United States Department of Labor
Employees' Compensation Appeals Board

S.P., Appellant	)	
and	)	**Docket No. 11-1756**
	)	**Issued: March 19, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Rogers, AR, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 26, 2011 appellant, through her attorney, filed a timely appeal from a June 2, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 a three percent permanent impairment to her right arm.

FACTUAL HISTORY

On June 17, 2005 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries in a May 21, 2005 motor vehicle accident while in the performance of duty. On August 15, 2005 OWCP accepted the claim for right

[1] 5 U.S.C. § 8101 *et seq.*

shoulder sprain/strain, right elbow lateral epicondylitis, lumbosacral sprain/strain and right knee sprain/strain. The case was before the Board with respect to a claim filed for a recurrence of disability as of April 29, 2008.[2]

On December 28, 2009 appellant filed a claim for a schedule award. OWCP referred her for a second opinion examination by Dr. Alice Martinson, an orthopedic surgeon. In a report dated April 7, 2010, Dr. Martinson provided a history and results on examination, including range of motion for the right shoulder. She diagnosed right shoulder labral tear, post-traumatic right trochanteric bursitis and post-traumatic mild meralgia paresthetica. Dr. Martinson stated that, as appellant described the original injury, the most striking part of the story was the amount of violence done to her right hip and pelvis. She stated that the original diagnosis of lumbosacral strain was a general one and "should be supplanted by the more specific diagnosis of post[-]traumatic trochanteric bursitis, right hip." As to permanent impairment, Dr. Martinson completed worksheets for the right shoulder and right hip. The right shoulder impairment was six percent, based on Table 15-5 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) sixth edition. Dr. Martinson found three percent impairment based on labral lesions and three percent for acromioclavicular (AC) joint injury. As to the right hip, she identified Table 16-4 and opined that appellant had a 13 percent permanent impairment.

The case was referred to an OWCP medical adviser for review. In a report dated April 15, 2010, the medical adviser stated that chronic trochanteric bursitis was not an accepted condition. With respect to the use of Table 15-5, the medical adviser stated that while Dr. Martinson used two diagnosed conditions, a proper application of the table involved only one diagnosis. Therefore, the medical adviser found that the impairment was three percent to the right arm.

By decision dated April 26, 2010, OWCP granted a schedule award for three percent right arm impairment. The period of the award was 9.36 weeks from April 7, 2010.

Appellant requested a telephonic hearing with an OWCP hearing representative and submitted a March 26, 2010 report from Dr. Stephen Wilson, an orthopedic surgeon, who opined that she had sustained injuries to her back, right hip, shoulder and elbow as a result of the employment injury. Dr. Wilson indicated that, based on loss of range of motion for the right hip, she had a 20 percent impairment.[3] For the right shoulder, he found 15 percent impairment based on loss of range of motion. Dr. Wilson also found that appellant had two percent right arm impairment due to chronic epicondylitis in the right elbow, based on Table 15-4. He further opined that there was a six percent right arm impairment under Table 15-23 for chronic right elbow pain with radicular symptoms causing weakness and sensory deficits. Dr. Wilson concluded that appellant had 22 percent right arm impairment after combining the impairments for the right shoulder and elbow. A telephonic hearing was held on August 10, 2010.

[2] The Board issued an order remanding the case for consideration of whether a June 5, 2007 wage-earning capacity determination should be modified. Docket No. 09-1098 (issued November 20, 2009).

[3] In his report, Dr. Wilson initially refers to a whole person impairment for impairments to the right hip and right shoulder and then refers to a lower or upper extremity impairment using the same percentages.

By decision dated December 13, 2010, an OWCP hearing representative remanded the case for further development. The hearing representative stated that the case should be referred to an OWCP medical adviser with respect to Dr. Wilson's rating of right arm impairment.

In a report dated December 24, 2010, an OWCP medical adviser opined that impairments based on loss of range of motion were used only in special circumstances. He found that Dr. Wilson did not document that the range of motion results were consistent with the A.M.A., *Guides* to ensure reliability. The medical adviser noted that the range of motion results for the right shoulder differed significantly from the results reported by Dr. Martinson. He concluded that Dr. Wilson had offered ratings for "a number of conditions" that had not been accepted by OWCP.

By decision dated January 4, 2011, OWCP found that appellant was not entitled to an additional schedule award.

Appellant requested a telephonic hearing, which was held on April 5, 2011. In a decision dated June 2, 2011, the hearing representative found that she was not entitled to an additional schedule award based on the evidence of record. The hearing representative found that the weight of the evidence was represented by an OWCP medical adviser.

