United States Department of Labor
Employees' Compensation Appeals Board

C.P., Appellant	)	
and	)	**Docket No. 11-117**
	)	**Issued: August 10, 2011**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 18, 2010 appellant filed a timely appeal from a July 28, 2010 merit decision of the Office of Workers' Compensation Programs which granted appellant a schedule award. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than three percent permanent impairment of the right upper extremity for which she received a schedule award.

FACTUAL HISTORY

On September 4, 2008 appellant, then a 29-year-old clerk, filed a Form CA-1, traumatic injury claim, alleging that on the same day she was removing a tray from a rack and felt a pop in

[1] 5 U.S.C. §§ 8101-8193.

her right shoulder. OWCP accepted sprain of the right shoulder, right rotator cuff tear, right shoulder impingement syndrome and right shoulder tendinitis. Appellant stopped work.

OWCP also authorized surgery. On March 30, 2009 Dr. Richard G. Lehman, a Board-certified orthopedist, performed a right shoulder arthroscopic rotator cuff repair and acromioplasty, labrum repair. He diagnosed impingement syndrome, partial right shoulder rotator cuff tear and torn glenoid labrum. In reports dated April 9 to August 13, 2009, Dr. Lehman noted that appellant was progressing well postoperatively and regained full unrestricted range of motion of the shoulder in all planes. He continued physical therapy and light-duty restrictions. On October 20, 2009 Dr. Lehman returned appellant to full duty. In an October 22, 2009 report, he opined that, while appellant returned to her regular work, she had not completely recovered from her injury due to soreness and weakness.

On October 21, 2009 and April 24, 2010 appellant filed a claim for a schedule award. She submitted a March 9, 2010 report from Dr. Lehman who noted appellant had excellent range of motion of the right shoulder with good strength and no evidence of instability. Dr. Lehman opined that appellant was at maximum medical improvement and could work without restrictions.

In an April 28, 2010 letter, OWCP requested that appellant submit an assessment of permanent impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[2]

Appellant submitted a May 18, 2010 report from Dr. Lehman who treated appellant on March 9, 2010. Dr. Lehman noted findings upon examination of good range of motion for flexion and extension, no evidence of instability and good strength. He indicated that appellant reached maximum medical improvement on March 9, 2010. Dr. Lehman opined that, pursuant to the sixth edition of the A.M.A., *Guides,*[3] appellant had one percent impairment of the right arm. He noted that, pursuant to the Shoulder Regional Grid, Table 15-5, page 401, appellant was a class 2 under ligament/bone conditions for partial right rotator cuff tear, with one percent impairment. Dr. Lehman noted no significant signs or symptoms at maximum medical improvement with regard to soft tissue and muscle tendon rating. He noted that appellant fell within a class 2, with one percent impairment due to residual pain symptoms and residual loss of function with normal motion.

OWCP referred Dr. Lehman's report to OWCP's medical adviser who, in a June 11, 2010 report, opined that appellant had three percent impairment of the right arm pursuant to the A.M.A., *Guides*. The medical adviser noted that Dr. Lehman found one percent impairment of the right upper extremity based on a history of residual pain symptoms and residual loss of function with normal motion. He noted that the rating did not correlate with class 2, rather the terminology "residual loss, functional with normal motion" described class 1 impairment. The medical adviser noted that class 1 provides an impairment rating from one to five percent with the default of three percent. He noted that appellant had a good outcome for residuals of the

[2] A.M.A., *Guides* (6th ed. 2008).

[3] *Id*.

labral repair and partial rotator cuff repair performed on March 30, 2009. The medical adviser opined that the default value for permanent residuals for a partial rotator cuff tear or a labral tear would be an equitable impairment rating. He explained that the acromioplasty was performed to allow the surgical management for a partial rotator cuff tear and would not be ratable. The medical adviser noted that the A.M.A., *Guides* provide that if a patient has two significant diagnoses as in this case, partial rotator cuff tear and labrum tear, the examiner should use the diagnoses with the highest causally related impairment rating for the impairment calculation. He noted that, when rating rotator cuff injury/impingement or glenohumeral pathology, surgery incidental resection arthroplasty of the acromioclavicular joint is not rated.[4] Pursuant to the Shoulder Regional Grid, Table 15-5, page 402, partial tear of the rotator cuff, class 1, residual loss, functional with normal motion is rated from one to five percent with a default value of three percent. The medical adviser further noted that pursuant to the Shoulder Regional Grid, Table 15-5, page 402, labral lesion or SLAP[5] tear, class 1, with residual symptoms consistent objective findings and or function loss with normal motion also had an impairment rating range of one to five percent with the default value of three percent. He did not utilize the questionnaire on pages 482 to 486 of the A.M.A., *Guides* as Dr. Lehman's March 9, 2010 report noted a successful surgery. The medical adviser opined that to a reasonable degree of medical certainty appellant sustained a three percent impairment of the right upper extremity.

In a decision dated July 28, 2010, OWCP granted appellant a schedule award for three percent permanent impairment to the right upper extremity. The period of the award was from May 18 to July 22, 2010.

LEGAL PRECEDENT

The schedule award provision of FECA[6] and its implementing regulations[7] 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.[8] Effective May 1, 2009, schedule awards are determined in accordance with the A.M.A., *Guides* (6th ed. 2008).[9]

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[4] *Id*. at 387.

