United States Department of Labor
Employees' Compensation Appeals Board

MARY C. WISE, Appellant	)	
	)	**Docket No. 06-132**
and	)	**Issued: June 27, 2006**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Ellicott City, MD, Employer	)	

Appearances:
Jeffrey P. Zeelander, 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 October 24, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 20, 2005. 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 an 18 percent permanent impairment of the left upper extremity for which she received a schedule award.

FACTUAL HISTORY

On September 5, 1996 appellant, then a 42-year-old rural carrier filed an occupational disease claim alleging that she developed a rotator cuff tear of the left shoulder as a result of

lifting and carrying heavy trays of mail at work over a period of several years.[1] Appellant became aware of her condition on January 22, 1996. The Office accepted appellant's claim for a rotator cuff tear and tendinitis of the left shoulder and authorized an arthroscopy which was performed on June 4, 1997, with subsequent open revisions of left rotator cuff repair performed on December 14, 1999 and February 28, 2001. Appellant worked intermittently from January 26, 1996 to May 20, 1997 and stopped to undergo surgery. She returned to a light-duty position on September 22, 1997 and continued to work until September 16, 1998. Appellant returned to a light-duty position on September 21, 1998 and stopped work completely on September 7, 1999.

Appellant came under the treatment of Dr. George F. Ritchie, a Board-certified orthopedic surgeon, who treated appellant from September 13, 1996 to July 1, 1998 for left rotator cuff tear which developed from casing mail and lifting mailbags at work. He advised that conservative treatment failed and recommended surgical intervention. In reports dated March 24, 1998 to April 15, 1999, Dr. Ritchie advised that appellant still experienced pain and limited range of motion of the left shoulder and developed similar symptoms in the right shoulder. In reports dated December 23, 1999 to July 31, 2000, Dr. Ritchie noted that appellant experienced minimal post-surgical improvement of her left shoulder condition and recommended an open revision of her rotator cuff repair. In a report dated June 12, 2002, Dr. Ritchie advised that appellant experienced no improvement of her bilateral shoulder condition after several surgeries and indicated that he had nothing further to add to her treatment and that she was totally disabled.

On May 28, 2004 appellant filed a claim for a schedule award.

On June 10, 2004 the Office referred appellant for a second opinion to Dr. Robert A. Smith, a Board-certified orthopedic surgeon. The Office provided Dr. Smith with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties. In a medical report dated June 25, 2004, Dr. Smith reviewed the records and performed a physical examination of appellant. He indicated the history of appellant's work-related left shoulder injury and diagnosed impingement syndrome and rotator cuff tears of both shoulders and right sided de Quervain's disease. Dr. Smith noted findings upon physical examination of the left shoulder of abduction was 80 degrees, adduction was 30 degrees, internal and external rotation was 30 degrees, flexion was 80 degrees and extension was 30 degrees.[2] Dr. Smith did not offer an impairment rating.

Appellant submitted a June 29, 2004 report from Dr. Donald I. Saltzman, a Board-certified orthopedic surgeon, who diagnosed status post open acromioplasty and left rotator cuff repair times two with arthroscopy and history of rotator cuff tear of the right shoulder. He noted

[1] Appellant filed a separate claim for compensation on September 23, 1998, claim number A25-0495917. The Office accepted appellant's claim for right rotator cuff tear and right wrist de Quervain's syndrome and authorized arthroscopic surgery which was performed on September 7, 1999. This claim was consolidated with the current claim before the Board.

[2] Dr. Smith prepared a schedule award worksheet dated June 25, 2004 which stated it was for the left upper extremity; however, a review of the figures in his report of the same date correlated to findings for the right shoulder which is not before the Board at this time.

findings upon physical examination of the left shoulder of no obvious atrophy, pain on abduction and forward flexion, some weakness and pain on abduction, "4 +" abduction and forward flexion, and slightly limited pain and weakness in internal and external rotation. Dr. Saltzman opined that, in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment,*[3] (A.M.A., *Guides*), appellant sustained a 20 percent permanent impairment of the left upper extremity. He noted that she had a four percent impairment due to loss of abduction,[4] two percent impairment due to loss of extension,[5] six percent impairment for forward flexion,[6] one percent for loss of external and internal rotation,[7] three percent impairment for weakness in forward flexion,[8] two percent impairment for weakness in abduction,[9] and three percent total impairment for weakness in internal and external rotation.[10] He opined that, in accordance with the Combined Values Chart, page 604, appellant sustained a total of 20 percent impairment for the left upper extremity A.M.A., *Guides*.

The Office referred the record to an Office medical adviser. In a report dated June 27, 2004, he advised that, in accordance with the A.M.A., *Guides,* appellant sustained an 18 percent permanent impairment of the left upper extremity. He noted that flexion of 80 degrees was a 7 percent impairment,[11] extension of 30 degrees was a 1 percent impairment,[12] abduction of 80 degrees was a 5 percent impairment,[13] adduction of 30 degrees was a 1 percent impairment,[14] internal rotation of 30 degrees was a 3 percent impairment,[15] and external rotation of 30 degrees was a 1 percent impairment.[16]

In a decision dated August 20, 2004, the Office granted appellant a schedule award for 18 percent permanent impairment of the left upper extremity. The period of the schedule award was from September 1, 2004 to September 29, 2005.

[3] A.M.A., *Guides* (5th ed. 2001).

