United States Department of Labor
Employees' Compensation Appeals Board

M.J., Appellant	)	
and	)	**Docket No. 15-1832**
	)	**Issued: February 11, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Stone Mountain, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 8, 2015 appellant filed a timely appeal of an April 17, 2015 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 two percent permanent impairment of her left upper extremity.

FACTUAL HISTORY

Appellant, a 46-year-old letter carrier, experienced pain, tingling, and numbness in her left shoulder, both arms and fingers while delivering mail on May 7, 2012. OWCP accepted the claim for left shoulder sprain/strain and cervical herniated disc at C6-7.

[1] 5 U.S.C. § 8101 *et seq.*

In a report dated May 21, 2012, Dr. Gregory H. Lee, Board-certified in orthopedic surgery, diagnosed cervical spine radiculopathy. In a June 8, 2012 report, he noted that appellant had complaints of pain running down the left upper extremity. Dr. Lee reiterated his diagnosis of cervical spine radiculopathy and recommended that she undergo a magnetic resonance imaging (MRI) scan of the cervical spine to evaluate for nerve root impingement or disc herniation.

A June 19, 2012 report indicated that appellant underwent a cervical MRI scan. The report showed multi-level degenerative changes, most severe at C6-7, where disc-osteophyte complex was noted with superimposed disc protrusion.

On January 9, 2013 appellant underwent an authorized surgical fusion and discectomy procedure at the C5-6 and C6-7 levels. The procedure was undertaken to ameliorate cervical degenerative disc disease, spinal stenosis conditions, and herniated discs at the C5-6 and C6-7 levels.

On February 21, 2014 appellant filed a claim for schedule award (Form CA-7) based on a permanent impairment of her left upper extremity.

In a May 1, 2014 report, Dr. Plas T. James, an orthopedic surgeon, found that appellant had 15 percent whole person impairment stemming from her cervical degenerative disc disease and spinal stenosis conditions, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (sixth edition).

In a May 15, 2014 report, an OWCP medical adviser noted that the January 9, 2013 cervical discectomy and fusion procedure had yielded good results with no radiculopathy. He advised that appellant had left shoulder impingement syndrome, which had been treated nonoperatively and did not warrant an impairment rating under the A.M.A., *Guides*.

By decision dated May 29, 2014, OWCP denied appellant's request for a schedule award, finding that she had not sustained any permanent impairment to a scheduled member of her body causally related to her accepted left shoulder sprain and herniated discs at C6-7.

On July 18, 2014 appellant requested reconsideration of the May 29, 2014 decision.

In an August 25, 2014 report, Dr. James noted that during his initial history and physical examination, appellant presented with upper extremity weakness, decreased range of motion of the cervical spine, decreased deep tendon reflexes, a positive Spurling sign, and decreased pinprick sensation of the left arm in multiple areas. He diagnosed C3-7 multifactorial spinal stenosis, herniated disc, and disc-osteophyte complexes, in addition to ongoing radiculopathy. Dr. James advised that, because appellant was initially treated conservatively without any success, she underwent a C5-7 anterior cervical discectomy and fusion in January 2013. He reported that after she began taking topical NSAIDS and undergoing physical therapy she was ultimately released to begin work activities. Dr. James calculated 15 percent permanent impairment rating for the neck, shoulders, arms, and hands by using the A.M.A., *Guides Newsletter* "Rating Spinal Nerve Extremity Impairment using the sixth edition" (July/August 2009). He noted that he based this rating on appellant's herniated discs at the C5-6 and C6-7 levels, cervical degenerative disc disease, and spinal stenosis conditions, which resulted in her January 9, 2013 surgical fusion and

discectomy procedure at the C5-6 and C6-7 levels. Dr. James did not explain, however, how he specifically rated appellant's shoulder, arm, or hand impairments pursuant to the A.M.A., *Guides*.

In order to determine whether appellant had any permanent impairment stemming from her accepted left shoulder strain and cervical herniated discs at C6-7 conditions, OWCP referred her to Dr. Alexander N. Doman, Board-certified in orthopedic surgery, for a second opinion examination and impairment evaluation. In a report dated November 6, 2014, Dr. Doman diagnosed left shoulder rotator cuff residual tendinitis, in addition to mild subjective sensory radiculopathy of the left upper extremity following anterior cervical fusion. He reported that appellant had complaints of tingling in her fingers and pain in her left shoulder with overhead activities. Dr. Doman took x-rays of the cervical spine which showed solid anterior cervical fusion of C5 through C7 with plate fixation. Appellant also underwent x-ray examination of the left shoulder, the results of which were normal with no degenerative changes. In addition, Dr. Doman conducted nerve conduction velocity studies of the left upper extremity involving the ulnar nerve and median nerve. The results of these tests were normal.

