United States Department of Labor
Employees' Compensation Appeals Board

B.P., Appellant	)	
and	)	**Docket No. 06-578**
	)	**Issued: September 5, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Edison, 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 10, 2006 appellant filed a timely appeal from a merit decision of a hearing representative of the Office of Workers' Compensation Programs dated January 14, 2005 affirming a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award decision.

ISSUE

The issue is whether appellant has established that she has more than a 12 percent permanent impairment of the right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On January 5, 1998 appellant, then a 47-year-old mail handler, filed a claim alleging that the repetitive movements of placing trays and tubs into containers caused a right shoulder condition. The Office accepted her claim for right shoulder strain and a right rotator cuff syndrome. Appellant underwent surgical repair on June 8, 1999. She returned to a modified mail handler position on July 3, 2000. By decision dated September 5, 2000, the Office found

that appellant's actual earnings as a mail handler fairly and reasonably represents her wage-earning capacity. In decisions dated September 5, 2000, June 13, 2001 and July 5, 2002, the Office denied appellant's request to expand her claim to include a bilateral brachial plexus condition.[1]

On May 29, 2002 appellant filed a claim for a schedule award. In a March 7, 2002 medical report, Dr. Nicholas P. Diamond, a family practitioner, reviewed the January 5, 1998 work injury and a March 8, 2001 work injury, during which appellant was noted to have experienced a burning sensation in her neck, arms and hands while moving heavy items on the loading dock. He diagnosed bilateral brachial plexus (traction injury); post-traumatic right shoulder acromioplasty; chronic cervical spine strain and sprain; chronic bilateral cervical radiculitis; and post-traumatic right medial and lateral humeral epicondylitis of the elbow and provided his examination findings. Findings relating to right shoulder range of motion indicated that appellant had a forward elevation of 160 degrees and abduction of 160 degrees. The cervical spine examination revealed paravertebral muscle spasm and tenderness, and muscle spasm and tenderness of the trapezius and splenius capitis. Range of motion revealed forward flexion of 45 degrees, back extension of 25 degrees, left lateral flexion of 30 degrees, right lateral flexion of 30 degrees, left rotation of 60 degrees and right rotation of 70 degrees. Dr. Diamond performed grip strength testing with a Jamar Hand Dynamometer at level 3 and found a 14 kilogram force for the right and left hand, with appellant being right-hand dominant. Dr. Diamond also found that the sensory examination was decreased to pinprick and light touch involving the thumb and second and third fingers of the right hand and involved the third, fourth and fifth fingers of the left hand. Utilizing the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Diamond opined that appellant had a total right upper extremity impairment of 55 percent which was causally related to the employment injury of March 8, 2001. This was based upon a combined right upper extremity impairment reflecting a 2 percent range of motion deficit (1 percent right shoulder flexion[2] and a 1 percent right shoulder abduction[3]); a 10 percent right shoulder resection acromioplasty;[4] a 31 percent sensory deficit of the right median nerve;[5] a 20 percent right grip strength deficit[6] and a 3 percent pain-related impairment.[7]

On July 22, 2002 an Office medical adviser reported that appellant reached maximum medical improvement on March 7, 2002. He reviewed Dr. Diamond's examination and utilized appropriate sections of the A.M.A., *Guides*, to find that appellant had a 12 percent right upper

[1] The record reflects that appellant has a claim under case number 022009488, for a right cervical strain with a date of injury of March 8, 2001 and a claim for a lumbar condition and bilateral brachial plexus injuries under case number 02-0589724.

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

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

[4] *Id.* at 506, Table16-27.

[5] *Id.* at 492, Table 16-15.

[6] *Id.* at 509, Tables 16-32 and 16-34.

[7] *Id.* at 574, Figure 18-1.

extremity impairment. This was based on a 2 percent range of motion deficit (1 percent right shoulder flexion[8] and a 1 percent right shoulder abduction[9]) and 10 percent for right shoulder resection acromioplasty.[10] The Office medical adviser excluded the findings pertaining to the median nerve and grip strength on the basis that they were not part of the shoulder impairment. He also excluded the pain impairment on the basis that it was too subjective and was not appropriately tested.

By decision dated August 7, 2002, the Office issued a schedule award for a 12 percent permanent impairment to the right upper extremity.

