

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

D.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Nashville, TN, Employer**

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**Docket No. 06-2114
Issued: February 12, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 15, 2006 appellant filed a timely appeal from the June 15, 2006 merit decision of the Office of Workers' Compensation Programs, which denied a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the schedule award decision.

ISSUE

The issue is whether appellant is entitled to a schedule award for impairment resulting from authorized surgery.

FACTUAL HISTORY

On June 7, 2005 appellant, then a 46-year-old clerk, injured her right shoulder in the performance of duty when she lifted a tub of magazines, heard a pop in her right arm and felt a burning sensation. The Office accepted her claim for sprain/strain rotator cuff, right. It notified appellant that her preexisting acromioclavicular joint arthritic degenerative joint disease and degenerative ganglion cyst were not covered.

On July 7, 2005 the Office authorized “right shoulder arthroscopy/surgery” and “right repair of tendon(s).” On August 5, 2005 the Office authorized “right repair of shoulder.” On August 30, 2005 appellant underwent an open rotator cuff repair and acromioplasty, a distal clavicle resection and an arthroscopic extensive glenohumeral joint debridement of the right shoulder. Postoperative findings included a large full-thickness rotator cuff tear; severe acromioclavicular joint degenerative joint disease with large intraosseous distal clavicle cyst and degenerative ganglion cyst superior to the acromioclavicular joint; and mild adhesive capsulitis/synovitis, right shoulder glenohumeral joint and labral tears. On February 2, 2006 the Office notified appellant that the request for authorization for August 30 to September 30, 2005 was approved for “repair of shoulder,” “shoulder arthroscopy/surgery” and “partial removal, collar bone.”

Dr. Robert P. Fogolin, appellant’s orthopedic surgeon, reported maximum medical improvement on February 28, 2006. Appellant noted pain in her shoulder with 10-hour days. There was no snapping sensation, no radiating pain or paresthesias or numbness down the arm and no neck pain. Dr. Fogolin described his findings on physical examination:

“Patient has function range of motion of the right shoulder with full forward flexion, abduction and adduction extension. Internal and external rotation were each 90 percent when abducting the arm to 90 degrees. This was equal to contralateral side. The strength of the rotator cuff was full with internal and external rotators and almost a 5/5 strength of the supraspinatus and elevators with no scapula winging. Incisions are well healed.”

X-rays showed evidence of acromioplasty to a Type I, adequate distal clavicle resection with no bony overgrowth, glenohumeral joint reduced, subacromial space acceptable and a mild down-sloping acromion. Dr. Fogolin rated the impairment of appellant’s right upper extremity: “Based on [the American Medical Association,] *Guides [to] the Evaluation of Permanent Impairment*, 5th edition, she has a 10 percent upper extremity impairment based on the distal clavicle resection right shoulder which is noted on Table 16-12.” On May 17, 2006 Dr. Fogolin reported that appellant’s June 7, 2005 injury resulted in a 10 percent permanent impairment of the upper extremity.

On June 1, 2006 appellant filed a claim for a schedule award. An Office medical adviser reviewed Dr. Fogolin rating, stating:

“Claimant had combined arthroscopic open repair rotator cuff tear and acromioplasty and debridement of glenohumeral joint and open distal clavicle resection for degenerative arthritis and distal clavicle cyst and degenerative ganglion cyst of right acromioclavicular joint. Full range of motion right shoulder was regained postop[erative]. Case was accepted for sprain right shoulder. Arthritis and degenerative cyst of distal right clavicle is not part of accepted condition. Attending physician gave 10 percent right upper extremity permanent partial impairment for distal resection of right clavicle, which is not valid since not of accepted condition. Therefore, impairment right upper extremity based on accepted condition is equal to zero percent.”

In a decision dated June 15, 2006, the Office denied appellant's claim for a schedule award. The Office found that the medical evidence failed to demonstrate a measurable impairment based on the accepted condition.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.²

Authorization by the Office for medical examination or treatment constitutes a contractual agreement to pay for the services, regardless of whether a compensable injury or condition exists. Moreover, any medical condition resulting from authorized examination or treatment, such as residuals from surgery, may form the basis of a compensation claim for impairment or disability, regardless of the compensability of the original injury.³

ANALYSIS

On February 2, 2006 the Office authorized "partial removal, collar bone." In approving the surgery, appellant became eligible for claiming compensation for any residual impairment. It does not matter that the reason for the distal clavicle resection -- severe acromioclavicular joint degenerative joint disease with large intraosseous distal clavicle cyst and degenerative ganglion cyst superior to the acromioclavicular joint -- was not an accepted condition. The Office expressly authorized removal of the bone. Consistent with Office procedures, any impairment resulting from this authorized surgery may form the basis of a compensation claim.⁴ The Board therefore finds that the Office denied appellant's schedule award claim on erroneous grounds.

Dr. Fogolin, the attending orthopedic surgeon, reported that appellant had a 10 percent impairment of the right upper extremity based on the distal clavicle resection. There was no decreased motion. Table 16-27, page 506 of the A.M.A., *Guides* confirms that a distal clavicle resection arthroplasty represents a 10 percent permanent impairment of the upper extremity. The medical evidence establishes that appellant has, as a result of authorized surgery, a 10 percent permanent impairment of the right upper extremity which is a scheduled member of the body.⁵

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001). FECA Bulletin No. 01-05 (issued January 29, 2001).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.0300.2.c (October 1990). Cf. *Melody Friery*, 48 ECAB 525, 528 (1997) (the Board has held that surgery, which is performed as a result of an employment injury and which causes further impairments, constitutes a consequential injury and any disability resulting therefrom is compensable).

⁴ Federal (FECA) Procedure Manual, *supra* note 3.

⁵ 5 U.S.C. § 8107(c)(1) (arm).

The Board will reverse the Office's June 15, 2006 decision finding no entitlement to a schedule award.

CONCLUSION

The Board finds that appellant is entitled to a schedule award for impairment resulting from her authorized surgery. The impairment resulting from the distal clavicle resection provides a proper basis for a schedule award. The weight of the medical evidence establishes that appellant has a diagnosis-based 10 percent permanent impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2006 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for payment of an appropriate schedule award.

Issued: February 12, 2007
Washington, DC

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

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

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