United States Department of Labor
Employees' Compensation Appeals Board

L.M., Appellant	)	
and	)	**Docket No. 12-868**
	)	**Issued: September 4, 2012**
U.S. POSTAL SERVICE, BALTIMORE PERFORMANCE CLUSTER, Baltimore, MD, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 13, 2012 appellant filed a timely appeal from the February 16, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for an additional schedule award. 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.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish that she has more than a 35 percent permanent impairment of her left arm, for which she received a schedule award.

[1] 5 U.S.C. §§ 8101-8193.

[2] The record contains a June 12, 2012 decision of OWCP finding that appellant was not entitled to additional schedule award compensation. Appellant filed her appeal with the Board on March 13, 2012. Under the principles discussed in *Douglas E. Billings*, 41 ECAB 880 (1990), OWCP's June 12, 2012 decision, issued while the Board had jurisdiction over the matter in dispute, is null and void. *See Linda Thompson*, 51 ECAB 694 (2000).

FACTUAL HISTORY

OWCP accepted that on January 27, 1996 appellant, then a 41-year-old mail handler, sustained left shoulder impingement, contusions of her left shoulder, elbow, forearm, hip, knee and ankle and strains of her left shoulder, cervical, thoracic and lumbosacral areas when she was hit by a mail cart and she fell to the ground. On December 10, 1996 Dr. Louis Halikman, an attending Board-certified orthopedic surgeon, performed surgery which was authorized by OWCP, including left shoulder arthroscopic subacromial decompression, glenohumeral arthroscopy and arthroscopic resection of the anterior labrum. Appellant stopped work for a period and returned to work in early 1997 on part-time basis as a modified mail handler. She received OWCP compensation for periods of disability.

In an October 2, 2000 decision, OWCP granted appellant a schedule award for 35 percent left arm permanent impairment. The award ran for 109.20 weeks from September 10, 2000 to October 14, 2002.

Appellant filed a claim for increased schedule award compensation and submitted a March 26, 2003 report in which Dr. Halikman determined that she had 34 percent permanent impairment of her left arm under the standards of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

In a March 25, 2005 decision, OWCP denied appellant's claim finding that she did not show that she had more than a 35 percent permanent impairment of her left arm, for which she received a schedule award.

In May 2011, OWCP developed appellant's claim with respect to the extent of her ability to work. On June 6, 2011 Dr. Larry Becker, a Board-certified orthopedic surgeon serving as an impartial medical specialist on the issue of disability, provided examination findings including the results of range of motion testing of appellant's left shoulder. Dr. Becker stated that there were some signs of symptom magnification during the course of the evaluation of left shoulder motion. He noted that he checked the neurologic examination of the arms and found that the biceps and triceps reflexes were equal in each arm. Dr. Becker indicated that appellant's January 27, 1996 work injury resulted in treatment that had not been successful and posited that her left shoulder condition had progressed into left shoulder glenohumeral arthritis problems. He concluded that appellant was able to perform the position of mail handler for 20 hours per week with restrictions relating to overhead work, including limits on reaching, pushing, pulling and lifting.

In a September 19, 2011 report, Dr. Halikman indicated that appellant reported symptoms in her right arm, including pain running down the arm and right thumb numbness, which he believed stemmed from a herniation of her C5 disc.

On September 19, 2011 appellant filed a claim alleging increased permanent impairment of her left arm. In a November 10, 2011 report, Dr. Halikman determined that she had 35 percent permanent impairment of her left arm under the standards of the sixth edition of the A.M.A., *Guides* (6th ed. 2009). He indicated that appellant's primary problem was osteoarthritis of her left shoulder which was directly due to her January 27, 1996 work injury. Dr. Halikman stated

that, using Table 15-5, appellant was entitled to the maximum impairment of her left arm due to this condition. He expressed his belief that Table 15-5 did not adequately address the extent of her impairment. Dr. Halikman indicated that appellant did not have functional range of motion of her left shoulder, with no more than 90 degrees of forward flexion or elevation. Appellant had significant left shoulder pain on motion as well as at rest and her x-ray findings were "quite profound." Dr. Halikman indicated that Table 15-5 addressed only class 1 impairment and stated, "[I]n my opinion, [appellant] would qualify as a [c]lass 2 or even a [c]lass 3 impairment. The extent of her impairment is significant." He concluded that appellant had a 35 percent permanent impairment of her left arm and noted, "As noted, I have utilized [the sixth edition of the A.M.A., *Guides*] but in my opinion, these guides do not adequately reflect the extent of her incapacitation."

