United States Department of Labor
Employees' Compensation Appeals Board

Y.S., Appellant	)	
and	)	**Docket No. 06-1826**
	)	**Issued: February 12, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Carol Stream, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 3, 2006 appellant timely appealed from the Office of Workers' Compensation Programs May 11, 2006 merit decision regarding her entitlement to schedule award compensation. Pursuant to 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 met her burden of proof to establish that she has more than a 27 percent right upper extremity impairment for which she received a schedule award.

FACTUAL HISTORY

This is the second appeal in this case. By decision dated April 16, 2002, the Board, affirmed the Office's July 18, 2001 decision granting appellant schedule awards for 14 percent right upper extremity impairment and 16 percent left upper extremity impairment.[1] The period

[1] Docket No. 01-1933 (issued April 16, 2002).

of the award ran from October 27, 2000 through August 13, 2002. The Board determined that the reports of the Office medical adviser, Dr. David H. Garelick, were based on an appropriate use of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) and represented the weight of the medical evidence. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.[2]

On May 25, 2005 appellant filed a claim for an additional schedule award. In an April 5, 2005 report, Dr. Jacob Salomon[3] advised that an impairment evaluation regarding appellant's right and left shoulder conditions was performed on February 16, 2005. He diagnosed status post right shoulder arthroscopy, with impingement syndrome and contractures and status post left shoulder arthroscopy, with chronic adhesive capsulitis with permanent residuals. Dr. Salomon advised that maximum medical improvement was reached on February 16, 2005 the date of examination. He rated appellant as having a 20 percent right upper extremity impairment for her carpal tunnel syndrome and a 14 percent right shoulder upper extremity impairment[4] and a 12 percent impairment of the left upper extremity for her carpal tunnel syndrome and a 16 percent left shoulder upper extremity impairment. Based on the fifth edition of the A.M.A., *Guides,* Dr. Salomon opined that appellant had additional impairments of 12 percent to her left upper extremity and 14 percent to her right upper extremity. Range of motion findings for the right shoulder totaled a 12 percent impairment. Dr. Salomon found that a 110 degree shoulder flexion equaled a 5 percent impairment,[5] a 45 degree extension equaled a 0 percent impairment,[6] an abduction to 110 degrees equaled a 3 percent impairment,[7] an adduction of 30 degrees equaled a 1 percent impairment,[8] an external rotation to 70 degrees equaled a 0 percent impairment[9] and an internal rotation to 45 degrees equated to a 3 percent impairment.[10] A 20 percent impairment was given under Table 16-27 on page 506 for resection arthroplasty of the

[2] The present case, File No. 10-0486385, revealed that the Office accepted a bilateral shoulder impingement syndrome and authorized an arthroscopic subacromial decompression for both shoulders. Appellant has three other accepted claims for upper extremity conditions under File No. 10-0394594 (June 1, 1984 date of injury), File No. 10-0415026 (November 1, 1990 date of injury) and File No. 10-0494849 (June 1, 1998 date of injury). In File No. 10-0394594, the Office, by decision dated November 30, 1993, granted appellant a 15 percent right upper extremity impairment for the period March 10, 1993 to January 31, 1994. In File No. 10-0415026, the Office awarded her a 12 percent left upper extremity impairment for the period August 16, 1995 to May 4, 1996. There is no evidence that a schedule award was issued in File No. 10-0494849.

[3] Dr. Salomon's credentials are not of record.

[4] The record before the Board is devoid of any 20 percent right upper extremity impairment for carpal tunnel syndrome.

[5] A.M.A., *Guides* 476, Figure 16-40.

[6] *Id.*

[7] *Id.* at 477, Figure 16-43.

[8] *Id.*

[9] *Id.* at 479, Figure 14-46.

