United States Department of Labor
Employees' Compensation Appeals Board

R.S., Appellant	)	
	)	**Docket No. 08-1479**
and	)	**Issued: December 15, 2008**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Dallas, TX, Employer	)	

Appearances:
Appellant, pro se
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 April 25, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs March 19, 2008 merit decision regarding a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than an 18 percent permanent impairment to her left arm causally related to her federal employment.

FACTUAL HISTORY

On April 19, 2005 appellant, then a 61-year-old nursing assistant, sustained injury to her back, leg and hand when she slipped and fell while in the performance of duty. The claim was accepted for sprains of the lumbar and cervical spine, left shoulder and upper arm, hip and thigh, as well as bilateral carpal tunnel syndrome.

By report dated March 1, 2007, Dr. Ronnie Shade, an attending orthopedic surgeon, provided a history and results on examination. For left shoulder range of motion, Dr. Shade reported 125 degrees of flexion, 40 degrees extension, 25 degrees adduction, 135 degrees abduction, 60 degrees internal rotation and 40 degrees external rotation. He noted left hand pain and numbness, and he reported a small ganglionic cyst on the radial volar aspect of the wrist. As to permanent impairment, Dr. Shade reported 17 percent upper extremity impairment for cervical motor impairments. He described three motor impairments and graded each impairment at 25 percent. Dr. Shade did not identify any specific table or figure in the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. An additional impairment of seven percent was reported for the median nerve, consisting of a three percent motor impairment and a four percent sensory impairment.[1] In addition, he referred to Table 16-18 of the A.M.A., *Guides* and indicated that appellant had three percent impairment due to the ganglion cyst. In combining the impairments, Dr. Shade concluded that appellant had 19 percent arm impairment, based on 11 percent loss of range of motion, 7 percent sensory and motor deficit, and 3 percent for the ganglionic cyst.

The Office referred the case to an Office medical adviser for review. In a report dated January 21, 2008, he concurred that appellant had an 11 percent impairment for loss of range of motion. The medical adviser identified Tables 16-15, 16-11 and 16-10 and indicated that appellant had three percent impairment for motor deficit and four percent sensory deficit to the median nerve. As to the ganglion cyst, he noted this was not an accepted injury and should not be included in the calculation. The medical adviser combined the 11 percent, 4 percent and 3 percent to total 18 percent left arm impairment. He stated that the date of maximum medical improvement was March 17, 2007.

By decision dated March 19, 2008, the Office issued a schedule award for an 18 percent permanent impairment to the left arm. The period of the award was 56.16 weeks of compensation commencing March 17, 2007.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[2] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard

[1] Dr. Shade graded the motor deficit at 30 percent of a maximum 10 percent and the sensory deficit impairment at 10 percent of the maximum 39 percent.

[2] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

applicable to all claimants.[3] As of February 1, 2001, the fifth edition of the A.M.A. *Guides* was to be used to calculate schedule awards.[4]

ANALYSIS

Appellant submitted a March 1, 2007 report from Dr. Shade with an opinion as to the degree of permanent impairment to her left arm. With respect to loss of range of motion, Dr. Shade provided specific results for flexion and extension, adduction and abduction, as well as internal and external rotation. These results are properly evaluated in accord with Figures 16-40, 16-43 and 16-46 of the A.M.A., *Guides.* Under Figure 16-40, 125 degrees of flexion is four percent arm impairment, and 40 degrees of extension is one percent impairment.[5] 135 degrees of abduction is two percent arm impairment and 25 degrees adduction is one percent impairment.[6] Pursuant to Figure 16-46, 60 degrees of internal rotation is two percent arm impairment and 40 degrees external rotation is one percent impairment.[7] Adding these impairments results in an 11 percent left arm impairment due to loss of range of motion.

As to impairments based on motor and sensory deficit to the median nerve, Dr. Shade did not identify the table used to calculate the impairment. It appears he utilized Table 16-15 and the grading classification at Tables 16-10 (sensory deficit) and 16-11 (motor deficit), as identified by the Office medical adviser. For sensory deficit, the maximum impairment for the median nerve (below midforearm) is 39 percent[8] and Dr. Shade graded the impairment at 10 percent of the maximum, for 4 percent impairment.[9] The maximum for the motor deficit is 10 percent, and this impairment was graded at 30 percent, for 3 percent arm impairment.[10]

Both Dr. Shade and the Office medical adviser found an 11 percent impairment for loss of range of motion in the left shoulder, 4 percent motor deficit impairment and a 3 percent sensory deficit impairment to the left arm based on the accepted carpal tunnel syndrome. Dr. Shade provided an additional impairment for a left wrist ganglion cyst. Regarding the ganglion cyst, he had not discussed the condition prior to his March 1, 2007 report. It is not an accepted condition and there is no medical report of record with an opinion on causal relationship with the April 19, 2005 employment injury. A schedule award is based on

[3] *A. George Lampo*, 45 ECAB 441 (1994).

[4] FECA Bulletin No. 01-05 (January 29, 2001).

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

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

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

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

[9] *Id.* at 482, Table 16-11.

[10] *Id.* at 484, Table 16-11.

permanent impairment causally related to an employment injury.[11] Based on the evidence of record, the Office properly did not consider impairment for a ganglion cyst.

Dr. Shade also reported 17 percent upper extremity impairment based on cervical motor deficits. He did not identify the relevant table, although he may have been using Table 16-15. For example, he referred to the axillary nerve, which has a maximum 15 percent motor deficit impairment under this table. Dr. Shade did not properly identify additional nerves, however, as he referred to the biceps and the supraspinatus, which are not enumerated as nerves under Table 16-15. The Board also notes that an assessment of motor deficits under Tables 16-15 and 16-11 is to be used for rating weakness that is used for a diagnosed injury to a specific nerve or nerves.[12] The Office accepted a neck sprain; however, Dr. Shade does not discuss whether there was a diagnosed cervical nerve injury causally related to the April 19, 2005 employment injury. It is also not clear whether Dr. Shade felt the upper extremity impairment in the "cervical" category was a bilateral impairment or left arm impairment. In the absence of proper application of the A.M.A., *Guides* the Board finds an impairment based on cervical motor deficits was not established. With respect to any leg impairment, he did identify relevant tables or provide pertinent evidence regarding an employment-related permanent impairment.

The Board finds that the probative medical evidence does not establish more than an 18 percent permanent impairment to the left arm. The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the arm, the maximum number of weeks of compensation is 312 weeks. Since appellant's permanent impairment was 18 percent, he is entitled to 18 percent of 312 weeks, or 56.16 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.[13] In this case, the schedule award commenced on the date of maximum medical improvement provided by the Office medical adviser.[14]

CONCLUSION

The evidence does not establish more than an 18 percent permanent impairment to the left arm.

[11] *Rosa Whitfield Swain*, 38 ECAB 368 (1987).

[12] The A.M.A., *Guides* note that weakness may be due to many causes, including pain, and Table 16-11 is not to be used for rating weakness that is not due to a diagnosed injury of a specific nerve or nerves. *See* page 484.

[13] *Albert Valverde*, 36 ECAB 233, 237 (1984).

[14] The Office medical adviser may have intended to use March 1, 2007, the date of the report by Dr. Shade, but there is no indication that commencing the schedule award on March 17, 2007 had any adverse consequences to appellant.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs date March 19, 2008 is affirmed.

Issued: December 15, 2008
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