical spondylosis. By decision dated December 6, 2005, the Office granted appellant a schedule award for a 13 percent permanent impairment of her right arm.

The Office properly based its schedule award on the October 26, 2005 evaluation of Dr. Marsh, a Board-certified orthopedic surgeon who served as a second opinion physician. The Board finds, however, that Dr. Marsh's assessment was not complete and the case should be remanded to the Office for further development regarding the extent of appellant's right arm impairment.

In his October 26, 2005 report, Dr. Marsh calculated that appellant had a nine percent impairment of his right shoulder due to weakness. He found that appellant's case was represented by Example 16-72 on page 511 of the A.M.A., *Guides* in that appellant had full active range of right shoulder flexion and abduction against gravity with some resistance.[11] Dr. Marsh then posited that, under Table 16-35 on page 510, appellant's slight weakness upon shoulder flexion equaled a six percent upper extremity impairment and his slight weakness upon abduction equaled a three percent upper extremity impairment.[12] However, given that Dr. Marsh did not provide any specific results of right shoulder muscle testing or specific measurements for range of right shoulder motion upon flexion, extension, abduction, adduction, internal rotation, and external rotation, the Board is unable to determine whether Table 16-35 was applied appropriately to appellant's case to evaluate his loss of right shoulder strength.[13]

Moreover, because Dr. Marsh did not provide any specific measurements for range of right shoulder motion upon flexion, extension, abduction, adduction, internal rotation and external rotation, the Board is unable to determine whether appellant would be entitled to impairment ratings for limitation of right shoulder motion.[14] The record contains evidence which indicates that appellant might also have impairment of the right shoulder due to limited motion. In a report dated July 12, 2005, Dr. Rudins, a Board-certified physical medicine and rehabilitation physician, who provided a second opinion, noted that range of motion testing of the right shoulder revealed 140 degrees of flexion, 50 degrees extension, 125 degrees of abduction, 125 degrees of abduction, 40 degrees of adduction, 60 degrees of internal rotation and 90 degrees of external rotation. These findings suggest that appellant had ratable limitations upon right shoulder flexion, abduction and internal rotation.[15]

With respect to appellant's right elbow motion, Dr. Marsh properly noted that appellant's 140 degrees of flexion equaled a 0 percent impairment and that her 15 degrees of extension equaled a 2 percent impairment. However, he failed to provide any specific measurements for

[11] A.M.A., *Guides* 511, Example 16-72.

[12] *Id.* at 510, Table 16-35.

[13] Dr. Marsh merely indicated that appellant had full range of right shoulder motion without explaining the basis for this conclusion in accordance with the specific testing standards of the A.M.A., *Guides*.

[14] *See* A.M.A., *Guides* 474-79, Figures 16-40, 16-43 and 16-46.

[15] *See id.*

right elbow pronation and supination and it remains unclear whether appellant would be entitled to impairment rating for these motions.[16]

The Board further notes that Dr. Marsh properly determined that appellant had a two percent sensory loss associated with the surgical scar over his right elbow. He properly applied Tables 16-10 and 16-15 of the A.M.A., *Guides* to reach this conclusion.[17] Dr. Marsh also correctly determined that appellant had no objective neurological impairment of the cervical spine extending into the extremities and properly concluded that therefore she was not entitled to any impairment rating due to her cervical problems.[18]

Given the above-described deficiencies, the case should be remanded to the Office for further development of the evidence concerning appellant's right arm impairment.[19] After such development as it deems necessary, the Office should issue an appropriate decision.

LEGAL PRECEDENT -- ISSUE 2

Office regulations provide that, in order to be considered for payment by the Office, bills must be submitted by the end of the calendar year after the year when the expense was incurred, or by the end of the calendar year after the year when the Office first accepted the claim as compensable, whichever is later.[20]

ANALYSIS -- ISSUE 2

In a letter dated November 22, 2005, appellant indicated that she was requesting reimbursement for medical prescription and travel expenses from 2002 and 2003. By decision dated December 30, 2005, the Office denied appellant's claim for reimbursement of medical prescription and travel expenses on the grounds that she untimely requested reimbursement.

The Board finds that the Office properly denied appellant's request for reimbursement for medical prescription and travel expenses from 2002 and 2003. Appellant did not identify the particular medical prescription and travel expenses from 2002 and 2003 for which she requested

[16] *See* A.M.A., *Guides* 472-74, Figures 16-34 and 16-37.

[17] Dr. Marsh properly indicated that he agreed with an assessment by an Office medical adviser that appellant had a Grade 3 sensory impairment of 30 percent which multiplied by the 5 percent maximum value for sensory loss associated with the radial nerve at the elbow equaled 2 percent. *See* A.M.A., *Guides* 482, 492, Tables 16-10 and 16-15.

[18] *See* A.M.A., *Guides* 480-97.

[19] The record contains other impairment ratings, including those prepared by Dr. Rudins, Dr. Kana, an attending Board-certified orthopedic surgeon, and Dr. Scott, a Board-certified orthopedic surgeon, who provide a second opinion, but none of these assessments were derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses. These physicians either did not explain how their ratings were made in accordance with the A.M.A., *Guides* or did not include appellant's right shoulder impairment.

[20] 20 C.F.R. § 10.336.

reimbursement.[21] Even if she had identified such expenses, her November 2005 request would have been untimely in that bills must be submitted by the end of the calendar year after the year when the expense was incurred, or by the end of the calendar year after the year when the Office first accepted the claim as compensable, whichever is later.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant did not meet her burden of proof to establish that she sustained more than a 13 percent permanent impairment of her right arm, for which she received a schedule award. The Board further finds that the Office properly denied her claim for reimbursement of medical prescription and travel expenses from 2002 and 2003.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' December 30, 2005 decision is affirmed. The Office's December 6, 2005 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: June 13, 2006
Washington, DC

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

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

[21] Appellant submitted a November 22, 2005 statement in which the postmaster at her work site indicated that she had traveled 68.1 miles on October 26, 2005. However, the present appeal does not concern any potential claim for travel expenses incurred in 2005 as there is no final decision of the Office within the Board's jurisdiction regarding such a matter. *See* 20 C.F.R. § 501.2(c).