

**United States Department of Labor
Employees' Compensation Appeals Board**

R.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Charlotte, NC, Employer**

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**Docket No. 09-173
Issued: July 6, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 22, 2008 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated September 24, 2008 and November 19, 2007. Under 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 a 13 percent permanent impairment to her left upper extremity.

FACTUAL HISTORY

Appellant, a 52-year-old clerk, injured her left shoulder and neck while separating mail on March 26, 2004. She filed a claim for benefits, which the Office accepted for aggravation of cervical strain and left shoulder impingement. The Office authorized surgery for acromioplasty, arthroscopic subacromial decompression, a resection arthroplasty, of the left shoulder. The procedure was performed by Dr. Jerry Barron, an orthopedic surgeon, on February 2, 2007.

In a physical therapy report dated May 10, 2007, a physical therapist noted that appellant sustained loss of motion based on measurements for abduction, external rotation and internal rotation.

In a disability slip dated July 2, 2007, Dr. Barron stated that appellant had a 20 percent permanent impairment of the left upper extremity.

On July 6, 2007 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her left upper extremity.

In a report dated July 19, 2007, an Office medical adviser found that appellant had a 13 percent permanent impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition). He rated a 10 percent permanent impairment for resection arthroplasty, distal clavicle and 3 percent impairment for the loss of motion in the left shoulder, as noted in the May 10, 2007 physical therapy notes.

By decision dated November 19, 2007, the Office granted appellant a schedule award for a 13 percent permanent impairment of the left upper extremity for the period June 12, 2007 to March 21, 2008, for a total of 40.56 weeks of compensation.

On November 29, 2007 appellant requested reconsideration of the November 19, 2007 schedule award decision. She submitted several medical reports and diagnostic test reports; however, none of these reports contained a rating for permanent impairment based on her accepted neck and left shoulder conditions.

By decision dated September 24, 2008, the Office found that appellant was not entitled to any additional award for impairment to his left lower extremity.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act¹ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.³

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² *Id.* at § 8107(c)(19).

³ 20 C.F.R. § 10.404.

ANALYSIS

In this case, the Office medical adviser determined that appellant had a 13 percent impairment of the left upper extremity based on the A.M.A., *Guides*. He properly rated a 10 percent impairment for left shoulder resection arthroplasty, as set forth at Table 16-27 at page 506 of the A.M.A., *Guides*. This finding was proper and in conformance with the applicable table of the A.M.A., *Guides*. However, the Office medical adviser failed to specify the methods by which he calculated the three percent rating for loss of range of motion. He did not examine appellant and derived this rating by relying on random physical therapy notes. Therefore, the Office medical adviser failed to provide an adequate basis for his finding of a three percent impairment based on loss of motion. In addition, the Board notes that Table 17-2 of the A.M.A., *Guides* expressly prohibits an award for impairments based on muscle atrophy, muscle strength (loss), range of motion loss or ankylosis in combination with an impairment due to a diagnosis-based estimate (resection arthroplasty).⁴ The Board therefore disallows the three percent impairment rating the Office medical adviser accorded for loss of range of motion. The Board finds that the Office medical adviser's opinion constituted a sufficient basis for an award based on a 10 percent left upper extremity impairment. The Office therefore properly found that his opinion constituted the weight of the medical evidence in this regard.

Following the November 19, 2007 decision, appellant submitted several reports but did not submit a report which provided a rating for permanent impairment based on her accepted neck and left shoulder conditions. As there is no other medical evidence establishing that appellant sustained any additional permanent impairment, the Board finds that appellant is entitled to a 10 percent impairment of the left upper extremity.

CONCLUSION

The Board finds that appellant has established no more than a 10 percent impairment of the left upper extremity.

⁴ See *James R. Taylor*, 56 ECAB 537 (2005). In this case the Board held that the principle enunciated in Table 17.2, page 526 for not combining these awards in lower extremity impairments also applies to upper extremity impairments.

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2008 and November 19, 2007 decisions of the Office of Workers' Compensation Programs be affirmed, as modified.

Issued: July 6, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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