[10] *Id.*

shoulder. Dr. Salomon then combined the 12 percent range of motion deficits with the 20 percent surgical impairment to obtain a 30 percent total impairment of the right shoulder. Since appellant previously received a 14 percent right shoulder impairment, Dr. Salomon found that she was only entitled to an additional 16 percent impairment due to her right shoulder impairment. He stated that her previous impairment of 20 percent of the right upper extremity due to her carpal tunnel syndrome would remain the same. With respect to appellant's left shoulder, Dr. Salomon found that she had 15 percent impairment due to range of motion. He found that 100 degrees of flexion equaled a 5 percent impairment,[11] an extension to 35 degrees equaled a 1 percent impairment,[12] an abduction to 9 degrees equaled a 4 percent impairment,[13] an adduction to 30 degrees equaled a 1 percent impairment,[14] external rotation to 60 degrees equaled a 0 percent impairment[15] and internal rotation to 20 degrees equaled a 4 percent impairment.[16] A 30 percent impairment was given under Table 16-27 on page 506 for resection arthroplasty of the left shoulder. Dr. Salomon then combined the 15 percent range of motion deficits with the 30 percent surgical impairment to obtain a 41 percent total impairment of the left shoulder. Since appellant previously received a 16 percent left shoulder impairment, he found that she was only entitled to an additional 12 percent impairment due to her left shoulder impairment.[17] Dr. Solomon further stated that the 12 percent previous rating for her left carpal tunnel syndrome would remain the same.

On June 10, 2005 the Office referred appellant's case record to an Office medical adviser, Dr. Garelick, for review. It noted that the file included three other claims for which appellant received previous awards.[18]

In a June 13, 2005 report, Dr. Garelick reviewed the medical record for the purpose of determining impairment of both upper extremities due to the accepted work-related conditions of impingement syndrome and carpal tunnel syndrome and found no substantive change in her condition. On February 26, 2001 he recommended a 14 percent permanent impairment as residual from the right shoulder condition and on March 19, 2001 a 16 percent impairment as residual from the left shoulder condition was recommended. With regard to residual carpal tunnel syndrome, he noted that on June 14, 2003 Dr. Anderson recommended 20 percent right upper extremity impairment and on July 28, 2003 he recommended 12 percent left upper extremity impairment. Utilizing the Combined Values Charts on page 604 of the A.M.A.,

[11] *Id.* at 476, Figure 16-40.

[12] *Id*.

[13] *Id.* at 477, Figure 16-43.

[14] *Id.*

[15] *Id.* at 479, Figure 14-46.

[16] *Id.*

[17] The Board notes that 41 minus 16 equals 25, not 12.

[18] The other claims were identified as A1004150256, A100394594 and A100494849.

Guides, he opined that appellant had a total left upper extremity impairment of 26 percent and a total right upper extremity impairment of 31 percent.

By decision dated May 11, 2006, the Office awarded appellant a 27 percent impairment to her right upper extremity. The period of the award ran from August 14, 2002 to March 25, 2004.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[19] and its implementing regulation[20] 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, the Act 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 regulation as the appropriate standard for evaluating schedule losses.[21]

ANALYSIS

In the instant case, the Office accepted a bilateral shoulder impingement syndrome and authorized bilateral arthroscopic subacromial decompression. It subsequently combined File No. 10-0494849 with the current claim. In the first appeal of this matter, the Board affirmed a July 18, 2001 Office decision which awarded appellant a 14 percent right upper extremity impairment and a 16 percent left upper extremity impairment. The Office subsequently combined all of her cases and awarded a 27 percent right upper extremity impairment for the period August 14, 2002 to March 25, 2004.[22] On appeal, appellant argues that she is entitled to a greater award for both her right and left upper extremities.

The Board finds this case is not in posture for decision with regard to a finding on either appellant's right or left upper extremity impairment. Initially, it is noted that both the Office medical adviser and Dr. Salomon provided additional impairment ratings for both upper extremities; however, the Office only issued an additional schedule award for the right upper extremity. In arriving at the additional impairments due appellant for her right and left upper extremities, both the Office medical adviser and Dr. Salomon noted that she had previous awards for her upper extremities due to her shoulder and carpal tunnel conditions. However, neither the Office medical adviser, nor Dr. Salomon properly noted all the schedule awards appellant received with respect to her upper extremities or included such awards in their schedule award

[19] 5 U.S.C. § 8107.