[5] Superior labral tear from anterior to posterior.

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *See id*.; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[9] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Example 1 (January 2010).

ANALYSIS

Appellant's claim was accepted by OWCP for right shoulder sprain, right rotator cuff tear, right shoulder impingement syndrome and right shoulder tendinitis. OWCP authorized arthroscopic surgery on the right shoulder which was performed on March 30, 2009 for a rotator cuff repair and a labrum repair of the right rotator cuff. The Board finds that the medical evidence of record establishes three percent impairment to appellant's right upper extremity.

Appellant submitted a May 18, 2010 report from Dr. Lehman who opined that appellant had one percent impairment of the right arm pursuant to the A.M.A., *Guides* attributable to his rotator cuff tear. Dr. Lehman noted that, pursuant to the Shoulder Regional Grid, Table 15-5, page 401, appellant was a class 2 partial right rotator cuff tear, with one percent impairment. He based this finding on examination which revealed no significant signs or symptoms at maximum medical improvement with regard to soft tissue and muscle tendon rating. Dr. Lehman, however, did not specifically indicate how appellant's findings correlate with class 2 and the Board notes that there are no provisions for class 2 impairment for specific diagnoses on page 401. OWCP requested that its' medical adviser review the medical record and determine if appellant had permanent impairment of the right upper extremity.

OWCP's medical adviser reviewed Dr. Lehman's report and correlated his findings to provisions in the A.M.A., *Guides*. He followed the assessment formula of the sixth edition of the A.M.A., *Guides*, Chapter 15, section 15-2, entitled diagnosis-based impairment. The A.M.A., *Guides*, provide that the diagnosis-based impairment is the primary method of evaluation of the upper limb.[10] The initial step in the evaluation process is to identify the impairment class by using the corresponding diagnosis-based regional grid. The medical adviser explained that the class of impairment noted by Dr. Lehman did not properly reflect appellant's impairment pursuant to the A.M.A., *Guides*, as Dr. Lehman's description of residual loss, functional with normal motion which correlated with class 1 impairment. The medical adviser found that two diagnoses were applicable. He advised that the Shoulder Regional Grid, Table 15-5, A.M.A., *Guides*, page 403, and identified a class 1 impairment based on rotator cuff injury, partial thickness tear. Under Table 15-5, the default grade C, for such a class 1 rotator cuff injury, partial thickness tear is three percent upper extremity impairment. Also applicable under Table 15-5, page 404, was a rating for labral lesions or a SLAP tear, class 1, with residual symptoms consistent objective findings and or function loss with normal motion the impairment rating range is one to five percent with the default value of three percent.

Dr. Lehman further noted that the A.M.A., *Guides* provide that, if a patient has two significant diagnoses as in this case, the examiner should use the diagnoses with the highest causally-related impairment rating for the impairment calculation.[11] Thus, while two diagnoses were applicable, the medical adviser properly found that only one diagnosis could be used.

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[10] A.M.A., *Guides* 387, section 15.2.

[11] *See id*.

OWCP's medical adviser did not identify any modifiers based on the functional history, physical examination or clinical studies that warranted adjustment of the default rating.[12] He stated that appellant had a good outcome for residuals of the labral repair and partial rotator cuff repair performed on March 30, 2009. The medical adviser noted findings upon examination of good range of motion for flexion and extension, no evidence of instability and good strength. He opined that the default value of three percent impairment for permanent residuals for a partial rotator cuff tear or a labral tear would be an equitable impairment rating.

The Board finds that OWCP's medical adviser properly applied the A.M.A., *Guides,* to the findings presented by Dr. Lehman in rating impairment to appellant's right upper extremity. The medical adviser reviewed the medical evidence and fully explained how he determined appellant's rating for the right upper extremity in conformance with the A.M.A., *Guides*. Although Dr. Lehman offered an impairment rating, it was lower than that found by OWCP's medical adviser and Dr. Lehman did not clearly explain how his rating comported with the A.M.A., *Guides*.

On appeal, appellant contends that the schedule award is not adequate as her shoulder condition limits her daily activities including participating in athletic activities and limits her ability to perform her work duties. Under the schedule, Congress has defined the number of weeks of compensation payable for loss of use of a member.[13] For 100 percent impairment, or total loss of use, of an arm, FECA provides for 312 weeks of compensation.[14] As explained, appellant has 3 percent impairment of the right arm which would equate to 9.36 weeks of compensation (3 percent of 312 weeks) which is what she was awarded. Factors such as limitations on daily activities or recreational activities do not go into the determination of impairment under an award.[15] The record does not contain any medical evidence to establish greater impairment in accordance with the sixth edition of the A.M.A., *Guides*. Appellant has not established that she sustained more than three percent impairment of the right upper extremity.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has three percent impairment of the right upper extremity, for which she received a schedule award.

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[12] *See id*. at 411 for the net adjustment formula.

[13] *See Brent A. Barnes*, 56 ECAB 336 (2005).

[14] 5 U.S.C. § 8017(c)(1).

[15] *See E.L.*, 59 ECAB 405 (2008); *Dennis R. Stark*, 57 ECAB 306 (2006).

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 10, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board