On January 30, 2012 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, reviewed the evidence of record, including the November 10, 2011 report of Dr. Halikman. Based on the acromioclavicular joint injury category of Table 15-5 on page 403 of the sixth edition of the A.M.A., *Guides*, appellant's left shoulder condition warranted a default impairment rating of 10 percent with the range of possible impairment ratings falling between 8 and 12 percent. He further noted that appellant had marked restricted motion of her left shoulder and it was appropriate, under the instructions of Table 15-5 on page 405, to apply the assessment method based on range of motion found in section 15.7 (Table 15-34 on page 475). Dr. Berman concluded that, under this rating method, appellant had 24 percent permanent impairment of her left arm. He stated:

> "Therefore, utilizing page 475, Table 15-34: *Shoulder Range of Motion*, 90 degrees of flexion equals three percent impairment. Backward elevation zero, equals two percent impairment. External rotation equals 0, which is 9 percent impairment, internal rotation equals 0, which is 8 percent impairment, for a total of 22 percent impairment. Therefore, I am not in agreement with Dr. Halikman's conclusion of 35 percent impairment. In addition, a review of page 477, Table 15-35: *Range of Motion Modifiers*, and Table 15-36: *Functional History Grade Adjustment Range of Motion* indicates that the functional history should be one grade higher which represents 5 percent increase, and the net modifier of two grades higher would be a 10 percent increase. It is my recommendation because of the level of this severe disability, it should be increased by 10 percent, or 2 percent based upon the original recommendation of 22 percent for a total of 24 percent."

On February 16, 2012 OWCP denied appellant an increased schedule award for additional permanent impairment. It found that the medical evidence did not establish greater impairment of the left arm than the 35 percent previously awarded.

LEGAL PRECEDENT

The schedule award provision of FECA[3] and its implementing regulations[4] 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, FECA 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.[5] The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.[6]

With respect to the shoulder, reference is first made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. A class of diagnosis may be determined from the Shoulder Regional Grid (including identification of a default grade value).[7] Table 15-5 also provides that, if motion loss is present for a claimant who has undergone certain shoulder surgeries, impairment may alternatively be assessed using section 15.7 (range of motion impairment). Such a range of motion impairment stands alone and is not combined with a diagnosis-based impairment.[8] Impairment ratings for limited shoulder motion are derived from Table 15-34 on page 475.[9] Under Table 15-35 on page 477, a grade modifier value is assigned to the impairment ratings calculated from Table 15-34. Table 15-36 on page 477 provides standards for adjusting the grade modifier value based on a claimant's functional history.[10]

ANALYSIS

OWCP accepted that on January 27, 1996 appellant sustained left shoulder impingement, contusions of her left shoulder, elbow, forearm, hip, knee and ankle and strains of her left shoulder, cervical, thoracic and lumbosacral areas. In an October 2, 2000 award of compensation, it granted appellant a schedule award for 35 percent permanent impairment of her left arm.

Appellant filed a claim for increased permanent impairment and submitted a November 10, 2011 medical report from Dr. Halikman, an attending Board-certified orthopedic

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *Id*.

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

[7] *See* A.M.A., *Guides* (6th ed. 2009) 401-11.

[8] *Id.* at 405, 475-78.

[9] *Id.* at 475, Table 15-34.

[10] *Id.* at 477, Tables 15-35 and 15-36.

surgeon. Dr. Halikman indicated that he was requested to use the sixth edition of the A.M.A., *Guides* and discussed his findings on examination, but opined that the A.M.A., *Guides* did not adequately reflect the extent of appellant's incapacitation. Dr. Halikman stated that Table 15-5 addressed only class 1 impairment and noted, "[I]n my opinion, [appellant] would qualify as a [c]lass 2 or even a [c]lass 3 impairment." However, he concluded that appellant had 35 percent permanent impairment of her left arm based on the A.M.A., *Guides*.

Dr. Berman, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, reviewed the relevant medical evidence, including the November 10, 2011 report, and properly concluded that Dr. Halikman incorrectly used the A.M.A., *Guides*. Dr. Halikman did not explain how the standards of the A.M.A., *Guides*, as they currently exist, supported his finding that appellant had 35 percent left arm impairment. Dr. Berman then used Dr. Halikman's findings on examination and correctly concluded that appellant had 24 percent permanent impairment of her left arm under the sixth edition of the A.M.A., *Guides*. He discussed how he arrived at this conclusion listing specific tables and pages in the A.M.A., *Guides*. Dr. Berman properly interpreted Table 15-5 to find that it was appropriate to apply the assessment method based on range of motion found in section 15.7 (Table 15-34 on page 475). After calculating impairment ratings for various left arm motions, he then applied the appropriate modifiers to adjust the impairment rating and concluded that appellant had a total impairment of her left arm of 24 percent.[11]

The Board has held in similar cases that when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides* or does not discuss how he arrives at the degree of impairment based on physical findings, his opinion is of diminished probative value in establishing the degree of impairment and OWCP may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.[12] Dr. Berman properly applied the standards of the A.M.A., *Guides.* His opinion is the weight of medical evidence and supports that appellant does not have a greater left arm impairment than the 35 percent previously awarded. In addition, Dr. Halikman's report does not support an impairment rating greater than the previously awarded 35 percent for appellant's left arm.

On appeal, appellant alleged that OWCP failed to award her compensation for impairment of her right arm. However, OWCP has not accepted appellant's claim for a right arm condition and the medical evidence does not otherwise support the existence of a work-related right arm impairment.[13]

For these reasons, appellant did not meet her burden of proof to establish that she has more than a 35 percent permanent impairment of her left arm.

[11] *See supra* notes 8 through 10.

[12] *John L. McClanic*, 48 ECAB 552 (1997).

[13] Appellant alleged that she also was struck by a mail cart at work in 2009, but the record does not contain any indication that she filed a claim with respect to such an injury.

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 did not meet her burden of proof to establish that she has more than a 35 percent permanent impairment of her left arm, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 2012
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