LEGAL PRECEDENT

Section 8107 provides that, if there is permanent disability involving the loss or 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.[4] Neither, FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[5] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.[6]

With respect to a shoulder impairment, the A.M.A., *Guides* provides a regional grid at Table 15-5. The class of impairment (CDX) is determined based on specific diagnosis and then the default value for the identified CDX is determined. The default value (grade C) may be adjusted by using grade modifiers for Functional History (GMFH) Table 15-7, Physical Examination (GMPE) Table 15-8 and Clinical Studies (GMCS) Table 15-9. The adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[7]

[4] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

[5] *A. George Lampo*, 45 ECAB 441 (1994).

[6] FECA Bulletin No. 09-03 (March 15, 2009).

[7] The net adjustment is up to +2 (grade E) or -2 (grade A).

ANALYSIS

Appellant received a schedule award for a three percent right arm permanent impairment. The award was based on a right shoulder diagnosis and application of Table 15-5. The Board notes that, in addition to the right shoulder, the record contains evidence regarding a permanent impairment based on the right elbow and the right hip.

With respect to a right shoulder impairment, the second opinion physician, Dr. Martinson, identified Table 15-5 and diagnosed both an AC joint injury and a labral lesion. OWCP's medical adviser finds that only one diagnosis would be appropriate under Table 15-5. The Board notes that the A.M.A., *Guides* states that, when using the diagnosis-based regional grids, such as Table 15-5, "in most cases" one diagnosis will be appropriate.[8] For the shoulder specifically, the A.M.A., *Guides* note that it is common that diagnoses of rotator cuff tears, labral lesions and biceps tendon pathology are found together and the evaluator should choose the most significant diagnosis and rate only that diagnosis.[9] The A.M.A., *Guides* does not, however, specifically preclude use of both an AC joint injury and a labral lesion diagnosis. Dr. Martinson should have been asked to explain whether impairments for both diagnoses were appropriate in view of the guidance in the A.M.A., *Guides*. In addition, although the medical adviser indicated that the rating for either diagnosis was acceptable, Dr. Martinson did not explain how she used the adjustment grids and applied the net adjustment formula. On the worksheet Dr. Martinson reported zero as grade modifiers for functional history, physician examination and clinical studies, without further explanation. Applying the net adjustment formula noted above would not result in a grade C impairment of three percent for each diagnosis.

Accordingly, the Board finds that the second opinion physicians report was of diminished probative value with respect to a right shoulder impairment. It is noted that an attending physician, Dr. Wilson, opined that appellant had a right shoulder impairment based on loss of range of motion. In this regard the Board concurs with the medical adviser that Dr. Wilson did not adequately explain the use of a range of motion impairment. As the Board noted in *R.S.*, the A.M.A., *Guides* state that diagnosis-based impairments are the method of choice for calculating impairment.[10] In addition, range of motion measurements must be performed in accord with the provisions of the A.M.A., *Guides,* which includes active and passive measurements. Dr. Wilson did not establish that measurements were in accord with the A.M.A., *Guides* or explain why a range of motion impairment should take precedence over a diagnosis-based approach.

The next issue concerns an impairment for the right elbow. Dr. Wilson found an impairment based on epicondylitis. An OWCP medical adviser was asked for an opinion with respect to Dr. Wilson's findings, but he did not discuss this issue. The medical adviser referred generally to "a number of conditions" that were not accepted as employment related. In this case, OWCP had accepted lateral epicondylitis and the medical adviser should have reviewed Dr. Wilson's opinion on the issue.

[8] A.M.A., *Guides* 387.

[9] *Id.* at 390.

[10] Docket No. 11-850 (issued January 4, 2012). *Id*. at 461.

There also remains an issue with respect to a right hip condition and a lower extremity impairment. The report of Dr. Martinson, the second opinion physician, supported a causal relationship between the diagnosed trochanteric bursitis and the employment injury, based on the history of injury provided. Dr. Wilson also opined that a right hip condition was employment related. While not fully rationalized medical opinions, there was sufficient probative evidence to require OWCP to develop the issue and make appropriate findings as to whether a right hip condition was employment related.[11] If there is an employment-related hip condition, then OWCP may properly address the issue of a resulting permanent impairment to a scheduled member of the body.

OWCP undertook development of the schedule award issue and there remain significant issues regarding the extent of permanent impairment to the right arm as well as to the right leg. The case will be remanded to OWCP to properly resolve the issues presented.[12] On remand, OWCP should refer appellant for a second opinion examination. The physician should provide complete examination results and a rationalized opinion as to any employment-related permanent impairment to the right arm. In addition, an opinion as to whether a right hip condition is employment related and if so, whether there is a permanent impairment under the A.M.A., *Guides.* After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision and will be remanded to OWCP for further development of the medical evidence.

[11] *See Udella Billups*, 41 ECAB 260, 269 (1989).

[12] *See D.N.*, 59 ECAB 576 (2008); *Mae Z. Hackett*, 34 ECAB 1421 (1983).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 2, 2011 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: March 19, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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