United States Department of Labor
Employees' Compensation Appeals Board

L.B., Appellant	)	
and	)	**Docket No. 09-1336**
	)	**Issued: February 18, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Wilmington, DE, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 27, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated April 16, 2009. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained more than a five percent permanent impairment of her right upper extremity.

FACTUAL HISTORY

On April 14, 2006 appellant, then a 45-year-old clerk, filed an occupational disease claim alleging that she injured her right arm, wrist and shoulder while casing mail. The Office accepted her claim for sprain of right shoulder and upper arm.[1] It also accepted specified disorder of bursae and brachial neuritis or radiculitis on the right. Appellant received appropriate compensation benefits.

[1] The Office also accepted a May 25, 2008 claim for recurrence.

On March 6, 2007 appellant's treating physician, Dr. Elliot H. Leitman, a Board-certified orthopedic surgeon, performed an authorized right shoulder arthroscopy with subacromial decompression.[2]

On January 8, 2009 appellant claimed a schedule award and submitted a November 20, 2008 report from Dr. David Weiss, an osteopath, who advised that he utilized the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) to rate impairment. Dr. Weiss advised that appellant had reached maximum medical improvement and was doing normal work duty. Appellant continued to experience right shoulder pain and stiffness which was constant in nature and increased with changes in weather. Dr. Weiss also noted that appellant's activities of daily living were restricted. He examined appellant's right shoulder and noted well-healed portal arthroscopy scars, with focal acromioclavicular point tenderness. Regarding range of motion, Dr. Weiss noted that it was restricted with forward elevation, abductions and crossover adduction. He advised that internal rotation was abnormal to the sacrum and that circumduction produced crepitus within the acromioclavicular joint. Dr. Weiss explained that the drop test revealed a rotator cuff lag. Regarding the right elbow, he noted findings which included tenderness over the lateral epicondyle and lateral extensor mechanism, with positive wrist hyperextension. Under manual muscle strength testing, Dr. Weiss determined that appellant had a grade of 4/5 for the supraspinatus musculature. He noted that, for range of motion, Figure 16-40, appellant had an impairment of three percent for right shoulder flexion.[3] Dr. Weiss referred to Figure 16-43 and determined that right shoulder abduction was two percent impairment.[4] He also referred to Table 16-27 and advised that appellant had impairment of 10 percent for right shoulder resection arthroplasty.[5] Dr. Weiss also stated that appellant had three percent impairment for pain pursuant to Figure 18-1.[6] He opined that the total right upper extremity impairment was 18 percent.

In a March 14, 2009 report, the Office medical adviser reviewed appellant's history and the medical evidence. He noted that Dr. Weiss recommended 10 percent impairment for resection arthroplasty under Table 16-27; however, this rating was applicable only when the patient underwent a resection of the right distal clavicle.[7] The medical adviser explained that the surgical report did not establish that appellant underwent a resection of the distal clavicle, rather she underwent a shaving of the rotator cuff and subacromial decompression. Therefore,

[2] Dr. Leitman indicated that, on diagnostic arthroscopy, there were no chondral changes and that minor fraying of the superior labrum was debrided with an arthroscopic shaver. A small partial-thickness rotator cuff tear was debrided and the rotator cuff otherwise had an intact footprint. Arthroscopic examination of the subacromial space revealed extensive bursitis and a bursectomy was completed. Soft tissue was also removed down the surface of acromion and an acromioplasty was performed with excess bony fragments and bursa removed.

[3] A.M.A., *Guides* 476.

[4] *Id.* at 477.

[5] *Id.* at 506.

[6] *Id.* at 574.

[7] *Id.* at 506.

appellant did not have 10 percent impairment due to the surgery. Although Dr. Weiss rated pain impairment of three percent, the rating provided did not meet the criteria outlined in the A.M.A., *Guides*.[8] For loss of range of motion, Figure 16-40, right shoulder flexion/forward elevation was 140 degrees, three percent impairment;[9] and under Figure 16-43, 140 degrees of abduction was two percent impairment.[10] He concluded that appellant had five percent impairment for lost range of motion. The medical adviser noted that appellant reached maximum medical improvement on November 20, 2008.

