United States Department of Labor
Employees' Compensation Appeals Board

ELIZABETH H. STANFIELD, Appellant	)	
and	)	**Docket No. 06-663**
	)	**Issued: July 14, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Trenton, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 January 25, 2006 appellant filed a timely appeal from a September 27, 2005 decision of an Office of Workers' Compensation Programs' hearing representative who found that she was not entitled to an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than a 14 percent impairment of the left upper extremity for which she received a schedule award. On appeal counsel argues that the opinion of Dr. David Weiss, an osteopath, establishes impairment of 28 percent.

FACTUAL HISTORY

On June 3, 2003 the Office accepted that appellant, then a 61-year-old mail processor, sustained an employment-related left rotator cuff tear and authorized surgical repair. Surgery was performed on June 17, 2003. Appellant returned to restricted duty on July 9, 2003. On April 20 and August 7, 2004 she submitted schedule award claims, and a January 13, 2004 report

in which Dr. Weiss noted appellant's medical history and that she was right-hand dominant.[1] He noted her complaint of continued left shoulder pain and stiffness with difficulty performing overhead reaching and lifting with her left arm. Examination of the left shoulder included range of motion findings of forward elevation of 170 degrees, abduction of 180 degrees, cross over adduction of 45 degrees, internal rotation of 75 degrees and external rotation of 90 degrees. Muscle strength testing of the supraspinatus was graded as 3+/5, deltoid 4/5, triceps and biceps as 5/5. Dr. Weiss diagnosed status post massive rotator cuff tear with open repair and acromioplasty and post-traumatic acromioclavicular arthropathy with impingement to the left shoulder. He advised that, in accordance with the fifth edition of the A.M.A., *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[2] under Table 16-27, appellant had a 10 percent impairment for a left shoulder resection arthroplasty, under Tables 16-11 and 16-15, a 9 percent left deltoid motor strength deficit and a 9 percent left supraspinatus deficit and, under Figure 18-1, a 3 percent impairment for pain, which he combined for a total 28 percent left upper extremity impairment.

In a report dated July 26, 2004, an Office medical adviser reviewed the medical evidence and opined that the report of Dr. Weiss did not conform with the A.M.A., *Guides*. Dr. Weiss combined muscle weakness which is to be excluded when using arthroplasty and range of motion deficits, noting that this was not a peripheral nerve impairment. The Office medical adviser stated that, after arthroplasty, some weakness was common and that pain could cause weakness on testing. According to Figure 16-40 of the A.M.A., *Guides*, appellant was entitled to a 1 percent impairment for a range of motion deficit for the measured 170 degrees of forward elevation. He agreed with Dr. Weiss' conclusion that she was entitled to an 11 percent impairment for her resection arthroplasty and a 3 percent impairment for pain, or a combined 14 percent left upper extremity impairment.

By decision dated September 14, 2004, appellant was granted a schedule award for 14 percent permanent loss of use of the left upper extremity, a total of 43.68 weeks, to run from January 13 to September 4, 2004. Appellant, through her attorney, timely requested a hearing that was held on June 28, 2005.[3] In a decision dated September 27, 2005, an Office hearing representative affirmed the September 14, 2004 decision.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[4] and section 10.404 of the implementing federal regulations,[5] schedule awards are payable for permanent impairment of

[1] Dr. Weiss also noted findings and conclusions regarding appellant's knees. A knee condition has not been accepted as employment related in this claim which involves her left shoulder only.

[2] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001); *Joseph Lawrence, Jr*., 53 ECAB 331 (2002).

[3] Appellant, who is hearing impaired, did not attend the hearing and submitted a written statement.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

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*[6] has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[7] Chapter 16 provides the framework for assessing upper extremity impairments.[8]

ANALYSIS

The Board finds that appellant has a 14 percent left upper extremity impairment. Pursuant to Table 16-27 of the A.M.A., *Guides*, appellant is entitled to a 10 percent impairment for her resection acromioplasty.[9] The range of motion measurements made by Dr. Weiss demonstrate that she has a one percent loss. Figure 16-40 provides that 170 degrees of flexion (forward elevation) yields a 1 percent impairment.[10] Under Figure 16-43, appellant's measurements of 180 and 45 degrees for abduction and adduction respectively do not represent an impairment.[11] Her range of motion measurements of 75 and 90 degrees for internal and external rotation would equal no impairment under Figure 16-46.[12] Regarding pain, section 18.3d(c) of the A.M.A., *Guides* provides that an additional three percent impairment may be granted for pain that slightly increases the burden of a condition.[13] Combining the impairment value for the left shoulder acromioplasty with the values for loss of range of motion and pain, the Board finds a total of 14 percent impairment of the left upper extremity.

As stated in section 16.8 of the A.M.A., *Guides*, strength measurements are functional tests influenced by subjective factors that are difficult to control. The A.M.A., *Guides*, for the most part, is based on anatomic impairment and does not assign a large role to strength measurements.[14] Section 16.8a states that, only in a rare case, if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the A.M.A., *Guides*, can the loss of strength be rated separately. "*Otherwise, the impairment ratings based on objective anatomic findings take precedence*."[15]

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[6] A.M.A., *Guides, supra* note 2.

[7] *See Joseph Lawrence, Jr., supra* note 2; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[8] A.M.A., *Guides, supra* note 2 at 433-521.

[9] *Id.* at 506.

[10] *Id.* at 476.

[11] *Id.* at 477.

[12] *Id.* at 479.

[13] *Id.* at 573.

[14] A.M.A., *Guides, supra* note 2 at 508; *see Mary L. Henninger*, 52 ECAB 408 (2001).

[15] *Id.*.

(Emphasis in the original.) An example of this situation would be loss of strength caused by a severe muscle tear that healed leaving "a palpable muscle defect."[16] If the rating physician determines that loss of strength should be rated separately in an extremity that presents other impairments, the impairment due to loss of strength could be combined with the other impairments, only if based on unrelated etiologic or pathomechanical causes. Otherwise, the impairment ratings based on objective anatomic findings take precedence. The A.M.A., *Guides* also provides that decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities or absence of parts that prevent effective application of maximum force.[17]

The Board finds that the medical evidence in this case does not support that this is an unusual case. Although Dr. Weiss opined that, under Tables 16-11 and 16-15,[18] appellant was entitled to an additional nine percent impairment each for loss of strength in the deltoid and supraspinatus, he did not provide any explanation as to why this was such a rare case that would qualify as a section 16.8a exception.[19] The medical evidence is insufficient to establish that appellant is entitled to an increased impairment rating under Tables 16-11 and/or 16-15. The medical evidence of record does not establish left upper extremity impairment under the A.M.A., *Guides* greater than the 14 percent awarded.[20]

CONCLUSION

The Board finds that appellant has failed to establish that she is entitled to more than a 14 percent schedule award for the left upper extremity.

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[16] A.M.A., *Guides, supra* note 2 at 508.

[17] *Id.; see Cerita J. Slusher*, 56 ECAB ____ (Docket No. 04-1584, issued May 10, 2005).

[18] A.M.A., *Guides, supra* note 2 at 484, 492.

[19] *See Phillip H. Conte*, 56 ECAB ____ (Docket No. 04-1524, issued December 22, 2004).

[20] Appellant's attending physician, Dr. John J. DiBiase, a Board-certified orthopedic surgeon, did not provide an impairment rating.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 27, 2005 be affirmed.

Issued: July 14, 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