United States Department of Labor
Employees' Compensation Appeals Board

C.L., Appellant	)	
and	)	**Docket No. 08-357**
	)	**Issued: June 5, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Princeton, 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:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 14, 2007 appellant, through her attorney, filed a timely appeal from a December 19, 2006 merit decision of the Office of Workers' Compensation Programs and a June 19, 2007 hearing representative's decision granting her a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decisions.

ISSUE

The issue is whether appellant has more than a 13 percent permanent impairment of the right upper extremity.

FACTUAL HISTORY

On June 3, 2004 appellant, then a 46-year-old city letter carrier, filed an occupational disease claim alleging that she sustained right shoulder impingement due to factors of her federal employment. The Office accepted the claim for right shoulder impingement and a right rotator cuff tear.

On September 8, 2004 Dr. George Stollsteimer, a Board-certified orthopedic surgeon, performed a right shoulder arthroscopy with a right rotator cuff repair and subacromial decompression. The Office paid appellant compensation for total disability beginning September 10, 2004. Appellant returned to limited-duty employment on November 9, 2004 and to her regular employment on May 7, 2005.

On September 6, 2005 Dr. Stollsteimer related, "[Appellant] is being seen status post right rotator cuff repair. This was done approximately one year ago. She is doing extremely well. [Appellant] has no complaints whatsoever." Dr. Stollsteimer found full range of motion of the shoulder and "5/5 strength in all planes with no pain." He noted that appellant had no difficulties performing her employment duties.

On May 25, 2006 Dr. David Weiss, an osteopath Board-certified in family practice, performed an impairment evaluation. He discussed appellant's complaints of intermittent pain and stiffness in her right shoulder and difficulty reaching overhead and lifting. On examination, Dr. Weiss related:

> "There is no focal acromioclavicular point tenderness. There is no anterior cuff tenderness; however, there is exquisite tenderness noted over the tip of the acromion. Range of motion reveals forward elevation of 180/180 degrees, abduction of 170/180 degrees, crossover adduction of 75/75 degrees [and] external rotation of 80/90 degrees. Posterior reach (internal rotation) is to T6. Internal rotation is to 75 degrees. Drop test is negative. O'Brien's test is negative. Hawkin's impingement sign is mildly positive. Circumduction produces no clicks or creptiance.
>
> "Manual muscle strength testing of the upper extremities reveals the supraspinatus is graded at 4+/5. The biceps, triceps and deltoids are graded at 5/5."

Dr. Weiss measured upper arm circumference as 26.5 centimeters on the right and 26 centimeters on the left and lower arm circumference as 23 centimeters bilaterally. Citing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), (5th ed. 2001), he found that appellant had a 10 percent impairment of the right shoulder due to a resection arthroplasty[1] and a 4 percent impairment due to a motor strength deficit of the right supraspinatus,[2] which he combined to find a 14 percent upper extremity impairment. Dr. Weiss further found that she had an additional 3 percent impairment due to pain,[3] for a total right upper extremity impairment of 17 percent. Dr. Weiss concluded that appellant reached maximum medical improvement on May 25, 2006.

On September 7, 2006 an Office medical adviser reviewed Dr. Weiss' May 25, 2006 report. He noted that Dr. Weiss found normal range of motion, 4/5 weakness of the supraspinatus and a small reduction in circumference on the left "consistent with a right-handed

[1] A.M.A., *Guides* at 506, Table 16-27.

[2] *Id*. at 484, 492, Tables 16-11, 16-15.

[3] *Id*. at 574, Table 18-1.

individual." The Office medical adviser asserted, "[T]his claimant underwent subacromial decompression which would qualify for distal clavicle resection arthroplasty and a 10 [percent] impairment of the right upper extremity."[4] He disagreed with Dr. Weiss' finding that appellant had a motor deficit from a peripheral nerve disorder as she did not have peripheral nerve involvement or a neurological deficit. The Office medical adviser provided her with an additional 3 percent impairment due to pain for a total right upper extremity impairment of 13 percent.[5] He opined that appellant reached maximum medical improvement on May 25, 2006.

By decision dated December 19, 2006, the Office granted appellant a schedule award for a 13 percent permanent impairment of the right upper extremity. The period of the award ran for 283.92 days from May 25, 2006 to March 24, 2007.

On January 4, 2007 appellant, through her attorney, requested an oral hearing. At the hearing, held on April 2, 2007, her attorney contended that Dr. Weiss properly applied the A.M.A., *Guides*. Counsel further asserted that a conflict in opinion existed between Dr. Weiss and the Office medical adviser. In a statement dated April 17, 2007, appellant described her continuing shoulder problems and difficulty with fatigue.

