United States Department of Labor
Employees' Compensation Appeals Board

G.R., Appellant	)	
and	)	**Docket No. 08-1252**
	)	**Issued: June 17, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Houston, 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 March 24, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated December 17, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has more than a seven percent permanent impairment of her left upper extremity for which she received a schedule award.

FACTUAL HISTORY

On April 9, 2002 appellant, then a 57-year-old mail handler, sustained injury to her left thumb, wrist, forearm, shoulder and low back from heavy lifting and pulling equipment. She stopped work on April 20, 2002. On May 14, 2002 the Office accepted appellant's claim for left shoulder contusion, lumbosacral strain/sprain, left wrist tenosynovitis and left wrist carpal tunnel syndrome. On July 12, 2002 appellant underwent extensor tenosynovitis, left bursa, second

dorsal compartment and release of triggering left middle finger. She received compensation benefits. On December 12, 2003 appellant filed a claim for a schedule award.

In a May 5, 2003 report, Dr. Howard Grant, a family practitioner, stated that appellant had 10 percent upper extremity impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), 166 (5th ed. 2001). He noted that appellant had a 30 percent strength loss index and referred generally to Tables 16-3, 16-32 and 16-3.[1]

Appellant returned to limited-duty work, on July 17, 2003, working in the guard shack.

A December 17, 2003 letter notified appellant that her claim was not in posture for a schedule award as maximum medical improvement had not been reached.

On September 15, 2005 an Office medical adviser reviewed the file and determined that a second opinion was necessary to determine appellant's impairment.

On August 15, 2006 the Office referred appellant, together with a statement of accepted facts, a set of questions and the medical record, to Dr. David Vanderweide, a Board-certified orthopedic surgeon.

On September 6, 2006 Dr. Vanderweide examined appellant, reviewed her history of injury and treatment and found that she had reached maximum medical improvement. However, he found no permanent impairment with regard to the lumbar spine or left wrist or shoulder. Dr. Vanderweide noted that his examination of the lumbar spine revealed a 50 percent active range of motion with no guarding or spasm. Regarding the shoulder, he noted that appellant had pain with lifting. Dr. Vanderweide advised that his examination of the left shoulder revealed limited active range of motion with 120 degrees of flexion, 50 degrees of backwards elevation and 50 degrees of extension, 130 degrees of abduction, 40 degrees of adduction, 80 degrees of external rotation and 75 degrees of internal rotation with no evidence of adhesive capsular complaints. He opined that appellant reached maximum medical improvement on December 22, 2004.

In an October 10, 2006 report, the Office medical adviser reviewed appellant's history of injury and treatment. Under the A.M.A., *Guides*, he opined that appellant sustained seven percent impairment to the left upper extremity. The Office medical adviser referred to Figures 16-40, 16-43 and16- 46 to determine that appellant had impairment of four percent for flexion of 120 degrees, two percent for abduction of 130 degrees and one percent for internal rotation of 75 degrees.[2] He added the loss of range of motion impairments to total seven percent to the left upper extremity.

[1] A.M.A., *Guides* 439, 509.

[2] *Id*. at 476-79.

On November 17, 2006 the Office granted appellant a schedule award for seven percent impairment of the left upper extremity. The award covered a period of 21.84 weeks from December 22, 2004 to May 23, 2005.

On December 14, 2006 appellant requested a hearing, which was held on October 11, 2007.

At the hearing, appellant's representative contended that the schedule award did not take into account appellant's preexisting emotional condition. He referred to Veterans Administration records, which included a favorable finding of disability and a January 27, 2006 report from Dr. Steve Bailley, a clinical psychologist, relating to a mental status examination. Appellant's representative advised that appellant was in need of additional surgery and that she was entitled to an additional three percent impairment for pain to her shoulder and hand.

Appellant submitted reports dated March 17 to July 6, 2005 from Dr. Lubor Jarolimek, an orthopedic surgeon. On April 27, 2005 Dr. Jarolimek noted that appellant's left shoulder had been painful since 2002. He stated that, "if [appellant's] left shoulder pain persists, she will be a candidate for arthroscopic evaluation." Dr. Jarolimek included findings for abduction and forward elevation of the left shoulder but did not provide an impairment rating.

