

**United States Department of Labor
Employees' Compensation Appeals Board**

L.M., Appellant

and

**DEPARTMENT OF JUSTICE, DRUG
ENFORCEMENT AGENCY, Riverside, CA,
Employer**

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**Docket No. 06-648
Issued: August 11, 2006**

Appearances:
L.M., pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 25, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated November 15, 2005. Under 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 10 percent permanent impairment to her right upper extremity.

FACTUAL HISTORY

Appellant, a 39-year-old special agent, injured her right shoulder on August 3, 2000 while engaged in firearms training. She filed a claim for benefits on August 7, 2000, which the Office accepted for right shoulder impingement. On November 9, 2000 she underwent a resection of the right shoulder acromioclavicular joint. The procedure was performed by Dr. Ghassan Tooma, a specialist in hand surgery.

On November 8, 2001 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right shoulder.

In a report dated December 12, 2001, the Office medical adviser rated appellant at 10 percent impairment for a right distal clavicle resection arthroplasty under Table 16-27, page 506 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (the A.M.A., *Guides*).

On February 20, 2002 the Office granted appellant a schedule award for a 10 percent permanent impairment of the right upper extremity for the period October 16, 2001 to May 22, 2002, for a total of 31.2 weeks of compensation.

The record reflects that appellant underwent a right shoulder arthroscopy with partial rotator cuff tear debridement on April 3, 2003. On September 29, 2004 appellant filed a Form CA-7 claim for an additional schedule award based on a partial loss of her right upper extremity. In a report dated May 12, 2004, Dr. Tooma noted that appellant had reached maximum medical improvement on that date. He stated:

“[Appellant] has a disability of no repetitive overhead work with the right arm. She has a disability precluding heavy lifting with the right dominant arm, which contemplates that she has lost approximately 50 percent of her preinjury capacity for lifting with the right arm.”

In a report dated May 31, 2005, the Office medical adviser stated that appellant had a 10 percent impairment of the right upper extremity resulting from excision of the right distal clavicle, which was the sole impairment resulting from the accepted employment injury of August 3, 2000. He noted that this impairment took into account her residual pain and muscle weakness.

By decision dated November 15, 2005, the Office found that appellant was not entitled to an additional schedule award as she had previously been paid a schedule award for a 10 percent impairment of the right upper extremity. The medical evidence was not sufficient to support an increase in the impairment already awarded.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 5 U.S.C. § 8107(c)(19).

Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.³

ANALYSIS

The Office found that appellant had a 10 percent impairment of the right upper extremity based on the Office medical adviser's December 12, 2001 report. The Office medical adviser rated appellant at 10 percent impairment for her November 9, 2000 distal clavicle resection arthroplasty in accordance with Table 16-27, page 506 of the A.M.A., *Guides*. Based on this finding, the Office granted appellant a schedule award for a 10 percent impairment of the right upper extremity. The Board notes that Table 16-27 of the A.M.A., *Guides* allows for a 10 percent impairment award for distal clavicle resection arthroplasty. Appellant subsequently filed a claim for an increased award for the right upper extremity, and submitted Dr. Tooma's May 12, 2004 report. Although Dr. Tooma stated that appellant had a 50 percent capacity for lifting with her right arm in comparison with her preinjury lifting ability, he failed to discuss specific factors pertaining to rating her impairment under the A.M.A., *Guides* and failed to indicate how his findings conformed with the applicable figures and tables of the A.M.A., *Guides*. As such, Dr. Tooma's report is of diminished probative value. Moreover, the Board has held that the amount payable under a schedule award does not take into account such factors as the effect of impairment on lifestyle activities, wage-earning capacity, sports, hobbies or other activities. *See Ruben Franco*, 54 ECAB 496 (2003). The Office medical adviser reviewed Dr. Tooma's report and properly found it was not sufficient to support an increase in appellant's schedule award because it was not based on the A.M.A., *Guides*. Therefore, as there is no other probative medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found that appellant was not entitled to more than a 10 percent permanent impairment to her right upper extremity in its November 15, 2005 decision.

CONCLUSION

The Board finds that appellant has no more than a 10 percent impairment of the right upper extremity.

³ 20 C.F.R. § 10.404.

ORDER

IT IS HEREBY ORDERED THAT the November 15, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 11, 2006
Washington, DC

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

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