United States Department of Labor
Employees' Compensation Appeals Board

BEVERLY D. MILLNER, Appellant	)	
and	)	**Docket No. 05-661**
	)	**Issued: June 9, 2005**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Greensboro, NC, Employer	)	

Appearances:
Beverly D. Millner, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On January 24, 2005 appellant filed a timely appeal of the October 14, 2004 merit decision of the Office of Workers' Compensation Programs, which granted her a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim for a schedule award.

ISSUE

The issue is whether appellant has greater than three percent impairment of the right upper extremity for which she received a schedule award.

FACTUAL HISTORY

On March 10, 2003 appellant, then a 35-year-old part-time automation clerk, sustained a traumatic injury to her right upper extremity while in the performance of duty. The Office accepted her claim for right rotator cuff tear and authorized surgery, which she underwent on August 19, 2003. Dr. J. Wayne Keeling, a Board-certified orthopedic surgeon, performed a Neer

acromioplasty and repair of the right rotator cuff. Appellant received appropriate wage-loss compensation.

Appellant returned to work in a light-duty capacity on November 15, 2003. She was initially limited to six hours of work per day but, effective February 3, 2004, Dr. Keeling released her to work eight hours a day, five days per week with a restriction of one to two hours reaching above shoulder. He reported a "good" range of motion in the right shoulder and further noted that appellant had very little pain and had done well with the six-hour workday limitation. In a March 2, 2004 progress note, Dr. Keeling indicated that she could work a 40-hour week with a permanent restriction of no overhead lifting. He also noted that appellant reached maximum medical improvement and that she had 10 percent impairment of the right upper extremity secondary to her rotator cuff surgery.

The Office referred the record to its medical adviser to determine the extent of any permanent impairment of the right upper extremity. On March 12, 2004 the Office medical adviser indicated that there was insufficient information to establish an impairment due to the accepted condition of right rotator cuff tear. The Office medical adviser noted that Dr. Keeling recently indicated that appellant had good range of motion and very little pain.

On March 17, 2004 appellant filed a claim for a schedule award. Another Office medical adviser reviewed the case file on April 5, 2004 and noted that Dr. Keeling's finding of 10 percent impairment secondary to appellant's rotator cuff surgery was not supported under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). He explained that 10 percent impairment would be justified if there were an incision of the outer end of the clavicle, which was not the case here.[1]

On April 26, 2004 the Office asked Dr. Keeling to provide another impairment rating in accordance with the A.M.A., *Guides* (5th ed. 2001). He responded on May 7, 2004 noting that appellant reached maximum medical improvement on March 16, 2004 and she had objective evidence of decreased strength and subjective complaints of pain. Dr. Keeling reiterated that appellant had 10 percent impairment and he referred the Office to his March 2, 2004 progress notes. However, he did not identify any applicable tables in the A.M.A., *Guides* or otherwise explain how he arrived at his 10 percent impairment rating.

A third medical adviser reviewed the case file on June 10, 2004 and agreed that there was no identifiable basis for the 10 percent impairment rating by Dr. Keeling. The Office medical adviser recommended a functional capacity evaluation to obtain precise measurements of appellant's right shoulder range of motion. The Office advised Dr. Keeling of its medical adviser's recommendation and, in response, he explained that the 10 percent rating was consistent with his state's industrial commission guidelines for entering a joint and doing a repair. However, he agreed to schedule a functional capacity evaluation and afterwards prepare a rating consistent with the A.M.A., *Guides.*

The functional capacity evaluation was performed on July 28, 2004. In a report dated August 4, 2004, Dr. Keeling reviewed the recent findings and again noted that appellant had 10

[1] *See* Table 16-27, A.M.A., *Guides* 506.

percent impairment of the right upper extremity. He rated her based on loss of flexion, extension and abduction for a total of four percent. Dr. Keeling awarded an additional one percent for "loss of motion secondary to [appellant's] inability to continually use her full weight." He calculated another five percent impairment for "inability to do continuous ability over her head" and the "inability to continually do full activities." While Dr. Keeling stated that he used the A.M.A., *Guides* (5th ed. 2001) in determining appellant's right upper extremity impairment, he did not identify the applicable tables he relied upon.

On August 26, 2004 the Office medical adviser reviewed the record, including the recent functional capacity evaluation and Dr. Keeling's August 4, 2004 impairment rating and found that appellant had three percent impairment of he right upper extremity for loss of range of motion.

On October 14, 2004 the Office granted a schedule award for three percent impairment of the right upper extremity. The award covered a period of 9.36 weeks from March 16 to May 20, 2004.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[2] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[3] Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).[4]

ANALYSIS

Although Dr. Keeling found 10 percent impairment, his reports are insufficient to establish the extent of appellant's permanent impairment because he did not provide a rating in accordance with the A.M.A., *Guides*.[5] He did not adequately describe the basis for the 10 percent impairment rating, applying specific tables in the A.M.A., *Guides.* Rather, he noted that the estimate was based on consideration of state industrial commission guidelines. Consequently, Dr. Keeling's various reports are of limited probative value.[6]

[2] The Act provides that for a total or 100 percent loss of use of an arm, an employee shall receive 312 weeks compensation. 5 U.S.C. § 8107(c)(1).

[3] 20 C.F.R. § 10.404 (1999).

[4] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); FECA Bulletin No. 01-05 (issued January 29, 2001).

[5] *See* 20 C.F.R. § 10.333 (1999);

[6] *Mary L. Henninger*, 52 ECAB 408, 409 (2001).

The July 28, 2004 functional capacity evaluation revealed right shoulder flexion of 165 degrees, extension to 45 degrees, internal rotation to 50 degrees and external rotation to 80 degrees. Abduction and adduction were noted to be within normal limits. Under Figure 16-40, A.M.A., *Guides* 476, 165 degrees of shoulder flexion represents 1 percent impairment. 45 degrees of shoulder extension represents 0 impairment under Figure 16-40. According to Figure 16-46, A.M.A., *Guides* 479, 50 degrees of internal rotation represents 2 percent impairment and 80 degrees of external rotation represents 0 impairment. The impairments for shoulder flexion and loss of internal rotation are added for a total right upper extremity impairment of three percent for loss of shoulder motion.[7] The Office medical adviser correctly noted that additional impairment for muscle weakness and atrophy could not be combined with impairment for abnormal shoulder motion.[8] As the Office medical adviser's August 26, 2004 impairment rating conforms to the A.M.A., *Guides* (5th ed. 2001), his finding constitutes the weight of the medical evidence.[9] Appellant has not submitted any probative medical evidence indicating that she has more than three percent impairment of the right upper extremity.

CONCLUSION

The Board finds that appellant failed to establish that she has more than three percent impairment of her right upper extremity.

[7] *See* example 16-55, A.M.A., *Guides* 479.

[8] *See* section 16.8a, A.M.A., *Guides* 508.

[9] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

ORDER

IT IS HEREBY ORDERED THAT the October 14, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member