United States Department of Labor
Employees' Compensation Appeals Board

L.T., Appellant	)	
and	)	**Docket No. 12-615**
	)	**Issued: March 19, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Middletown, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 19, 2012 appellant filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) schedule award decision dated November 18, 2011. 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 seven percent permanent impairment of the left upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On March 24, 2008 appellant, a 56-year-old postmaster, filed a Form CA-2 claim for benefits, alleging that she developed a left shoulder condition causally related to employment factors. OWCP accepted the claim for disorder of bursae and tendons in left shoulder region

[1] 5 U.S.C. § 8101 *et seq.*

(impingement syndrome), sprain of left shoulder and left upper arm and partial tear of the left rotator cuff.

On March 26, 2009 appellant underwent arthroscopic surgery for repair of left rotator cuff tear in her left shoulder, a complete bursectomy and subacromial decompression surgery. The surgery was authorized by OWCP.

On July 9, 2011 appellant filed a Form CA-7 claim for schedule award based on a partial loss of use of her left upper extremity.

In order to determine the proper degree of impairment stemming from appellant's accepted shoulder conditions, OWCP referred her to Dr. Kevin F. Hanley, Board-certified in orthopedic surgery, for a second opinion examination. In an October 13, 2011 report, Dr. Hanley found that she had a 14 percent permanent impairment of the left upper extremity pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He rendered this impairment based on loss of range of motion in the left shoulder, not on a diagnosis-based calculation. Dr. Hanley found on physical examination that appellant had 150 degrees of forward flexion; 40 degrees of extension; 140 degrees of abduction; 30 degrees of adduction; 30 degrees of internal rotation; and 50 degrees of external rotation. He stated:

> "Per the [A.M.A., *Guides*] (sixth edition), the table that would apply in this particular case would be Table 15-5 (page 402). However, if one looks at 15-5, under 'impingement syndrome' or under 'partial rotator cuff tear,' both diagnoses are asterisked and that asterisk says that if motion loss is present, the impairment can be assessed using Section 15-7 as a stand-alone methodology. Since all of the compartments in those two criteria positions indicate normal motion and [appellant] does not have normal motion, I have opted to rate her according to the range of motion model.
>
> "Therefore, we refer to Table 15-34 (at page 475), with regard to flexion-extension, [appellant] has mild severity (ranges between 90 degrees to 170 degrees for flexion and between 30 to 40 degrees for extension) and therefore has a three percent upper extremity [impairment] for flexion loss and a one percent upper extremity impairment for extension loss.
>
> "Abduction-adduction, again she falls into the mild grade -- three percent upper extremity impairment for abduction loss and one percent upper extremity impairment for adduction loss.
>
> "Internal and external rotation, [appellant] has mild restriction of external rotation (50 degrees equates to a two percent upper extremity impairment) but internal

rotation of only 30 degrees is considered moderate (four percent upper extremity impairment)."

* * *

"Therefore, [appellant] has a total 14 percent impairment of the upper extremity as a consequence of this injury."

In a November 9, 2011 report, Dr. Ellen Pichey, Board-certified in family medicine and preventive medicine and an OWCP medical adviser, found that appellant had a seven percent impairment of the left upper extremity stemming from her accepted left shoulder rotator cuff tear. She based appellant's impairment rating on the diagnosis-based method in rendering her impairment rating, finding that Dr. Hanley did not present a rationale in accordance with the A.M.A., *Guides* sufficient to support his use of the range of motion method. Dr. Pichey advised that the A.M.A., *Guides* indicated at Chapter section 15.2, pages 461-64 that diagnosis-based impairments are the preferred method of determination; she asserted that range of motion should be used principally as a factor in the physical examination component of the adjustment grid range of motion table as a stand-alone method, pursuant to section 15.3b, only when no other diagnosis-based estimates are applicable or in cases such as severe crush injuries and scarring.

Applying the net adjustment formula at section 15, pages 406, 410 and 411 of the A.M.A., *Guides*,[2] Dr. Pichey found that appellant had a default impairment of class 1 based on rotator cuff tear, which yielded a grade C impairment. She found that the grade at Table 15-7, page 406 for functional history was 2, for a moderate problem; and the grade for physical examination at Table 15-8, page 408 was 1, for a mild problem; clinical studies was used for diagnosis placement. Pursuant to the formula set forth at Table 15-21, page 411, Dr. Pichey then subtracted the grade modifier of 1 from grade 2 for both functional history at Table 15-7, which yielded a net adjusted grade of 1 plus 1 -- a total grade of plus 2, which moved the default position to E, which equated to a seven percent impairment of the left upper extremity at Table 15-5, page 402.[3]

By decision dated November 18, 2011, OWCP granted appellant a schedule award for a seven percent permanent impairment of the left upper extremity for the period March 26 to August 25, 2010, for a total of 21.84 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing regulations[5] 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

[2] A.M.A., *Guides* at 406, 410-11.

[3] *Id*. at 402.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

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.[6] The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.[7]

ANALYSIS

OWCP accepted the conditions of disorder of bursae and tendons in left shoulder region (impingement syndrome), sprain of left shoulder and left upper arm and partial tear of the left rotator cuff. In its November 18, 2011 decision, it granted appellant a schedule award for a seven percent impairment of the left upper extremity, using the applicable tables of the sixth edition of the A.M.A., *Guides*, for diagnosis-based impairments of the upper extremities.

The Board notes that Dr. Pichey, the medical adviser, chose the diagnosis-based method for determining the degree of impairment as opposed to methodology for loss of range of motion in the left shoulder, the method used by Dr. Hanley. Dr. Pichey differed in the method utilized to arrive at an impairment figure. She indicated that there was an absence of rationale as to why Dr. Hanley used the range of motion method.

Section 15-7, the section of the A.M.A., *Guides*, which pertains to range of motion impairments, states:

> "Section 15-2 Diagnosis-Based Impairments [DBI], is the method of choice for calculating impairment. Range of motion is used principally as a factor in the Adjustment Grid: Physical Examination, as explained in Section 15.3b. Some of the DBI grids refer to the range of motion section when that is the most appropriate mechanism for grading the impairment. This section is to be used as a **stand-alone** rating when other grids refer you to this section or when no other diagnosis-based sections of this chapter are applicable for impairment rating of a condition."

Based on the above section, Dr. Pichey found that the diagnosis-based method for rating impairments was the appropriate method for rating appellant's accepted left shoulder conditions, as opposed to that based on loss of range of motion. She did not recognize, however, that the diagnosis-based grid for partial rotator cuff tear and impingement syndrome does allow, in the alternative, that the impairment be assessed under the range of motion methodology. Instead Dr. Pichey stated that the range of motion methodology could only be used for cases such as severe crush injury or scarring.

[6] *Id.*

[7] *Veronica Williams*, 56 ECAB 367, 370 (2005).

Dr. Hanley utilized the range of motion methodology in his impairment evaluation pursuant to the sixth edition of the A.M.A., *Guides* rendering a different overall impairment rating. The case shall be remanded for OWCP to forward Dr. Pichey's November 9, 2011 report to Dr. Hanley for his review of the impairment evaluation by the district medical adviser. OWCP should request a clarification of his original October 13, 2011 evaluation of appellant and impairment rating.

After such further development as necessary, OWCP shall issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2011 decision of the Office of Workers' Compensation Programs' is set aside and this case is remanded for further proceedings consistent with this opinion.

Issued: March 19, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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