United States Department of Labor
Employees' Compensation Appeals Board

L.P., Appellant	)	
and	)	**Docket No. 11-238**
	)	**Issued: August 18, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Stoutsville, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 8, 2010 appellant filed a timely appeal from the September 17, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied an increased 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 over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On April 27, 2009 appellant, then a 59-year-old rural carrier, injured her left shoulder in the performance of duty when a package slipped out of her hand and she tried to catch it. OWCP accepted her claim for left shoulder impingement syndrome and left rotator cuff sprain. On

[1] 5 U.S.C. § 8101 *et seq.*

May 26, 2009 appellant underwent a subacromial decompression and arthroscopic rotator cuff repair. Her postoperative diagnosis was full-thickness rotator cuff tear without evident labral or biceps injury. There was some minor labral fraying along the anterior labrum, but the injury was found to be most consistent with a left-side rotator cuff tear with impingement.

Appellant filed a claim for a schedule award. Her surgeon, Dr. Richard L. Baumann, offered an impairment rating under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). He reported that appellant had done well in the postoperative period and was ready to go back to full duty without restriction. One area in which appellant was lacking, however, was the loss of 20 degrees in internal rotation. A recent therapy note revealed some discomfort with external rotation and full forward flexion, but her strength was better than four out of five in that distribution and she had done well in her return to work.

OWCP's medical adviser applied the sixth edition of the A.M.A., *Guides* and determined that appellant's full-thickness rotator cuff tear, with a default rating of five percent, offered the most favorable diagnosis-based estimate of impairment under Table 15-5. He explained that there was no modification for subjective complaints given the history and examination findings reported by Dr. Baumann in his postoperative progress notes.

On January 26, 2010 OWCP issued a schedule award for a five percent impairment of appellant's left upper extremity.

OWCP later received a report from Dr. Baumann, who offered an 11 percent impairment rating under Table 15-5 of the sixth edition of the A.M.A., *Guides* after shoulder repair secondary to rotator cuff injury.[2] OWCP's medical adviser explained that there was no way to understand this rating under Table 15-5.

On April 2, 2010 OWCP reviewed the merits of appellant's claim and denied modification of its previous decision. It found that Dr. Baumann did not correctly use the A.M.A., *Guides* to show that appellant had more than five percent impairment of her left upper extremity.

OWCP then received a June 23, 2010 rating from Dr. Garth S. Russell, an orthopedist, who found that appellant's left shoulder had lost 30 degrees of external rotation, 15 degrees of internal rotation and 30 degrees of flexion. Dr. Russell confirmed that appellant had five percent impairment for a full-thickness rotator cuff tear, but he increased this rating by four percent for loss of motion. He concluded that she had a nine percent impairment of her left upper extremity.

OWCP's medical adviser explained that, if the range of motion model is used to estimate impairment, it is a stand-alone mechanism and Dr. Russell did not report all the ranges of motion. He explained that appellant's functional history and physical examination findings, including the ranges of motion Dr. Russell reported, would not warrant modification of the default rating for a full-thickness rotator cuff tear.

[2] This was the same rating Dr. Baumann gave under the fifth edition. Under the sixth edition, the highest impairment rating anyone can receive for a full-thickness rotator cuff tear is seven percent under Table 15-5, page 403.

In a decision dated September 17, 2010, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision. It found that Dr. Russell's evaluation did not establish that appellant had more than five percent impairment of her left upper extremity.

LEGAL PRECEDENT

Section 8107 of FECA[3] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[4] As of May 1, 2009, any decision regarding a schedule award must be based on the sixth edition.[5]

ANALYSIS

Diagnosis-based impairment is the primary method of evaluation for the upper limbs.[6] Table 15-5, the shoulder regional grid, lists the diagnoses relevant to the shoulder. In most cases, only one diagnosis will be appropriate. If a patient has two significant diagnoses, such as a rotator cuff tear and biceps tendinitis, the examiner should use the diagnosis with the highest causally-related impairment rating for the impairment calculation.[7]

The first step is to find which of appellant's postoperative diagnoses, assuming all are causally related, offers the highest impairment rating. The default rating for a full-thickness rotator cuff tear is five percent, according to Table 15-5, page 403. The default rating for an impingement syndrome is three percent, according to the same table at page 402. There is no estimate given for minor labral fraying without evident injury.

The five percent default estimate for full-thickness rotator cuff tear may be modified up or down one or two percent by "[nonkey]" factors, such as functional history and physical examination findings, but only if the examiner determines that those factors are reliable and associated with the diagnosis.[8] Dr. Baumann, the operating surgeon, reported that appellant did well in the postoperative period and a recent therapy note showed only some discomfort with external rotation and full forward flexion. Such a mild functional history warrants no modification under Table 15-7, page 406. Dr. Baumann also reported a 20 degree loss of

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

[6] A.M.A., *Guides* 387 (6th ed. 2009).

[7] *Id.* ("Thus, when rating rotator cuff/impingement … incidental resection arthroplasty of the acromioclavicular joint is not rated)."

[8] *Id*. at 385.

internal rotation, but this is also considered mild under Table 15-34, page 475 and warrants no modification of the default impairment value.[9]

Dr. Russell, the second evaluating orthopedist, confirmed that appellant warranted a five percent impairment rating for her full-thickness rotator cuff tear. He augmented this diagnosis-based rating by four percent for loss of motion. The sixth edition of the A.M.A., *Guides* does not permit such a combination. As Table 15-5 states: "If motion loss is present, this impairment [for full-thickness rotator cuff tear] may alternatively be assessed using section 15.7, Range of Motion Impairment. A range of motion impairment stands alone and is not combined with diagnosis impairment."[10]

While a range of motion impairment may not be combined with appellant's five percent diagnosis-based impairment, it may stand alone as an alternative. According to Table 15-34, page 475, 60 degrees of external rotation (90 degrees is normal, less 30 degrees on examination) represents no impairment of the upper limb and 80 degrees of internal rotation (90 degrees is normal, less 15 degrees on examination, but the result is rounded to the nearest 10 degrees in accordance with page 464) also represents no impairment. Appellant does have three percent impairment of her left upper extremity due to 150 degrees of flexion (180 is normal, less 30 degrees on examination). As a stand-alone alternative, this is less than her diagnosis-based impairment rating.[11]

The Board finds that appellant has no more than a five percent impairment of her left upper extremity due to her accepted shoulder injury. The Board will therefore affirm OWCP's September 17, 2010 decision denying modification of appellant's schedule award.

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 no more than a five percent impairment of her left upper extremity.

[9] *See also id*. at 408 (Table 15-8) (mild loss of motion on physical examination).

[10] *Id*. at 405 (asterisk at the bottom of the table).

[11] This motion impairment, like the one Dr. Baumann reported, is considered mild under Table 15-34, page 475, and warrants no modification of the default diagnosis-based impairment rating.

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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