United States Department of Labor
Employees' Compensation Appeals Board

MANUEL C. MARTINEZ, Appellant	)	
and	)	**Docket No. 06-413**
	)	**Issued: April 11, 2006**
U.S. POSTAL SERVICE, POST OFFICE, San Jose, CA, Employer	)	

Appearances:
Manuel C. Martinez, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On December 12, 2005 appellant filed a timely appeal of a May 17, 2005 Office of Workers' Compensation Programs' schedule award and a September 25, 2005 decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has more that a 15 percent permanent impairment to his right arm, for which he received a schedule award; and (2) whether the Office properly refused to reopen the claim for merit review pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

The Office notified appellant by letter dated February 13, 2002 that his claim was accepted for a right shoulder tendinitis.[1] On November 13, 2002 appellant underwent arthroscopic right shoulder surgery by Dr. John Coleman, an orthopedic surgeon. He diagnosed impingement syndrome and indicated that appellant's date of injury was March 2000. He indicated that the procedures performed included subacromial decompression with extensive debridement and excision of the distal clavicle.

In a report dated July 1, 2003, Dr. Coleman provided a history and results on examination. He reported that appellant had 140 degrees of right shoulder flexion, compared to a normal of 180 degrees, abduction of 150 degrees and external rotation of 40 degrees. Dr. Coleman stated that range of motion in other directions was full; he provided Jamar grip strength results and noted generally good strength but reported the strength on the right did not match the left. He opined that appellant's condition was permanent and stationary. With respect to a degree of impairment, he stated: "I would grade his residual disability as equivalent to a 50 percent loss of preinjured capacity for lifting."

The record indicates that, by letter dated August 4, 2003, the Office advised Dr. Coleman that the standard for impairment ratings was the 5th edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). It requested that Dr. Coleman provide an appropriate impartment estimate. There is no indication that Dr. Coleman responded.

The Office referred the case to an Office medical adviser for an opinion as to the degree of permanent impairment under the A.M.A., *Guides*. In a report dated September 1, 2003, the Office medical adviser opined that the impairment for loss of range of motion was three percent for loss of flexion, one percent for loss of abduction and one percent for loss of external rotation. The medical adviser also found that appellant had a 10 percent impairment for the resection of the distal clavicle surgery based on Table 16-27 of the A.M.A., *Guides*. Combining the 5 percent for loss of motion with 10 percent for the arthroscopic surgery, the medical adviser opined that appellant had a 15 percent permanent impairment to his right arm.

By decision dated December 9, 2004, the Office granted a schedule award for a 15 percent permanent impairment to the right arm. The period of the award was 46.80 weeks of compensation commencing July 1, 2003.

Appellant requested a review of the written record. He stated that neither he nor Dr. Coleman was aware that the A.M.A., *Guides* must be used. In a decision dated May 17, 2005, the Office hearing representative affirmed the December 9, 2004 schedule award decision.

In a letter received by the Office on August 8, 2005, appellant requested reconsideration of his claim. He stated that Dr. Coleman was never contacted with any questions regarding his

[1] Appellant filed a notice of recurrence of disability (Form CA-2a) on January 31, 2002, the Office advised appellant that the case was developed as one for a new injury.

report. Appellant submitted an article from a National Association of Letter Carriers (NALC) newsletter regarding schedule awards.

In a decision dated September 27, 2005, the Office determined that appellant's request for reconsideration was insufficient to warrant further merit review of the schedule award.

LEGAL PRECEDENT -- ISSUE 1

Under section 8107 of the Federal Employees' Compensation Act[2] and section 10.404 of the implementing federal regulations,[3] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[4]

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[5]

ANALYSIS -- ISSUE 1

The attending orthopedic surgeon, Dr. Coleman, provided a July 1, 2003 report with results on examination and an opinion that appellant's right arm condition was permanent and stationary. He did not provide an opinion as to the degree of impairment under the A.M.A., *Guides*. The Office referred the case to an Office medical adviser for an opinion as to the degree of permanent impairment under the A.M.A., *Guides.*

With respect to loss of range of motion, Figure 16-40 provides that 140 degrees of shoulder flexion is a 3 percent arm impairment.[6] Under Figure 16-43, 150 degrees of abduction results in a 1 percent impairment and pursuant to Figure 16-46, 40 degrees of external rotation is a 1 percent impairment.[7] Based on the finds of Dr. Coleman therefore the Office medical adviser

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[2] 5 U.S.C. §§ 8101-8193.

[3] 20 C.F.R. § 10.404.

[4] *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[5] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

[6] A.M.A., *Guides* 476, Figure 16-40.

[7] *Id.* at 477, Figure 16-43 and 479, Figure 16-46.

properly determined that appellant had a five percent arm impairment based on loss of range of motion for the shoulder.

In addition, the medical adviser identified Table 16-27, which provides arm impairments after arthroplasty of specific joints. The medical adviser identified the distal clavicle and under Table 16-27 a resection arthroplasty is a 10 percent impairment.[8] The 5 percent impairment for loss of range motion is combined with the 10 percent for a 15 percent arm impairment.[9] The Office medical adviser provided a reasoned medical opinion under the A.M.A., *Guides* on the issue presented in the case.

Appellant has argued that Dr. Coleman was not aware that the A.M.A., *Guides* was the appropriate standard for evaluating permanent impairment under the Act and the Office did not contact him. The record does contain an August 4, 2003 letter to Dr. Coleman, who had an opportunity to provide further medical opinion on the issue presented. The only probative medical evidence of record regarding the degree of permanent impairment under the A.M.A., *Guides* is the September 1, 2003 report from the Office medical adviser. The Office followed its procedures in referring the case to the medical adviser and her report provided a reasoned opinion that appellant had a 15 percent right arm impairment.

The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the arm, the maximum number of weeks of compensation is 312 weeks. Since appellant had a 15 percent right arm impairment, he is entitled to 15 percent of 300 weeks or 46.80 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.[10] In this case, the Office medical adviser properly concluded that the date of maximum medical improvement was July 1, 2003, the date of examination by Dr. Coleman.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

[8] *Id.* at 506, Table 16-27.

[9] *Id.* at 604, Combined Values Chart.

[10] *Albert Valverde*, 36 ECAB 233, 237 (1984).

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[11]

ANALYSIS -- ISSUE 2

With his request for reconsideration, appellant submitted an article from an NALC newsletter regarding schedule awards. The underlying issue is a medical issue and the article has no probative medical value. Newspaper articles, medical texts and excerpts from publications are of no evidentiary value on the issue of causal relationship as they are of general application and are not probative as to whether specific conditions were the result of particular circumstances of the employment.[12] Appellant did not submit any new and relevant evidence that would require the Office to reopen the claim for merit review. In addition, appellant's request for reconsideration did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. The Board finds that appellant did not meet any of the requirements of section 10.606(b)(2) and therefore the Office properly refused to reopen the case for merit review under 5 U.S.C. § 8128(a).

CONCLUSION

The probative medical evidence does not establish more than a 15 percent permanent impairment to the right arm. In addition, the Office properly refused to reopen the claim for merit review under 5 U.S.C. § 8128(a).

[11] *Eugene F. Butler*, 36 ECAB 393 (1984).

[12] *Eugene Van Dyk*, 53 ECAB 706 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 27 and May 17, 2005 are affirmed.

Issued: April 11, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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