[4] *Id*. at 477, Table 16-43, page 477.

[5] *Id*. at 475, Table 16-40.

[6] *Id.*

[7] *Id*. at 479, Table 16-46.

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

[9] *Id.*

[10] *Id*.

[11] *Id*. at 476, Figure 16-40.

[12] *Id.*

[13] *Id*. at 477, Figure 16-43.

[14] *Id.*

[15] *Id*. at 479, Figure 16-46.

[16] *Id.*

In a letter dated May 31, 2005, appellant requested a review of the written record. Appellant submitted a report from Dr. Ritchie dated December 20, 2004, who noted that an electromyography was positive for bilateral carpal tunnel disease and recommended a left carpal tunnel release.

By decision dated October 20, 2005, the hearing representative affirmed the August 20, 2004 schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[17] and its implementing regulation[18] 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.

ANALYSIS

The Office referred appellant for a second opinion evaluation to Dr. Smith. On June 25, 2004 Dr. Smith noted that appellant's physical examination of the left shoulder revealed abduction of 80 degrees for an impairment rating of 5 percent,[19] adduction of 30 degrees for an impairment rating of 1 percent,[20] flexion of 80 degrees for an impairment rating of 7 percent,[21] extension of 30 degrees for an impairment rating of 1 percent,[22] internal rotation of 30 degrees for an impairment rating of 4 percent,[23] and external rotation of 30 degrees for an impairment rating of 1 percent.[24] The Board notes that Dr. Smith's findings conform to the fifth edition of the A.M.A., *Guides*[25] and total a 19 percent permanent impairment of the left upper extremity based on loss of range of motion.

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[17] 5 U.S.C. § 8107.

[18] 20 C.F.R. § 10.404 (1999).

[19] A.M.A., *Guides* 477, Figure 16-43.

[20] *Id.*

[21] *Id*. at 476, Figure 16-40.

[22] *Id.*

[23] *Id*. at 479, Figure 16-46.

[24] *Id.*

[25] *Supra* note 3.

The Board finds that the opinion of Dr. Smith is sufficiently well rationalized and based upon a proper factual background. It represents the weight of the evidence and establishes that appellant sustained a 19 percent permanent impairment of the left upper extremity.

Although Dr. Saltzman determined that appellant sustained a 20 percent permanent impairment of the left upper extremity, he did not adequately explain how he reached this estimate in accordance with the relevant standards of the A.M.A., *Guides*.[26] On June 29, 2004, Dr. Saltzman noted general findings upon physical examination of the left shoulder, with no obvious atrophy, pain on abduction and forward flexion, some weakness on abduction and pain, "4 +" abduction and forward flexion, slightly limited pain and weakness in internal and external rotation. He stated that appellant sustained a four percent impairment due to loss of abduction,[27] two percent impairment due to loss of extension,[28] six percent impairment for forward flexion,[29] one percent for loss of external and internal rotation,[30] three percent impairment for weakness in forward flexion,[31] two percent impairment for weakness in abduction,[32] and three percent total impairment for weakness in internal and external rotation.[33] However, Dr. Saltzman did not provide an impairment rating in conformance with the A.M.A., *Guides.* The Board notes that he failed to specifically identify the range of motion calculations for abduction, flexion, adduction, internal and external rotation to support his findings and did not properly explain how he calculated the specific impairment values using Table 16-35, 16-40, 16-43 and 16-46, pages 15, page 476 to 510 of the A.M.A., *Guides.*[34] Additionally, he noted a calculation of "4 +" abduction and forward flexion; however, this notation is not in conformance with measurements on which ratings are based in the A.M.A., *Guides*.

The Office medical adviser applied the A.M.A., *Guides* to the information provided in Dr. Smith's June 25, 2004 report. He calculated that, based on the fifth edition of the of the A.M.A., *Guides,*[35] flexion of 80 degrees was a 7 percent impairment,[36] extension of 30 degrees

[26] *See Tonya R. Bell,* 43 ECAB 845, 849 (1992).

[27] *Id*. at 477, Table 16-43.

[28] *Id*. at 476, Table 16-40.

[29] *Id.*

[30] *Id*. at 479, Table 16-46.

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

[32] *Id.*

[33] *Id.*.

[34] *Id*. at 501, 476, 477, 479, Table 16-35, 16-40, 16-43, 16-46.

[35] *Supra* note 3.

[36] *Id*. at 476, Figure 16-40.

was a 1 percent impairment,[37] abduction of 80 degrees was a 5 percent impairment,[38] adduction of 30 degrees was a 1 percent impairment,[39] and external rotation of 30 degrees was a 1 percent impairment.[40] However, the medical adviser incorrectly noted that internal rotation for the left shoulder of 30 degrees equated to 3 percent impairment. Instead, the A.M.A., *Guides* provides for a 4 percent impairment rating for 30 degrees of internal rotation.[41] The medical evidence reflects a 19 percent permanent impairment of the left upper extremity. The Board finds that appellant has a 19 percent permanent impairment of the left upper extremity.

CONCLUSION

The Board finds that appellant sustained a 19 percent permanent impairment of the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the October 20, 2005 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: June 27, 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

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[37] *Id.*

[38] *Id*. at 477, Figure 16-43.

[39] *Id.*

[40] *Id*. at 479, Figure 16-46.

[41] *Id.*