United States Department of Labor
Employees' Compensation Appeals Board

I.H., Appellant	)	
and	)	**Docket No. 07-1348**
	)	**Issued: October 23, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Catonsville, 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:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 23, 2007 appellant filed a timely appeal from the April 11, 2007 merit decision of the Office of Workers' Compensation Programs, which awarded schedule compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this schedule award.

ISSUE

The issue is whether appellant has more than an eight percent permanent impairment of her right upper extremity.

FACTUAL HISTORY

On November 2, 2004 appellant, then a 47-year-old clerk, filed a claim alleging that she sustained an injury in the performance of duty: "Repetitious movement of right arm when filing mail for long hours." The Office accepted her claim for right shoulder strain.

On March 30, 2005 Dr. Robert A. Smith, an orthopedic surgeon and Office referral physician, reported that appellant had recovered from her employment injury. He reported full range of shoulder motion with complaints of discomfort on each maneuver.

Appellant filed a claim for a schedule award. On June 26, 2006 Dr. Robert W. Macht, a general surgeon, found a 13 percent impairment of the right upper extremity due to loss of shoulder motion and a 14 percent impairment due to pain, for a total impairment of 25 percent.

The Office found a conflict in medical opinion between Dr. Macht and Dr. Smith. It referred appellant to Dr. Hugh O. House, a Board-certified orthopedic surgeon, for an evaluation of any impairment. On March 7, 2007 Dr. House related appellant's history and his findings on examination. He diagnosed right shoulder subacromial impingement, which he felt, to a reasonable degree of medical certainty, was related to repetitive overhead motion at work. Dr. House found a five percent impairment of the right upper extremity due to loss of shoulder motion. He also found a five percent pain-related impairment.

An Office medical adviser reviewed Dr. House's findings and confirmed the five percent rating for loss of shoulder motion. However, Dr. House did not support his rating for pain-related impairment and the medical adviser recommended an additional three percent based on Table 18-1 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

On April 11, 2007 the Office issued a schedule award based on an eight percent permanent impairment of the right upper extremity.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[1] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[2]

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[3] When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999). The Office began using the fifth edition of the A.M.A., *Guides* effective February 1, 2001.

[3] 5 U.S.C. § 8123(a).

report is also vague, speculative or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.[4] Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Act will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.[5]

ANALYSIS

Dr. House, the impartial medical specialist, reported forward shoulder flexion of 150 degrees and extension of 50. This represents a two percent impairment for loss of flexion and no impairment for extension under Figure 16-40, page 476, of the A.M.A., *Guides*. Dr. House also reported 120 degrees of abduction. This represents a three percent impairment under Figure 16-43, page 477. His examination therefore supports a five percent impairment of the right upper extremity due to the loss of shoulder motions reported.

There are three other shoulder motions for which Dr. House provided no measurements. He stated only that appellant tolerated "full" external and internal rotation. Dr. House made no mention of adduction. This does not allow a proper application of the pie charts in the A.M.A., *Guides* to confirm the extent of appellant's impairment. Clarification is therefore warranted. The Office should ask Dr. House for the actual goniometric measurements for adduction and for external and internal rotation.

Clarification is also warranted for appellant's pain-related impairment. Dr. House found an additional five percent impairment for pain but did not explain how he used the A.M.A., *Guides* to arrive at this rating. Discussing the difficulties associated with integrating pain-related impairment into an impairment rating system, the A.M.A., *Guides* states:

> "Finally, at a practical level, a chapter of the [A.M.A.,] *Guides* devoted to pain-related impairment should not be redundant of or inconsistent with principles impairment rating described in other chapters. The [A.M.A.,] *Guides'* impairment ratings currently include allowances for the pain that individuals typically experience when they suffer from various injuries or diseases, as articulated in Chapter 1 of the [A.M.A.,] *Guides*: 'Physicians recognize the local and distant pain that commonly accompanies many disorders. Impairment ratings in the [A.M.A.,] *Guides* already have accounted for pain. For example, when a cervical spine disorder produces radiating pain down the arm, the arm pain, which is commonly seen, has been accounted for in the cervical spine impairment rating' (p. 10). Thus, if an examining physician determines that an individual has pain-related impairment, he or she will have the additional task of deciding whether or

[4] *See Nathan L. Harrell*, 41 ECAB 402 (1990).

[5] *Harold Travis*, 30 ECAB 1071 (1979).

not that impairment has already been adequately incorporated into the rating the person has received on the basis of other chapters of the [A.M.A.,] *Guides*."[6]

Dr. House supported pain-related impairment but did not explain why he feels this impairment was not already adequately incorporated into the rating appellant received under Chapter 16.[7] He should be asked to explain whether the procedures for evaluating impairment due to entrapment or compression neuropathies are appropriate for appellant's diagnosis of subacromial impingement.[8] The Board notes that, in the absence of complex regional pain syndrome, additional impairment values are not given for decreased motion.[9] The Board will set aside the Office's April 11, 2007 decision and remand the case for further development and an appropriate final decision on appellant's entitlement to a schedule award. On remand, the Office should address the impartial medical specialist's diagnosis of subacromial impingement.

CONCLUSION

The Board finds that this case is not in posture for decision. The opinion of the impartial medical specialist requires clarification.

[6] *See* A.M.A., *Guides* 570 and 20 ("The impairment ratings in the body organ system chapters make allowance for any accompanying pain.").

[7] *See id*. at 570, Chapter 18.3a ("When This Chapter Should Be Used to Evaluate Pain-Related Impairment").

[8] *Id*. at 491, Chapter 16.5d.

[9] *Id*. at 494.

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: October 23, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board