United States Department of Labor
Employees' Compensation Appeals Board

G.S., Appellant	)	
and	)	**Docket No. 08-1174**
	)	**Issued: January 27, 2009**
U.S. POSTAL SERVICE, TERMINAL POST OFFICE, Philadelphia, 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:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 12, 2008 appellant filed a timely appeal from an October 2, 2007 decision of the Office of Workers' Compensation Programs denying an additional schedule award for bilateral upper extremity impairments. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained more than a 17 percent impairment of the left upper extremity and a 3 percent impairment of the right upper extremity, for which she received schedule awards. On appeal, appellant asserted that a conflict of medical opinion arose between Dr. David Weiss, an attending osteopath, and an Office medical adviser.

FACTUAL HISTORY

This is appellant's third appeal before the Board. By order dated October 1, 2004,[1] the Board remanded the case for the doubling of File No. xxxxxx936, accepted for bilateral

[1] Docket No. 04-1239 (issued October 1, 2004).

de Quervains tenosynovitis sustained on or before February 27, 1990, with File No. xxxxxx168, accepted for aggravation of left shoulder impingement syndrome sustained on or before January 15, 1995. Appellant underwent bilateral wrist surgeries and a left shoulder acromioplasty with distal clavicle resection. By decision dated December 4, 2006,[2] the Board set aside a November 7, 2005 decision of the Office affirming prior schedule awards. The Board remanded the case to the Office to determine the appropriate percentage of upper extremity impairment. The Board found that, both Dr. Weiss, an attending osteopathic physician Board-certified in orthopedic surgery, and an Office medical adviser, misapplied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*) in calculating the percentage of impairment. The law and the facts of the case as set forth in the Board's prior decision and order are hereby incorporated by reference.

On January 4, 2007 the Office referred an updated statement of accepted facts and the medical record to an Office medical adviser to determine the appropriate percentage of permanent impairment.

In a January 5, 2007 report, the Office medical adviser reviewed the medical record and statement of accepted facts. He performed a detailed analysis of the findings provided by Dr. Weiss in his January 8, 2002 report agreeing that appellant had reached maximum medical improvement. The medial adviser concurred with Dr. Weiss' finding of a three percent impairment of each upper extremity due to pain according to Figure 18-1, page 574[3] and sections 18.3(a) and (b), pages 570 and 571 of the A.M.A., *Guides*. He explained that Dr. Weiss found persuasive evidence of a pain-related impairment substantially increasing the burden of the accepted condition. Regarding impairment of the left shoulder, the medical adviser found a two percent impairment due to shoulder flexion limited to 150 degrees according to Figure 16-40[4] and two percent impairment due to shoulder abduction limited to 140 degrees according to Figure 16-43.[5] He assessed an additional 10 percent impairment according to Table 16-27[6] due to left shoulder acromioplasty equivalent to a distal clavicle resection. The medical adviser then added the 3, 2, 2 and 10 percent impairments to find a total 17 percent impairment of the left upper extremity. He opined that appellant had a three percent impairment of the right upper extremity due to hand and wrist pain. The medical adviser explained that Dr. Weiss improperly assessed a grip strength impairment and that there was no objective basis for his assessment of a 31 percent impairment for median nerve deficits.

[2] Docket No. 06-1049 (issued December 4, 2006).

[3] A.M.A., *Guides* 574, Figure 18-1, (fifth edition) is entitled, "Algorithm for Rating Pain-Related Impairment in Conditions Associated With Conventionally Ratable Impairment."

[4] *Id*. at 476, Figure 16-40 is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack of Flexion and Extension of Shoulder."

[5] *Id*. at 477, Figure 16-43, is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack of Abduction and Adduction of Shoulder."

[6] *Id*. at 506, Table 16-27, is entitled "Impairment of the Upper Extremity After Arthroplasty of Specific ones or Joints." Resection of the distal clavicle constitutes a 10 percent impairment of the upper extremity.

By decision dated March 5, 2007, the Office found that appellant had not established that she sustained more than a 17 percent impairment of the left upper extremity or a 3 percent impairment of the right upper extremity, for which she received schedule awards. It found that the Office medical adviser correctly applied the A.M.A., *Guides* to Dr. Weiss' findings.

In a March 12, 2007 letter, appellant requested an oral hearing, held July 26, 2007. At the hearing, she contended that she had an additional 20 percent impairment for grip strength deficit and 31 percent median nerve impairments. Alternatively, appellant contended there was a conflict of opinion between Dr. Weiss and the Office medical adviser.

