United States Department of Labor
Employees' Compensation Appeals Board

B.E., Appellant	)	
and	)	**Docket No. 07-1315**
	)	**Issued: September 26, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Sellersville, PA, Employer	)	

Appearances:
Thomas R. Uliase, 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 17, 2007 appellant filed a timely appeal from the October 31, 2006 merit decision of an Office of Workers' Compensation Programs' hearing representative, who affirmed a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the schedule award.

ISSUE

The issue is whether appellant has more than a 15 percent permanent impairment of her right upper extremity.

FACTUAL HISTORY

On September 24, 2004 appellant, then a 50-year-old mail clerk, filed a claim alleging that her neck and right arm condition were a result of her federal employment: "Heavy lifting on a regular basis, escalating pain." The Office accepted her claim for C4-5 and C6-7 right disc herniation.

On February 6, 2006 appellant filed a claim for a schedule award. She submitted the October 20, 2005 impairment evaluation of Dr. Nicholas Diamond, an osteopath, who described his finding on physical examination and determined that appellant had a 2 percent impairment of her right upper extremity due to loss of shoulder flexion, a 3 percent impairment due to loss of shoulder abduction, a 1 percent impairment due to a Grade 4 sensory deficit of the right C7 nerve root and a 20 percent impairment due to loss of grip strength, for a total impairment of 25 percent.

On February 18, 2006 an Office medical consultant reviewed Dr. Diamond's evaluation and determined that his findings demonstrated a 15 percent impairment to appellant's right upper extremity. He agreed with the ratings given for loss of shoulder flexion and abduction but he found that the impairment due to sensory and motor deficits was 10 percent.

On February 28, 2006 the Office issued a schedule award for a 15 percent impairment of appellant's right upper extremity.

Appellant requested an oral hearing before an Office hearing representative, which was held on July 31, 2006. In a decision dated October 31, 2006, the hearing representative affirmed the February 28, 2006 schedule award. The hearing representative found that the Office medical consultant properly applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) to the findings reported by Dr. Diamond.

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]

ANALYSIS

There is no dispute about the impairment due to loss of motion. Using Table 16-40, page 476, of the A.M.A., *Guides*, shoulder flexion to 150 degrees represents a two percent impairment of the upper extremity. Using Table 16-45, page 477, abduction to 120 degrees represents a three percent impairment. Because the relative upper extremity value of each shoulder functional unit has been taken into consideration in the impairment pie charts, the impairment values contributed by each unit of motion are added to determine the impairment of the upper extremity due to abnormal shoulder motion.[3] Impairment due to loss of motion is therefore five percent.

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001).

[3] A.M.A., *Guides* 479.

There is also no dispute about the impairment due to sensory loss. Dr. Diamond, the examining osteopath, noted decreased sensation to pinprick and light touch over the C7 dermatome. He classified this sensory loss as Grade 4, or "Distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity." This represents a sensory deficit of up to 25 percent of the affected nerve.[4] As the maximum loss of function due to sensory deficit of the C7 nerve root is five percent,[5] appellant has a one percent impairment of her right upper extremity due to sensory loss.

Dr. Diamond also found a 20 percent impairment of the right upper extremity due to loss of grip strength. The A.M.A., *Guides* explains, however, that, because strength measurements are functional tests influenced by subjective factors that are difficult to control and the A.M.A., *Guides* is for the most part based on anatomic impairment, the A.M.A., *Guides* does not assign a large role to such measurements.[6] Nonetheless, in a rare case, if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the A.M.A., *Guides*, the loss of strength may be rated separately. The A.M.A., *Guides* cautions:

> "If the examiner judges that loss of strength should be rated separately in an extremity that presents other impairments, the impairment due to loss of strength *could be combined* with the other impairments, *only* if based on unrelated etiologic or pathomechanical causes. *Otherwise, the impairment ratings based on objective anatomic findings take precedence*."[7] (Emphasis in the original.)

Dr. Diamond did not explain how this is one of those rare cases where a 20 percent impairment due to loss of grip strength should be rated separately from other impairments. He improperly combined loss of grip strength with loss of shoulder motion and spinal nerve root deficit without showing that the loss of grip strength was based on an unrelated etiologic or pathomechanical cause. The Board therefore finds that his impairment rating of 25 percent for the right upper extremity is of diminished probative value.[8]

The Office medical consultant approached the strength issue in a manner that allows combination under the A.M.A., *Guides*. Noting 4+/5 strength in both the supraspinatus and deltoid musculature, he determined that appellant had a Grade 4 motor deficit, or "Active movement against gravity with some resistance." This represents up to a 25 percent impairment

[4] *Id*. at 424, Table 15-15.

[5] *Id*. at 424, Table 15-17.

[6] *Id*. at 507.

[7] *Id*. at 508.

[8] Additionally, the reliability of Dr. Diamond's grip strength reading is not demonstrated by repeated testing. The A.M.A., *Guides* states that tests repeated at intervals during an examination are considered reliable if there is less than 20 percent variation in the readings. If there is more than 20 percent variation in the readings, one may assume the individual is not exerting full effort. The test is usually repeated three times with each hand at different times during the examination, and the values are recorded and later compared. *Id*. Dr. Diamond simply reported one measurement for the left and one measurement for the right.

of the affected nerve.[9] As the maximum loss of function due to motor deficit of the C7 nerve root is 35 percent,[10] appellant would have a 9 percent impairment of her right upper extremity due to motor loss.

If there is both sensory and motor impairment of a nerve root, the percentages are combined using the Combined Values Chart on page 604 of the A.M.A., *Guides*.[11] Appellant has a 10 percent impairment of her right upper extremity due to spinal nerve root compression. This combines with her 5 percent impairment due to abnormal shoulder motion for a total impairment of 15 percent, which the Office awarded. The Board will affirm the Office's October 31, 2006 decision affirming appellant's February 28, 2006 schedule award.

CONCLUSION

The Board finds that appellant has no more than a 15 percent permanent impairment of her right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 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

[9] A.M.A., *Guides* 424, Table 15-16.

[10] *Id*. at 424, Table 15-17.

[11] *Id*. at 423.