[20] 20 C.F.R. § 10.404 (1999).

[21] *Id.*

[22] This would include appellant's schedule award for a 15 percent right upper extremity impairment under File No.10-0394594 and a 12 percent left upper extremity impairment under File No. 10-0415026. It is unclear from the record, however, whether appellant was paid such schedule awards.

calculation. For example, while both the Office medical adviser and Dr. Salomon noted that she previously received impairments for her right and left shoulder conditions, they appeared to have no knowledge of appellant's previous awards of a 15 percent right upper extremity impairment in File No. 10-0394594 and a 12 percent left upper extremity impairment in File No.10-0415026. With regard to appellant's previous impairments due to her carpal tunnel syndrome, it is well established that preexisting impairments of the body are to be included in determining the amount of a schedule award for a member of the body that sustained an employment-related impairment.[23] Dr. Salomon failed to include the impairments due to carpal tunnel syndrome in his calculation. Furthermore, both he and the Office medical adviser appeared to reference a 20 percent right upper extremity impairment due to carpal tunnel syndrome; however, the report on which such impairment is based or a copy of an Office decision indicating that such an impairment was awarded is not present in the record before the Board.[24]

Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.[25] Moreover, the Board notes that the Office did not include within the statement of accepted facts a clear listing of appellant's accepted conditions and schedule awards received. Office procedures indicate that accepted conditions must be included in a statement of accepted facts and further provides that, when an Office medical adviser "renders a medical opinion based on a statement of accepted facts which is incomplete or inaccurate or does not use the statement of accepted facts as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.[26] In this case, the Office medical adviser should have based his medical opinion on a complete statement of accepted facts, which included a listing of the Office's accepted conditions as well as all the schedule awards received by appellant. Since the Office medical adviser rendered his medical opinion based on incomplete factual information concerning appellant's previous schedule awards, failed to include Dr. Salomon's findings in his report and referenced a June 14, 2003 medical report from a Dr. Anderson which is not of record, the probative value of his report is limited. Accordingly, the Board finds that the case must be remanded for further medical development and clarification as to the factual aspects of appellant's previous schedule awards as Dr. Salomon's medical opinion and the subsequent opinion of the Office medical adviser are of diminished probative value as it was based on an incomplete statement of accepted facts.[27]

[23] *See Dale B. Larson*, 41 ECAB 881, 490 (1990); *Pedro M. DeLeon, Jr*., 35 ECAB 487, 492 (1983).

[24] The Office medical adviser referenced a June 14, 2003 report from a Dr. Anderson in calculating impairment. However, this report is not of record.

[25] *See Thomas J. Fragale*, 55 ECAB 619 (2004). Federal (FECA) Procedure Manual, Part 2 -- Claims, Evaluation of Schedule Awards, Chapter 2.808.6(d) (August 2002).

[26] Federal (FECA) Procedure Manual, Part 3 -- Medical, Requirements for Medical Reports, Chapter 3.600.3 (October 1990).

[27] *See Richard F. Williams*, 55 ECAB 343 (2004) (once the Office starts to procure medical opinion, it must do a complete job. The Office has the responsibility to obtain from its referral physician an evaluation that will resolve the issue involved in the case).

The case, therefore, will be remanded for further development. On remand, the Office should combine the files for appellant's bilateral upper extremity conditions, which include both the shoulder and carpal tunnel conditions and specifically note the previous schedule awards received.[28] The Office should then submit the medical record and a statement of accepted facts, including appellant's bilateral carpal tunnel conditions and previous schedule awards received, to an appropriate medical specialist or to its Office medical adviser for a supplemental report for a determination as to whether she is entitled to an increased schedule award based on her accepted work-related conditions. After such development as the Office deems necessary, an appropriate merit decision shall be issued.

CONCLUSION

The Board finds that this case is not in posture for decision to determine whether appellant is entitled to more than a 27 percent impairment of the right upper extremity, which the Office previously awarded.

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision.

Issued: February 12, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[28] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8 (February 2000) regarding the Office procedures for doubling case files.