

**United States Department of Labor
Employees' Compensation Appeals Board**

RANDE SHAUL-MAXWELL, Appellant)	
)	
and)	
)	Docket No. 06-128
)	Issued: March 8, 2006
U.S. POSTAL SERVICE, POST OFFICE,)	
Albany, NY, 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 October 13, 2005 appellant filed a timely appeal of an October 14, 2004 decision of an Office of Workers' Compensation Programs' hearing representative with respect to appellant's schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issues of this case.

ISSUE

The issue is whether appellant has more than a 12 percent permanent impairment to her left arm, for which she received a schedule award.

FACTUAL HISTORY

On June 26, 1991 appellant, then a 41-year-old flat sorter operator, filed an occupational disease claim (Form CA-2) alleging that she sustained an elbow condition as a result of her federal employment. The Office accepted the claim for a left lateral epicondylitis and appellant returned to work in a light-duty capacity. A treatment note dated April 27, 1992, from Dr. James Elting, noted that appellant had developed adhesive capsulitis of the left shoulder.

With respect to a permanent impairment, appellant submitted a report dated July 19, 1996 from Dr. David Weiss, an osteopath.¹ He provided results on examination for the left shoulder and left elbow and opined that appellant had a 53 percent permanent impairment to her left arm based on loss of range of motion, motor deficit and sensory deficit or pain.

The Office referred appellant, together with a statement of accepted facts, to Dr. Thomas Dorsey, a Board-certified orthopedic surgeon. In a report dated September 5, 2000, he provided results on examination for the left shoulder, elbow, wrist and hand. Dr. Dorsey's report limited range of motion in the left shoulder but opined that this was a "voluntary limitation" and the left hand grip strength was not consistent with other examination findings. He did not provide a specific impairment rating. In a report dated April 8, 2001, an Office medical adviser opined that appellant had a 20 percent left arm permanent impairment based on loss of range of motion to the left elbow and wrist.

According to the Office, the case required further development as appellant did not fully cooperate with Dr. Dorsey. The Office referred appellant to Dr. John Spring, a Board-certified orthopedic surgeon, for an opinion as to the degree of employment-related permanent impairment. In a report dated May 23, 2002, Dr. Spring provided results on examination. He noted that appellant had adhesive capsulitis in the left shoulder. Dr. Spring opined that appellant had a 5 percent impairment to the left elbow and an 18 percent impairment to the shoulder, for a 23 percent arm impairment. Dr. Spring did not identify any specific tables under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

The case was referred to an Office medical adviser for an opinion regarding the degree of permanent impairment. The medical adviser was directed not to consider a shoulder impairment as this was not an accepted condition. In a report dated June 30, 2002, the medical adviser opined that appellant had a 12 percent left arm impairment, based on 5 percent loss of elbow motion, 5 percent for loss of elbow strength and 2 percent for sensory deficit/pain.

By decision dated September 5, 2002, the Office issued a schedule award for a 12 percent permanent impairment to the left arm. The period of the award was 37.44 weeks commencing May 23, 2002.

Appellant requested a hearing, which was held on July 27, 2004. By decision dated October 14, 2004, the hearing representative affirmed the determination that appellant had no more than a 12 percent left arm permanent impairment. The case was remanded for further development with respect to pay rate.

¹ Appellant submitted this report with a request for reconsideration of a September 22, 1995 the Office decision, denying a claim for a recurrence of disability. The Board found that the Office properly denied merit review as the evidence was not relevant to that issue. Docket No. 97-982, issued December 10, 1998.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act² 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

It is well established that when the Office refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, the Office should secure an appropriate report on the relevant issues.⁵

ANALYSIS

The Office undertook further development of the medical evidence with respect to the degree of employment-related permanent impairment to the left arm. The accepted condition was a left elbow condition, lateral epicondylitis, as a result of repetitive motion. The medical evidence is consistent in also containing a diagnosis of a left shoulder condition. The Office referred appellant to Dr. Spring for an opinion regarding the degree of employment-related permanent impairment. His report does not, however, adequately address all of the relevant issues regarding the schedule award. Dr. Spring did not provide a complete factual and medical history. In addition, he provided an opinion as to an employment-related permanent impairment to the arm that included an impairment rating for the left shoulder. Although the Office had not accepted a left shoulder condition, the medical record does contain a consistent diagnosis of a left shoulder adhesive capsulitis and Dr. Spring appeared to believe that the condition was employment related. The Board also notes that the initial referral physician selected, Dr. Dorsey, provided results for the wrist and hand and the April 8, 2001 report of the Office medical adviser included impairment for the wrist.

In order to properly determine the degree of permanent impairment to the left arm causally related to employment, the issue of whether a left shoulder condition or other left arm condition is employment related must properly be resolved. Once that issue is resolved, an appropriate determination can be made as to entitlement to a schedule award.

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 Robert Kirby*, 51 ECAB 474, 476 (2000); *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

On remand, the Office should secure a medical report with a reasoned medical opinion, based on a complete background, with respect to whether appellant has any other employment-related left arm conditions in addition to the lateral epicondylitis. The report should include a detailed description of any impairment related to federal employment and an opinion as to the degree of employment-related permanent impairment under the A.M.A., *Guides*. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case must be remanded to the Office for further development of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 14, 2004 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: March 8, 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