By decision dated April 16, 2009, the Office granted appellant a schedule award for five percent permanent impairment of her right upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[11] and its implementing regulations[12] 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 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.[13]

Section 18.3b of the fifth edition of the A.M.A., *Guides* provides that pain-related impairment should not be used if the condition can be adequately rated under another section of the A.M.A., *Guides*. Office procedures provide that, if the conventional impairment adequately encompasses the burden produced by pain, the formal impairment rating is determined by the appropriate section of the A.M.A., *Guides.* However, an impairment rating can, in some situations, be increased by up to three percent if pain increases the burden of the employee's condition.[14]

ANALYSIS

Dr. Weiss found that appellant had 18 percent impairment of the right arm. The Board notes that his report is insufficient to establish more than the five percent impairment. Dr. Weiss referred to Table 16-27 to find that a right shoulder resection arthroplasty represented 10 percent

[8] *Id.* at 570, Figure 18.3a: When This Chapter Should Be Used To Evaluate Pain-Related Impairment.

[9] *Id.* at 476.

[10] *Id.* at 477.

[11] 5 U.S.C. § 8107.

[12] 20 C.F.R. § 10.404.

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

[14] *Richard B. Myles*, 54 ECAB 379 (2003).

impairment of the upper extremity.[15] The Office medical adviser, however, reviewed the surgical report and determined that a resection of the distal clavicle had not been performed. As the medical record does not establish that appellant underwent a resection arthroplasty, she is not entitled to an impairment rating under Table 16-27 of the A.M.A., *Guides.*

Dr. Weiss rated impairment of three percent for pain under Figure 18-1. The fifth edition of the A.M.A., *Guides* allows for an impairment percentage to be increased by up to three percent for pain under Chapter 18, if an individual appears to have a pain-related impairment that has increased the burden on his or her condition slightly.[16] A formal pain assessment, however, must be performed in accordance with Chapter 18.[17] Otherwise medical examiners are advised not to use Chapter 18 for any condition that can be adequately related under the other chapters of the A.M.A., *Guides*. Dr. Weiss did not explain the basis for rating pain under Chapter 18.[18] The Office medical adviser found that the additional impairment of three percent for pain was not supported. The medical evidence does not establish that appellant is entitled to an award due to pain under Chapter 18.

For the right shoulder, Dr. Weiss and the Office medical adviser were in agreement that appellant has five percent impairment for loss of range of motion to the right upper extremity. Under Figure 16-40,[19] appellant had flexion of 140 degrees which represents three percent impairment. Under Figure 16-43,[20] abduction of 140 degrees is a two percent impairment. Adduction of 55 degrees does not represent any impairment to the shoulder. The Office medical adviser also referred to Figure 16-46[21] and explained that external rotation of 90 degrees did not represent impairment. He added the flexion and abduction to total five percent for decreased range of motion of the right shoulder. The Board notes there is no other medical evidence of record, based upon a correct application of the A.M.A., *Guides*, to establish more than five percent permanent impairment of the right arm.

On appeal, appellant's representative contends that the impairment rating by Dr. Weiss represents the weight of medical opinion. As noted, however, the evidence does not support greater impairment. The Board notes that appellant may submit relevant medical evidence to the Office in support of a request for an additional schedule award.

[15] A.M.A., *Guides* 506.

[16] *T.H.*, 58 ECAB 334 (2007).

[17] A.M.A., *Guides* 573.

[18] *Id.* at 573.

[19] *Id.* at 476.

[20] *Id.* at 477.

[21] *Id*. at 479.

CONCLUSION

The Board finds that appellant has no more than a five percent impairment of her right upper extremity for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 16, 2009 is affirmed.

Issued: February 18, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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