In a letter dated August 14, 2002, appellant, through her attorney, requested an oral argument, which was held October 19, 2004. By decision dated January 14, 2005, an Office hearing representative affirmed the August 7, 2002 schedule award decision.

On appeal, appellant's attorney contends that a conflict in medical opinion evidence was created between Dr. Diamond and the Office medical adviser.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[11] and its implement regulation[12] 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. The Act, however, does not specify the manner in which the percentage loss of a member 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* (5th ed.) has been adopted by the Office for evaluating schedule losses.[13]

ANALYSIS

The Office based its schedule award decision on the July 22, 2002 report of its medical adviser. It is well established that, when the examining physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of permanent impairment and the Office may rely on the opinion of its

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

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

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

[11] 5 U.S.C. § 8107.

[12] 20 C.F.R. § 10.404.

[13] *See* 20 C.F.R. § 10.404; *see also David W. Ferrall*, 56 ECAB ___ (Docket No. 04-2142, issued February 23, 2005).

medical adviser to apply the A.M.A., *Guides* to the findings reported by the examining physician.[14]

Dr. Diamond determined that appellant sustained a 55 percent right upper extremity impairment. However, he did not adequately explain how he reached his determination in accordance with the standards of the A.M.A., *Guides.*[15]

In his March 7, 2002 impairment rating, Dr. Diamond found a combined right upper extremity impairment of 52 percent, consisting of a 2 percent range of motion impairment,[16] 10 percent right shoulder resection impairment,[17] 31 percent sensory deficit right median nerve, 20 percent right grip strength deficit, for a combined right upper extremity impairment of 52 percent and included 3 percent impairment for pain. His impairment findings for a 2 percent range of motion and a 10 percent right shoulder resection acromioplasty of the distal clavicle properly conform to the A.M.A., *Guides* which at pages 482 and 492, Tables 16-10 and 16-15, sets forth impairment rating for sensory deficit for the peripheral nerve disorders. Although, Dr. Diamond found a 31 percent sensory deficit impairments of the median nerve, he did not identify a grade of sensory deficit between one and five as set forth in the A.M.A., *Guides* at Table 16-10[18] or explain how he calculated specific impairment values using Table 16-15 on pages 492 of the A.M.A., *Guides*.[19] He further noted that appellant had a 20 percent right grip strength deficit. The A.M.A., *Guides*, provides, however, that decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts that prevent effective application of maximal force in the region being evaluated.[20] As Dr. Diamond found that appellant had decreased motion of the right shoulder, it was inappropriate for him to utilize the values for loss of strength in evaluating his impairment. He also allowed three percent for pain under Chapter 18 of the A.M.A., *Guides*. The Board notes, however, that examiners should not use Chapter 18 to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.[21] As noted, Dr. Diamond did not explain why pain could not be appropriately rated in Chapter 16.

In a report dated July 22, 2002, an Office medical adviser reviewed Dr. Diamond's findings. He concluded that Dr. Diamond's impairment estimates relating to sensory deficit of

[14] *John L. McClanic*, 48 ECAB 552 (1997).

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

[16] A.M.A., *Guides* at 476-77, Figure 16-40 and Figure 16-43.

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

[18] *Id.* at 482, Table 16-10a.

[19] *Id.* at 492, Table 16-15.

[20] *Id.* at 508, section 16.8a.

[21] *See* FECA Bulletin No. 01-01 (issued January 31, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003); A.M.A., *Guides* at 18.3(b); *Linda Beale*, 57 ECAB ___ (Docket No. 05-1536, issued February 15, 2006).

the median nerve, grip strength deficit and the pain impairment were not in accordance with the A.M.A., *Guides*. The Office medical adviser determined that appellant had a 12 percent permanent impairment of the right upper extremity, based on 2 percent loss of range of motion impairment and 10 percent impairment for acromioplasty. As the Office medical adviser's report is the only medical report which conforms to the A.M.A., *Guides*, it constitutes the weight of the medical evidence.

On appeal, appellant's attorney contends that a conflict exists between Dr. Diamond and the Office medical adviser. As noted, Dr. Diamond's impairment evaluation did not conform to the A.M.A., *Guides* and is of diminished probative value.[22]

CONCLUSION

The Board finds that appellant has not established that she has more than a 12 percent permanent impairment of the right upper extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 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

[22] *Derrick C. Miller*, 54 ECAB 266 (2002).