Dr. Doman calculated one percent upper extremity impairment for the left shoulder by rating a class 1 impairment for rotator cuff tendinitis at Table 15-5, page 402 of the A.M.A., *Guides*, the shoulder regional grid for rating upper extremity impairments. He found that appellant had a grade B impairment which corresponded to one percent impairment rating, for a history of painful injury to the left shoulder without consistent objective findings; *i.e.*, objective residual loss of function. Dr. Doman rated one percent impairment for radiculopathy based on her sensory complaints of paresthesias in the left upper extremity involving the fingers of her left hand. He relied on Table 1 of the July and August 2009 *The Guides Newsletter*, finding that appellant had a class 1 impairment for a mild sensory deficit at C6, which yielded a default grade C. Dr. Doman found that appellant had no objective motor impairment. He opined, however, that her subjective sensory complaints of the left upper extremity were consistent and represented a mild sensory deficit which corresponded to one percent impairment rating at Table 1. Dr. Doman combined this rating with the one percent impairment for rotator cuff tendinitis for a total left upper extremity impairment rating of two percent.

In a November 13, 2014 report, an OWCP medical adviser concurred with Dr. Doman's findings and his rating of two percent left upper extremity impairment.

By decision dated November 17, 2014, OWCP vacated the May 29, 2014 decision and found, based on Dr. Doman's October 23, 2014 report, that appellant was entitled to a schedule award for two percent permanent left upper extremity.

By decision dated November 19, 2014, OWCP granted appellant a schedule award for two percent permanent impairment of the left upper extremity for the period October 23 to December 5, 2014, for a total of 6.24 weeks of compensation.

In a January 20, 2015 report, Dr. James essentially reiterated his previous findings and conclusions, including his previously submitted 15 percent left upper extremity permanent impairment rating.

On January 29, 2015 appellant requested reconsideration of the November 19, 2014 decision.

In a February 11, 2015 report, an OWCP medical adviser reviewed Dr. James' January 20, 2015 report and found that it did not provide a basis for an impairment rating greater than the two percent already awarded. The medical adviser noted that Dr. James did not provide a rating in conformance with the sixth edition of the A.M.A., *Guides*.

By decision dated April 17, 2015, OWCP denied modification of the November 19, 2014 decision.

LEGAL PRECEDENT

The schedule award provision of FECA[2] and its implementing regulations[3] 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.[4] The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to her employment.[5]

ANALYSIS

OWCP accepted the conditions of cervical herniated discs at C6-7 and left shoulder sprain. With regard to peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP procedures indicate that *The Guides Newsletter* "Rating Spinal Nerve Extremity Impairment using the sixth edition" (July/August 2009) is to be applied.[6] The Board notes that an impairment rating can be issued based on findings of radiculopathy pursuant to the July/August 2009 sixth edition of *The Guides Newsletter*. Dr. Doman rated one percent impairment for radiculopathy based on appellant's sensory complaints of paresthesias in the left upper extremity involving the fingers of her left hand. He relied on Table 1 of the July and August 2009 *The Guides Newsletter*, finding that a C6 impairment rating for the nerve is a class 1 injury with a mild sensory deficit with the default grade C. Dr. Doman found no motor impairment objectively and that appellant's subjective sensory complaints of the left upper extremity were consistent and represented a mild sensory deficit corresponding to one percent impairment rating;

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

[4] *Id.*

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

[6] *See G.N.*, Docket No. 10-850 (issued November 12, 2010); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (August 2011).

this amounted to a combined left upper extremity rating of two percent. The record indicates that she was diagnosed with cervical spine radiculopathy in May 2012 and that a June 19, 2012 MRI scan showed multi-level degenerative changes.[7] Dr. Doman calculated one percent upper extremity impairment for the left shoulder by relying on Table 15-5 on page 402 of the A.M.A., *Guides*. He found that appellant had a class 1 impairment for rotator cuff tendinitis, a grade B impairment which corresponded to one percent permanent impairment rating for a history of painful injury to the left shoulder without objective residual loss of function.[8]

The Board finds that Dr. Doman's November 6, 2014 impairment rating was rendered in conformance with the sixth edition of the A.M.A., *Guides*.

The reports from Dr. James, appellant's treating physician, rated 15 percent permanent impairment of appellant's left upper extremity based on impairments to the shoulder, arm, and hand. However, Dr. James did not provide sufficient detail to enable an OWCP medical adviser or the Board, to visualize any permanent impairment.[9] His reports were general in nature and did not contain detailed findings on examination from which a determination could be made as to whether appellant had a permanent impairment of her upper extremities as derived under the standards of the A.M.A., *Guides*.[10] Thus, this rating was not rendered in accordance with proper OWCP and Board procedures.

Accordingly, as Dr. Doman provided the only impairment rating of record rendered in accordance with the applicable protocols and tables of the A.M.A., *Guides*, appellant was not entitled to a schedule award greater than two percent impairment for which she received a 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 not established that she has more than two percent permanent impairment of her left upper extremity.

[7] It is well established that in determining entitlement to a schedule award, preexisting impairments to the schedule member are to be included. *Michael C. Milner*, 53 ECAB 446 (2002).

[8] While there is no indication in the record that appellant had any preexisting tendinitis in her left shoulder prior to the May 8, 2012 work injury, Dr. Doman's impairment rating based on rotator cuff tendinitis, which is not an accepted condition, was adopted by OWCP and its medical adviser and will be left undisturbed by the Board, as it was not challenged by the employing establishment on appeal.

[9] *See A.L.*, Docket No. 08-1730, (issued March 16, 2009) (an impairment description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations). *See also Joseph D. Lee*, 42 ECAB 172 (1990).

[10] *See C.B.*, Docket No. 09-0447 (September 14, 2009).

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board