By decision dated December 17, 2007, an Office hearing representative affirmed the November 17, 2006 decision. He noted that schedule awards were not payable for emotional conditions and that appellant's claim was not approved for an employment-related emotional condition. The Office hearing representative also found that appellant had not submitted sufficient medical evidence to support an impairment rating for pain.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[3] sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[4] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[5] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[6]

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be

[3] 5 U.S.C. §§ 8101-8193.

[4] 5 U.S.C. § 8107.

[5] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[6] A.M.A., *Guides* (5th ed. 2001); 20 C.F.R. § 10.404.

itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.[7] However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment.

ANALYSIS

The Office accepted that appellant sustained a left shoulder contusion, lumbosacral strain/sprain, left wrist tenosynovitis and left wrist carpal tunnel syndrome. On July 12, 2002 appellant underwent extensor tenosynovitis, left bursa, second dorsal compartment and release of triggering left middle finger.

On May 5, 2003 Dr. Grant opined that appellant had 10 percent left upper extremity impairment based on the A.M.A., *Guides*. However, he did not address whether she had not reached maximum medical improvement. Office procedures provide that to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and which establishes a date of maximum medical improvement.[8]

The Office referred appellant to Dr. Vanderweide for a second opinion. In a September 6, 2006 report, Dr. Vanderweide noted appellant's history of injury and treatment and determined that she did not have any impairment of the lumbar spine or left wrist. He noted that appellant had pain with lifting and provided range of motion findings for the left shoulder, which included 120 degrees of flexion, 50 degrees of backwards elevation and 50 degrees of extension, 130 degrees of abduction, 40 degrees of adduction, 80 degrees of external rotation and 75 degrees of internal rotation with no evidence of adhesive capsular complaints. Dr. Vanderweide found that appellant had reached maximum medical improvement on December 22, 2004. The Office medical adviser reviewed Dr. Vanderweide's findings on October 10, 2006. He opined that appellant sustained seven percent impairment to the left upper extremity. Under Table 16-40, page 476, 120 degrees flexion represents four percent impairment of the upper extremity and 50 degrees of extension represents zero percent impairment. Under Table 16-43, page 477, 130 degrees abduction represents two percent impairment and 40 degrees adduction represent no impairment. Under Table 16-46, page 479, 80 degrees external rotation represents no impairment, but 75 degrees internal rotation represents one percent impairment. The impairment values contributed by each unit of motion are added to determine the impairment of the upper extremity due to abnormal shoulder motion.[9] The Office medical adviser found a total seven percent impairment based on loses of range of motion.

However, the Board notes that Dr. Vanderweide also found that appellant had shoulder pain, but offered no opinion as to whether she had impairment due to pain. This finding was

[7] *See William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(b) (August 2002).

[9] A.M.A., *Guide*s 479.

also noted by Dr. Jarolimek. The Office medical adviser did not address whether appellant had impairment due to pain. As the Office undertook development of the medical evidence and referred appellant to Dr. Vanderweide for a second opinion evaluation, it has an obligation to secure a report adequately addressing the extent of appellant's left upper extremity impairment.[10] The case will be remanded for the Office to obtain clarification from Dr. Vanderweide with regard to whether appellant has additional impairment for pain in accordance with Chapter 16 of the A.M.A., *Guides*.

CONCLUSION

The Board finds that this case is not in posture for decision. The case will be remanded for further development of the medical evidence to be followed by an appropriate merit decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 17, 2007 is set aside and remanded for further proceedings consistent with this decision of the Board.

Issued: June 17, 2009
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

[10] *See Peter C. Belkind*, 56 ECAB 580 (2005) (where the opinion of the Office's second opinion physician was unclear on whether the claimant had any permanent impairment due to his accepted employment injury, the Board found that the Office should secure a report adequately addressing the relevant issue). *See also Melvin James*, 55 ECAB 406 (2004).