

FACTUAL HISTORY

On August 28, 1996 appellant, then a 38-year-old distribution clerk, filed an occupational disease claim alleging that the pain in her shoulders, chest and upper extremities was a result of her federal employment. She stated:

“I was diagnosed of neck and shoulder strain in 6/3/92. Due to keying in LSM [letter sorting machines] sometimes 12 hours a day. Dispatching full letter trays of mail, pushing and pulling heavy metal container that weigh as much as 245 pounds if empty. I worked in manual sortation unit and place letter on to designated pigeon repeatedly when not keying on the LSM machine with 20 keyboards.”

On February 7, 1997 the Office accepted appellant’s claim for bilateral shoulder impingement syndrome.¹ On June 10, 1999 the Office asked Dr. Luiz C. Toledo, an attending Board-certified orthopedic surgeon, for an evaluation of any permanent shoulder impairment due to the accepted condition. On June 29, 1999 Dr. Toledo reported that he last saw appellant on January 14, 1999. He stated that the range of motion in her shoulders was normal and there were no neurologic findings of any significance. “Therefore,” he stated, “since there is no decrease of strength, no atrophy, no ankylosis or sensory changes, there is zero percent impairment related to this injury.” Dr. Toledo found that appellant had reached maximum medical improvement.

On September 4, 2007 appellant filed a claim for a schedule award. On September 11, 2007 the Office asked Dr. Toledo to evaluate any impairment of the upper extremities due to the accepted condition.

In a decision dated October 17, 2007, the Office denied a schedule award for lack of evidence.

On appeal, appellant disagrees with the Office’s October 17, 2007 decision in OWCP File No. 160284405 because her injury is permanent and has gotten worse.

LEGAL PRECEDENT

Section 8107 of the Federal Employees’ Compensation Act² authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*.³

¹ OWCP File No. 160284405.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.⁴ To support a schedule award, the file must contain competent medical evidence that describes the impairment in sufficient detail for the adjudicator to visualize the character and degree of disability.⁵ The report of the examination must always include a detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment.⁶ The Office should advise any physician evaluating permanent impairment to use the fifth edition of the A.M.A., *Guides* and to report findings in accordance with those guidelines.⁷

ANALYSIS

Appellant's claim was accepted by the Office for bilateral shoulder impingement. She has a burden to submit medical evidence showing that her accepted bilateral shoulder impingement syndrome caused a permanent impairment to one or both of her upper extremities. The mere existence of pathology in a member of the body, in this case, the shoulders, is not a basis for a schedule award. There must be a demonstrated loss of use of such member, or an impairment in the function of the member.⁸ There is no medical evaluation of appellant's upper extremities performed in accordance with the fifth edition of the A.M.A., *Guides*. Appellant has not met her burden of proof to establish that she is entitled to a schedule award for her accepted bilateral shoulder impingement syndrome. The Board will therefore affirm the Office's October 17, 2007 decision denying her September 4, 2007 claim for a schedule award.

CONCLUSION

The Board finds that appellant has not met her burden to establish that she is entitled to a schedule award for her work-related bilateral shoulder impingement syndrome.⁹

⁴ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.b(2) (August 2002).

⁶ *Id.* at Chapter 2.808.6.c(1).

⁷ *Id.* at Chapter 2.808.6.a (noting exceptions).

⁸ *LaFern W. Miller*, 12 ECAB 62 (1960).

⁹ Appellant filed a separate appeal under OWCP File No. 160271858, which the Office accepted for bilateral carpal tunnel syndrome. Docket No. 08-761. The Board will issue a separate decision on that appeal.

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2008
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