United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 07-971**
	)	**Issued: September 11, 2007**
DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, PARKER DAM FIELD DIVISION, Parker Dam, CA, Employer	)	

Appearances:
Appellant, pro se
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 February 26, 2007 appellant filed a timely appeal from a November 28, 2006 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant has more than four percent impairment of the right arm, for which she received a schedule award.

FACTUAL HISTORY

On July 20, 2004 appellant, then a 52-year-old purchasing officer, sustained a fracture of her upper right arm when she slipped and fell while entering the women's room at her workplace. She stopped work on that date. In a July 23, 2004 report, Dr. William F. Binder, a Board-certified orthopedic surgeon, diagnosed humeral fracture. On August 24, 2004 the Office accepted appellant's claim for closed fracture of right humerus.

Following the acceptance of her claim, appellant submitted reports from Dr. Binder detailing her treatment and progress. On April 29, 2005 Dr. Binder stated that appellant's humerus had healed, but that her shoulder was stiff. In a June 16, 2005 magnetic resonance imaging (MRI) scan report, Dr. Warren Mays, a Board-certified radiologist, concluded that appellant had a supraspinatus tear in her right shoulder.

On July 26, 2005 Dr. Binder noted that appellant had 140 degrees of forward flexion but concluded: "Ultimately, I think we are going to have to put the supraspinatus back from the full-thickness rotator cuff tear." On August 16, 2005 he noted that appellant's range of motion was improving to 150 degrees of forward flexion and "very modest limitation of internal and external rotation" but recommended a right shoulder arthroscopy and rotator cuff repair.

On August 29, 2005 an Office medical adviser advised that Dr. Binder's proposed surgery appeared appropriate. The Office authorized the procedure and Dr. Binder performed surgery on October 5, 2005. In an operative report of October 6, 2005, Dr. Binder explained that he performed an arthroscopy followed by open acromioplasty and "takedown of partial tear with reapproximation." He listed postoperative diagnosis of "incomplete rotator cuff tear right shoulder with anterior labral tearing." On October 10, 2005 Dr. Binder noted that appellant experienced some shoulder stiffness following the surgery."

On June 19, 2006 Dr. Binder reported that appellant's strength and range of motion were now approaching normal. He explained: "Examination today reveals that [appellant] has excellent range of motion of the right shoulder given her history. She is still at the 150 degree forward flexion and abduction range. [Appellant] internally and externally rotates well on the right side."

Dr. Binder provided an impairment rating on October 9, 2006. He noted that appellant complained of consistent mild ache and explained that "most of her difficulty is in forward flexion and abduction where she gets 150 degrees versus 180 degrees on the contra-lateral side. External rotation is 40 degrees, internal rotation is full and extension is full." Dr. Binder also noted full range of motion in the elbow and hand regions. Using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[1] (A.M.A., *Guides*), he concluded that appellant had four percent upper extremity impairment. Using Figure 16-40,[2] Dr. Binder measured 150 degrees of forward flexion, which represented two percent upper extremity impairment. He measured 150 degrees of abduction which, under Figure 16-43,[3] calculated one percent upper extremity impairment. Finally, Dr. Binder used Figure 16-46[4] to calculate one percent upper extremity impairment based on 40 degrees of external rotation. As appellant exhibited full external rotation and extension, Dr. Binder concluded that she had four percent right upper extremity impairment based on loss of range of motion.

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

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

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

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

On November 1, 2006 appellant requested a schedule award.

In a November 10, 2006 report, an Office medical adviser agreed with Dr. Binder's impairment rating. He reviewed appellant's accepted condition and authorized surgery, listing her status as post right shoulder arthroscopy with open subacromial decompression and rotator cuff repair. The medical adviser reviewed the record and calculated two percent impairment for loss of shoulder flexion, using the A.M.A., *Guides*, Figure 16-40,[5] one percent impairment for loss of shoulder abduction, using Figure 16-43[6] and one percent impairment for loss of shoulder external rotation, using Figure 16-46.[7] He concluded:

> "[Appellant] has four percent impairment of the right upper extremity. The four percent impairment of the right upper extremity is the sole impairment of the right upper extremity resulting from the accepted work injury of July 20, 2004. The date of maximum medical improvement is October 9, 2006, when [appellant] was released from medical care by her treating physician, Dr. Binder."

On November 28, 2006 the Office granted appellant a schedule award for four percent impairment of the right upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[8] and its implementing regulation[9] set 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.[10]

ANALYSIS

The Office accepted that appellant sustained a humerus fracture and authorized a right shoulder arthroscopy for a rotator cuff repair. In support of her schedule award request, appellant submitted an October 9, 2006 impairment rating from Dr. Binder who measured appellant's shoulder range of motion and concluded that she had 150 degrees of forward flexion, 150 degrees of abduction and 40 degrees of external rotation. Dr. Binder measured full range of

[5] *See supra* note 2.

[6] *See supra* note 3.

[7] *See supra* note 4.

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404 (1999).

[10] *See id.*

motion on extension and external rotation. He prepared his impairment rating in accordance with the A.M.A., *Guides*.[11] Using Figure 16-40, which measures impairment based on loss of flexion and extension, Dr. Binder calculated two percent upper extremity impairment.[12] The A.M.A., *Guides* assign two percent impairment for a measurement of 150 degrees of flexion and zero percent impairment for full extension.[13] Dr. Binder used Figure 16-43 to calculate appellant's impairment based on loss of abduction and adduction. In accordance with the A.M.A., *Guides*, one percent impairment is based on 150 degrees of abduction and zero percent impairment with full adduction.[14] He used Figure 16-46 to measure appellant's impairment based on loss of internal and external rotation. The A.M.A., *Guides*, provide one percent impairment based on 40 degrees of external rotation and zero percent impairment for full internal rotation.[15] Dr. Binder's measurements and calculations comport with the A.M.A., *Guides* and he found no other basis on which to attribute additional impairment.[16]

The Office medical adviser reviewed Dr. Binder's impairment evaluation on November 10, 2006. The medical consultant concurred with Dr. Binder's impairment rating, based on loss of range of motion, confirming that the evaluation was proper under the A.M.A., *Guides*. The weight of the medical evidence establishes that appellant has no more than four percent impairment of the right upper extremity.

On appeal, appellant asserts that she has a greater impairment due to her pain.[17] The Board notes, however, that Dr. Binder conducted his evaluation in accordance with the A.M.A., *Guides* and did provide any basis on which pain could be properly rated under the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant did not establish that she has more than four percent impairment of the right arm, for which she received a schedule award.

[11] *See supra* notes 2, 3 and 4.

[12] *Supra* note 2.

[13] *Id.*

[14] *Supra* note 3.

[15] *Supra* note 4.

[16] Dr. Binder also indicated that appellant's impairment of the right arm equated to two percent whole person impairment. However, the Act contains no provision allowing payment of compensation for whole person impairment. No claimant may receive a schedule award for permanent impairment of the whole person. *See Tommy R. Martin*, 56 ECAB ___ (Docket No. 03-1491, issued January 21, 2005).

[17] After issuance of the Office's November 28, 2006 decision, appellant submitted additional medical evidence. The Board, however, notes that it cannot consider this evidence for the first time on appeal because the Office did not consider this evidence in reaching its final decision. The Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the November 28, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 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