United States Department of Labor
Employees' Compensation Appeals Board

P.D., Appellant	)	
and	)	**Docket No. 10-2249**
	)	**Issued: August 19, 2011**
U.S. POSTAL SERVICE, DOMINICK V. DANIELS PROCESSING & DISTRIBUTION CENTER, Kearny, NJ, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 8, 2010 appellant, through her attorney filed a timely appeal of a July 12, 2010 Office of Workers' Compensation Programs' (OWCP) merit decision granting a schedule award. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has more than two percent impairment of the right upper extremity and seven percent impairment of the left upper extremity for which she received schedule awards.

Counsel argued on appeal that, based on the date of maximum medical improvement and submission of the claim to OWCP, appellant's schedule award should have been calculated

[1] 5 U.S.C. § 8101 *et seq.*

under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[2]

FACTUAL HISTORY

On February 11, 2003 appellant, then a 58-year-old distribution clerk, filed a traumatic injury claim alleging that she sustained injury to both arms that day when a bulk mail carrier struck her and knocked her to the ground. A magnetic resonance imaging (MRI) scan of February 24, 2003 found mild rotator cuff tendinopathy with no complete tear, but failed to demonstrate a condition of the left upper arm. Dr. Aekyeong H. Moon, a Board-certified internist, diagnosed rotator cuff syndrome as well as contusions beginning on February 25, 2003. On July 10, 2003 OWCP accepted appellant's claim for contusions of the arms, left knee and left shoulder.

In a report dated February 7, 2009, Dr. David Weiss, an osteopath, reviewed appellant's medical history, noting a diagnosis of bilateral de Quervain's tenosynovitis in 1997 and an injury in 2003. He reported appellant's complaints of left shoulder pain and stiffness, bilateral wrist pain and stiffness as well as numbness and tingling of the hands. Appellant stated that she experienced weakness in her upper extremities and difficulties in daily living with household duties performed with the assistance of friends and family members. Dr. Weiss diagnosed cumulative and repetitive trauma disorder, bilateral de Quervain's tenosynovitis to the right and left wrist, defined work-related injury to the left shoulder, chronic post-traumatic rotator cuff tendinopathy to the left shoulder and post-traumatic acromioclavicular arthropathy with impingement to the left shoulder. Based on his examination, Dr. Weiss computed a *Quick*DASH score of 45 for the left upper extremity and 63 for the right upper extremity.

As to the left shoulder, Dr. Weiss found focal acromioclavicular point tenderness, anterior cuff tenderness and forward elevation of 165 degrees, abduction of 160 degrees, adduction of 65 degrees, internal rotation of 90 degrees and external rotation of 90 degrees. He found left wrist range of motion of 44 degrees of palmar flexion, radial deviation of 20 degrees and ulnar deviation of 35 degrees. Dr. Weiss reported 75 degrees of dorsiflexion, 40 degrees of palmar flexion and 20 degrees of radial deviation and ulnar deviation of 35 degrees. He reported grip strength measurements of 22 kilograms of force in the right hand and 18 kilograms of force in the left hand.

Dr. Weiss applied the fifth edition of the A.M.A., *Guides* to his findings and determined that appellant had 2 percent loss of range of motion of the left shoulder, 2 percent left wrist palmar flexion and left thumb abduction of 18 percent for 22 percent impairment of the left upper extremity. He also added an additional 3 percent impairment due to pain for a total left upper extremity rating of 25 percent. Dr. Weiss found 23 percent impairment of the right upper extremity due to loss of flexion, right thumb abduction and pain-related impairment.

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

Counsel requested a schedule award on appellant's behalf on March 17, 2009. In a letter dated July 23, 2009, OWCP informed her that her request for a schedule award should be evaluated under the sixth edition of the A.M.A., *Guides*[3] which came into effect on May 1, 2009.

On October 15, 2009 Dr. Weiss revised his report to comport with the sixth edition of the A.M.A., *Guides*. He diagnosed left shoulder rotator cuff tendinitis with residual loss awarding five percent impairment.[4] Dr. Weiss found that appellant had physical examination adjustment of two, functional history adjustment of two based on the *Quick*DASH and clinical studies adjustment of one based on imaging. He also diagnosed de Quervain's tenosynovitis and found two percent impairment with similar physical examination and functional history and a zero adjustment for clinical studies. Dr. Weiss found that appellant's left upper extremity impairment was seven percent. In regard to appellant's right upper extremity, he made an identical rating for de Quervain's tenosynovitis.

OWCP's medical adviser reviewed the evidence on May 24, 2010. He found that Dr. Weiss' report comported with the A.M.A., *Guides* based on diagnosis of left shoulder rotator cuff tendinitis, left de Quervain's tenosynovitis and right de Quervain's tenosynovitis.

By decision dated July 12, 2010, OWCP granted appellant schedule awards for two percent impairment of the right upper extremity and seven percent impairment of the left upper extremity.

LEGAL PRECEDENT

A claimant seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.[5] Section 8107 provides that, if there is permanent disability involving the loss of loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[6] A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to her employment.[7] In other words, it is the claimant's burden of proof to establish that she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.[8]

[3] For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[4] A.M.A., *Guides* 402, Table 15-5.

[5] *Tammy L. Meehan*, 53 ECAB 229, 230 (2001).

[6] 5 U.S.C. § 8107.

[7] *Veronica Williams*, 56 ECAB 367 (2005).

[8] *Meehan, supra* note 5.

The schedule award provision of FECA and its implementing regulations[9] set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of loss of use, of scheduled members or functions of the body. FECA, 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 matter which rests in the discretion of OWCP. 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.

ANALYSIS

OWCP accepted appellant's claim for contusions of the arms, left knee and left shoulder. Appellant's attending physician, Dr. Moon, listed rotator cuff syndrome as a preexisting condition based on an MRI scan that showed rotator cuff tendinopathy. Dr. Weiss listed bilateral de Quervain's tenosynovitis since 1997, which preexisted her February 11, 2003 employment injury. It raises the question as to whether this condition should be considered in evaluating whether she has any permanent impairment as a result of the accepted conditions of contusions of the upper extremity.[10] OWCP's medical adviser did not address the medical evidence as to any preexisting de Quervain's tenosynovitis or rotator cuff conditions. The claim will be remanded for a supplemental report from the medical adviser that addresses permanent impairment of her upper extremities due to preexisting conditions which should be included in determining her rating for schedule award purposes.

On appeal, counsel argues that appellant reached maximum medical improvement on February 7, 2009 and that the case was submitted to OWCP on March 17, 2009 and therefore the fifth edition of the A.M.A., *Guides* should have been used to rate appellant's permanent impairment. In *Harry D. Butler*,[11] the Board noted that Congress delegated authority to the director regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the director adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.[12] On March 15, 2009 the director exercised authority to advise that as of May 1, 2009 all schedule award decisions of OWCP should reflect use of the sixth edition of the A.M.A., *Guides*.[13] The applicable date of the sixth edition is as of the schedule award decision reached. It is not determined by either the date of maximum medical improvement or when the claim for such award was filed.

[9] 20 C.F.R. § 10.404.

[10] When assessing the percentage of impairment of those conditions accepted by OWCP as job related, any preexisting permanent impairment of the same member is included. *J.H.*, 59 ECAB 377, 380 (2008).

[11] 43 ECAB 859 (1992).

[12] *Id.* at 866.

[13] FECA Bulletin No. 09-03 (March 15, 2009). The FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award & Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).

CONCLUSION

The Board finds that the case is not in posture for decision on the extent of permanent impairment to appellant's upper extremities.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2010 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development.

Issued: August 19, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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