By decision dated June 19, 2007, the hearing representative affirmed the December 19, 2006 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[6] and its implementing federal regulations,[7] 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[8] Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.[9]

ANALYSIS

The Office accepted that appellant sustained right shoulder impingement and a right rotator cuff tear due to factors of her federal employment. On September 8, 2004

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

[5] *Supra* note 3.

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id*. at § 10.404(a).

[9] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

Dr. Stollsteimer performed a right rotator cuff repair and subacromial decompression. Appellant stopped work on the date of surgery. She returned to limited-duty employment on November 9, 2004 and to her usual employment on May 7, 2005. In a September 6, 2005 progress report, Dr. Stollsteimer found that appellant had full range of motion and strength and "no complaints whatsoever."

On May 25, 2006 Dr. Weiss noted that appellant experienced intermittent right shoulder pain and stiffness. He found tenderness of the tip of the acromion and listed range of motion findings of forward elevation of 180 degrees, abduction of 170 degrees, adduction of 75 degrees, external rotation of 80 degrees and internal rotation of 75 degrees. Dr. Weiss found that appellant had 4/5 muscle strength of the supraspinatus and 5/5 muscle strength of the biceps, triceps and deltoids. He determined that appellant had a 10 percent impairment due to a resection arthroplasty[10] and a 4 percent impairment due to a motor strength deficit of the supraspinatus.[11] Dr. Weiss combined the 10 percent impairment due to the resection arthroplasty and the 4 percent impairment due to a motor strength deficit to find a 14 percent impairment of the right upper extremity. He added 3 percent for pain under Chapter 18 and concluded that appellant had a 17 percent impairment of the right upper extremity. Dr. Weiss, however, did not properly calculate the impairment due to motor strength deficit using Table 16-15. A proper application of the A.M.A., *Guides* requires that specific nerves be identified under Table 16-15 in order to determine the maximum impairment for sensory or motor deficit in the identified nerve.[12] The impairment is then graded according to Table 16-10 for sensory deficits and 16-11 for motor deficits.[13] These tables provide a grade from one to five according to the severity of the impairment. Dr. Weiss identified the supraspinatus as causing a motor strength deficit but offered no explanation for his rating under the A.M.A., *Guides*. He did not identify an impairment of a peripheral nerve and there is no evidence that appellant has a peripheral nerve impairment. Consequently, Dr. Weiss' report does not conform to the A.M.A., *Guides*.

An Office medical adviser reviewed Dr. Weiss' report and properly found that his range of motion measurements did not show any impairment under the A.M.A., *Guides*.[14] He determined that appellant had a 10 percent impairment due to her subacromial decompression which "would qualify for distal clavicle resection arthroplasty."[15] The Office medical adviser asserted that appellant did not have a motor deficit impairment from a peripheral nerve impairment. He opined that she was entitled to an additional award for a 3 percent impairment due to pain under Chapter 18, which he added to the 10 percent for the subacromial decompression to find a total right upper extremity impairment of 13 percent. The Board notes, however, that examiners should not use Chapter 18 to rate pain-related impairments for any

[10] A.M.A., *Guides* at 506, Table 16-27.

[11] *Id*. at 484, 492, Tables 16-11, 16-15.

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

[13] *Id*. at 482, 484, Tables 16-10, 16-11.

[14] *Id*. at 476, 477, 479, Tables 16-40, 16-43, 16-46.

[15] *Supra* note 10. Table 16-27 identifies a 10 percent impairment for a distal clavicle resection arthroplasty rather than a subacromial decompression.

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*.[16] Neither Dr. Weiss nor the Office medical adviser explained why appellant's condition could not be adequately rated under other chapters.

Consequently, the Board thus finds that the evidence supports that she has no more than a 13 percent right upper extremity impairment. There is no evidence of record conforming to the A.M.A., *Guides* showing a greater degree of impairment.

On appeal, appellant's attorney contends that the record contains a conflict between Dr. Weiss and the Office medical adviser. As discussed, however, Dr. Weiss' impairment rating did not conform to the A.M.A., *Guides* and is of diminished probative value.[17]

CONCLUSION

The Board finds that appellant has no more than a 13 percent permanent impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 19, 2007 and December 19, 2006 are affirmed.

Issued: June 5, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[16] *See supra* note 9. A.M.A., *Guides* at 18.3(b); *see also Philip Norulak*, 55 ECAB 690 (2004).

[17] *See generally Derrick C. Miller*, 54 ECAB 266 (2002).