United States Department of Labor
Employees' Compensation Appeals Board

J.H., Appellant	)	
	)	**Docket No. 08-1619**
and	)	**Issued: February 6, 2009**
	)	
U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 19, 2008 appellant filed a timely appeal from a February 22, 2008 decision of the Office of Workers' Compensation Programs denying her claim for a schedule award for impairment to her right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has any permanent impairment to her right upper extremity causally related to her October 19, 2005 employment injury.

FACTUAL HISTORY

On July 9, 1998 appellant, then a 42-year-old letter sorting machine operator and distribution clerk, filed an occupational disease claim alleging that beginning on March 10, 1987 she developed bilateral carpal tunnel syndrome due to the repetitive motions of her hands and wrists required while operating the letter sorting machine. On November 5, 1998 the Office accepted her claim for bilateral carpal tunnel syndrome. She underwent a right carpal tunnel release on January 14, 1999 and a left carpal tunnel release on April 8, 1999. Appellant returned

to work in a light-duty capacity on June 21, 1999. On March 31, 2000 the Office granted her a schedule award for 10 percent impairment of each upper extremity, a total of 20 percent, from December 6, 1999 to February 15, 2001 or 62.40 weeks.[1]

On April 26, 2006 appellant filed a new claim for a right shoulder injury. The claim was accepted for right shoulder impingement syndrome, a right shoulder disorder of the bursae and tendons and a cervical sprain and strain.[2]

On November 17, 2006 appellant underwent surgery consisting of right shoulder arthroscopic repair of a superior labrum anterior to posterior (SLAP) lesion and subacromial decompression debridement. There was no significant evidence of impingement at the outlet and no distal clavicle excision was required. The operative report indicated no evidence of a rotator cuff tear. Appellant returned to full-time limited duty on February 27, 2007. On September 29, 2007 she filed a claim for a schedule award for impairment to her right shoulder. An October 5, 2007 electromyogram of appellant's right shoulder was reported as normal.

In an October 25, 2007 report, Dr. Gerald L. Murtagh, an attending Board-certified orthopedic surgeon, stated that appellant was treated for a right shoulder injury and underwent arthroscopic surgery on November 17, 2006. Appellant was performing her regular job and had reached maximum medical improvement following her surgery one year previously. Dr. Murtagh noted that appellant occasionally had mild aching and discomfort in her right shoulder and occasional difficulty with repetitive use in the forward flexed, overhead position. Appellant did not have any significant pain and was not taking any ongoing medications for her condition. Dr. Murtagh stated that appellant had full range of motion of the right shoulder and no evidence of atrophy or ankylosis. He stated that she had five percent impairment of her right shoulder but did not explain how he determined her impairment.[3]

On December 6, 2007 Dr. Ronald Blum, an Office medical adviser, stated that Dr. Murtagh's October 25, 2007 report was not sufficient to establish whether appellant had any right shoulder impairment. He recommended that the Office refer appellant to a Board-certified medical specialist for an impairment evaluation with findings on physical examination and reference to the applicable sections of the A.M.A., *Guides*.

On January 2, 2008 the Office referred appellant, together with a statement of accepted facts and copies of medical records to Dr. Christopher E. Cenac, a Board-certified orthopedic surgeon, for an impairment rating of her right shoulder.

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[1] The Federal Employees' Compensation Act provides for 312 weeks of compensation for 100 percent loss or loss of use of an upper extremity. 5 U.S.C. § 8107(c)(1). Multiplying 312 weeks by 10 percent equals 31.20 weeks of compensation for each upper extremity or a total of 62.40 weeks.

[2] This is a combined case which includes OWCP File No. xxxxxx320, accepted for bilateral carpal tunnel syndrome and OWCP File No. xxxxxx800, accepted for right shoulder impingement syndrome, a right shoulder disorder of the bursae and tendons and a cervical sprain and strain, sustained on October 19, 2005.

[3] The record shows that in an October 12, 2007 letter the Office asked Dr. Murtagh to provide an impairment rating with pertinent objective findings and reference to applicable sections of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.* Dr. Murtagh did not provide such a rating.