By decision dated and finalized October 2, 2007, an Office hearing representative affirmed the March 5, 2007 decision denying an additional schedule award for the left upper extremity. The hearing representative found that the medical evidence did not establish that appellant had greater than the 17 percent impairment of the left upper extremity and 3 percent of the right upper extremity previously awarded. The hearing representative explained that Dr. Weiss did not provide adequate medical rationale to support a work-related median nerve or grip strength impairment.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act[7] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a mater which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[8] As of February 1, 2001, schedule awards are calculated according to the fifth edition of the A.M.A., *Guides*, published in 2000.[9]

The standards for evaluation of the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.[10] Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedures for determining impairments of the upper extremities due to pain, discomfort, loss of sensation or loss of strength.[11] Multiple impairments of one extremity are present, such as those of the hand,

[7] 5 U.S.C. §§ 8101-8193.

[8] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

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

[10] *Tammy L. Meehan*, 53 ECAB 229 (2001).

[11] A.M.A. *Guides* 433-521 (5th ed. 2001), Chapter 16, "The Upper Extremities."

wrist, elbow and shoulder, are first expressed individually as upper extremity impairments and then combined to determine the total upper extremity impairment.[12] It is well established that in determining entitlement to a schedule award, preexisting impairment to the scheduled member is included.[13]

ANALYSIS

The Office accepted that appellant sustained bilateral de Quervains tenosynovitis and an aggravation of left shoulder impingement syndrome. Appellant underwent left shoulder acromioplasty with distal clavicle resection and bilateral wrist surgeries.

The Office found that appellant did not sustain more than the 17 percent permanent impairment of the left upper extremity or 3 percent impairment of the right upper extremity previously awarded, based on a review by an Office medical adviser of the January 8, 2002 report from Dr. Weiss, an attending osteopath Board-certified in orthopedic surgery. Dr. Weiss rated two percent impairment for limited left shoulder flexion according to Figure 16-40 and an additional two percent impairment for limited shoulder abduction according to Figure 16-43. He also found 10 percent impairment due to acromioplasty with clavicular resection according to Table 16-27. The medical adviser concurred with these percentages of impairment. Dr. Weiss also assessed a three percent impairment of each upper extremity according to Figure 18-1 due to pain cause by the accepted de Quervains tenosynovitis. The medical adviser agreed that specific features of appellant's clinical presentation warranted the additional three percent impairment due to pain. The adviser totaled the 2, 2, 3 and 10 percent impairments of the left upper extremity to equal 17 percent. The right upper extremity was assessed at three percent. The Board notes that, under the Combined Values Chart, combining the impairment values for loss of range of motion, pain and surgery results in a 17 percent impairment.

The Board finds that the Office medical adviser properly utilized the appropriate tables and grading schemes of the A.M.A., *Guides* in assessing appellant's upper extremity impairments. He provided a detailed analysis of Dr. Weiss' findings as well as medical rationale supporting the use of Figure 18-1. The medical adviser also found that Dr. Weiss misapplied the A.M.A., *Guides* by assessing an additional 20 percent grip strength impairment. At section 16.5d, page 494, the A.M.A., *Guides* provides that impairment for entrapment neuropathies be rated on motor and sensory impairments only. Additional impairment values are not given for decreased grip strength.[14] The Board finds that Dr. Weiss improperly included grip strength as an element of impairment. Also, Dr. Weiss did not provide adequate findings to support 31 percent impairment due to median nerve deficits. These errors diminish the probative weight of his opinion.

[12] *Id*. at 438, para. 16.1c, p. 481, 16.5b. *See also Cristeen Falls*, 55 ECAB 420 (2004).

[13] *Peter C. Belkind*, 56 ECAB 580 (2005).

[14] *See also Robert V. DiSalvatore*, 54 ECAB 351 (2003) (where the Board found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory impairments only, without additional impairment values for decreased grip strength).

The Board finds that the Office medical adviser properly applied the grading schemes of the A.M.A., *Guides* in assessing the percentage of permanent impairment of the upper extremities. Therefore, the Office properly accorded the weight of the medical evidence to the opinion of the Office medical adviser.

On appeal, appellant contends that there is a conflict of medical opinion between the Office medical adviser, for the government, and Dr. Weiss, for appellant. The Board finds that there is no conflict of opinion as the Office medical adviser's report outweighs that of Dr. Weiss. The Office medical adviser provided a well-rationalized impairment rating according to the appropriate portions of the A.M.A., *Guides*, whereas Dr. Weiss misapplied the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant has not established that she sustained more than a 17 percent impairment of the left upper extremity and a 3 percent impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated and finalized October 2, 2007 is affirmed.

Issued: January 27, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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