In a report dated January 21, 2008, Dr. Cenac reviewed the medical history and provided findings on physical examination. Appellant had normal range of motion in her right shoulder, normal sensation to pinprick and light touch in her shoulder and hands. Dr. Cenac measured appellant's right shoulder forward elevation (flexion) of 140 degrees, abduction of 140 degrees, adduction of 30 degrees, external rotation of 90 degrees and internal rotation of 40 degrees. He did not provide a measurement for right shoulder extension. Measurements of both shoulders above and below the elbow were equal and symmetrical. There was no shoulder atrophy. Reflex testing was normal in her right shoulder. An x-ray revealed minimal postsurgical changes involving the acromioclavicular (AC) joint. There was no hardware in appellant's right shoulder from her surgery, all joint surfaces were intact and there was no evidence of arthritic changes. Dr. Cenac stated that, based on the fifth edition of the A.M.A., *Guides*, appellant had no anatomical impairment or residuals due to her October 19, 2005 right shoulder injury.

In a February 19, 2008 report, Dr. Blum noted that Dr. Cenac found normal range of motion in appellant's right shoulder and determined that there was no anatomical impairment as a result of her October 19, 2005 employment injury. Dr. Blum stated that she had no right shoulder impairment based on Dr. Cenac's evaluation.

By decision dated February 22, 2008, the Office denied appellant's claim on the grounds that the evidence failed to establish that she had any upper extremity impairment causally related to her October 19, 2005 accepted shoulder conditions.[4]

LEGAL PRECEDENT

The schedule award provision of the Act[5] and its implementing regulations[6] set forth a 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 regulations as the appropriate standard for evaluating schedule losses.[7]

ANALYSIS

In a report dated January 21, 2008, Dr. Cenac stated that appellant had normal range of motion in her right shoulder, normal sensation to pinprick and light touch in her shoulder and hands. He measured right shoulder flexion of 140 degrees, abduction of 140 degrees, adduction

[4] Subsequent to the February 22, 2008 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] A.M.A., *Guides* (5th ed. 2001).

of 30 degrees, external rotation of 90 degrees and internal rotation of 40 degrees. Measurements of both shoulders above and below the elbow were equal and symmetrical. There was no shoulder atrophy. Reflex testing was normal in appellant's right shoulder. An x-ray revealed minimal postsurgical changes involving the AC joint. Dr. Cenac stated that, based on the fifth edition of the A.M.A., *Guides*, appellant had no anatomical impairment or residuals due to her October 19, 2005 right shoulder injury. The Board finds that his evaluation is insufficient to establish appellant's right shoulder impairment. Although Dr. Cenac stated that appellant had normal range of motion in her right shoulder, the A.M.A., *Guides* provides for impairment based, on some of his range of motion findings. According to Figure 16-40 at page 476 of the A.M.A., *Guides* and 140 degrees of flexion equals three percent impairment. Figure 16-43 at page 477 provides for two percent impairment for 140 degrees of abduction and one percent for 30 degrees of adduction. There is no impairment for 90 degrees of external rotation according to Figure 16-46 at page 479. However, Figure 16-46 provides that 40 degrees of internal rotation equals three percent impairment. Additionally, Dr. Cenac did not provide a measurement for appellant's right shoulder extension which is required for shoulder impairment rating based on the A.M.A., *Guides*. Due to these deficiencies, his January 21, 2008 evaluation is not sufficient to establish appellant's right shoulder impairment. The case will be remanded for further development on the issue of appellant's entitlement to a schedule award for right shoulder impairment.

CONCLUSION

The Board finds that this case is not in posture for a decision. On remand the Office should obtain a thorough examination and evaluation of appellant's right shoulder and an impairment rating based on complete physical findings and the applicable sections of the A.M.A., *Guides*. After such further development as the Office deems necessary, it should issue an appropriate decision on appellant's claim for a schedule award for her right shoulder.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 22, 2008 is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: February 6, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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