United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 09-1530**
	)	**Issued: February 22, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Forest Park, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 12, 2009 appellant filed a timely appeal from the March 4, 2009 merit decision of the Office of Workers' Compensation Programs, which denied an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant is entitled to an additional schedule award.

FACTUAL HISTORY

On April 13, 2000 appellant, then a 48-year-old clerk/keyer, sustained an injury in the performance of duty while picking up heavy letter trays and nonmachinable or manually handled mail. The Office accepted her claim for left shoulder strain and left shoulder impingement syndrome. On July 9, 2004 appellant received a schedule award for a 25 percent impairment of

her left upper extremity. That impairment included a 12 percent impairment due to loss of shoulder motion.[1]

Dr. Jacob Salomon, a surgeon, evaluated appellant on March 25, 2008. He reported 110 degrees abduction, 20 degrees adduction and 20 degrees external rotation. Dr. Salomon added a three percent impairment for abduction to a 15 percent impairment for abduction (he meant adduction) and a 1 percent impairment for external rotation, for a 19 percent total impairment of the left upper extremity due to loss of shoulder motion.

An Office medical adviser reviewed Dr. Salomon's findings and determined that the measurements represented only five percent impairment due to loss of shoulder motion. He noted that Dr. Salomon offered two percentages for abduction and did not document range of motion in all planes. The Office therefore referred appellant, together with the medical record and a statement of accepted facts, to Dr. David H. Trotter, a Board-certified orthopedic surgeon, for a second-opinion evaluation.

On November 27, 2008 Dr. Trotter reported his findings on physical examination, which included 140 degrees flexion, 130 degrees abduction, and 70 degrees external and internal rotation. He noted discrepancies, however, in observed versus unobserved behaviors during the evaluation, including inconsistencies in her apparent range of motions. Dr. Trotter stated that appellant's symptoms and examination findings, along with ancillary test results, did not support that she had any evidence of active or recurrent or residual left shoulder strain, left shoulder impingement syndrome, bilateral carpal tunnel syndrome or de Quervain's tenosynovitis. He concluded that appellant appeared to have no significant evidence of any abnormal impairment or permanency.

The Office medical adviser reviewed Dr. Trotter's findings and reported no evidence to warrant an additional impairment rating.

In a decision dated March 4, 2009, the Office denied an additional schedule award.

On appeal, appellant argues that bone spurs were discovered in her left shoulder after surgery, and that her doctor, Dr. Salomon, has found 10 percent impairment due to loss of shoulder motion.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[2] 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

[1] On May 17, 2007 appellant received a schedule award for an additional 11 percent impairment of her left upper extremity due to carpal tunnel syndrome and de Quervain's tenosynovitis under OWCP File No. xxxxxx502.

[2] 5 U.S.C. § 8107.

permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[3]

ANALYSIS

In his March 25, 2008 report, Dr. Salomon, appellant's surgeon, reported 110 degrees abduction, 20 degrees adduction and 20 degrees external rotation. These measurements represent upper extremity impairments of three percent, one percent and one percent respectively, or a total upper extremity impairment of five percent due to loss of motion.[4] This is substantially less than the 12 percent impairment for loss of motion found in appellant's July 9, 2004 schedule award. So Dr. Salomon's report fails to establish that appellant has any greater impairment.[5]

Dr. Trotter, the orthopedic surgeon and second-opinion physician, reported 140 degrees flexion, 130 degrees abduction, and 70 degrees external and internal rotation. These findings represent upper extremity impairments of three percent, two percent, zero percent and one percent respectively, or a total upper extremity impairment of six percent due to loss of motion.[6] This is, again, substantially less than the 12 percent impairment for loss of motion found in appellant's July 9, 2004 schedule award. Dr. Trotter was of the opinion that these findings were unreliable due to inconsistencies and that appellant appeared, in fact, to have no significant evidence of any injury-related residuals or impairment.

The medical evidence, therefore, does not support that appellant has any greater impairment of her left upper extremity than she did when she received her July 9, 2004 schedule award. Accordingly, the Board will affirm the Office's March 4, 2009 decision denying an additional schedule award.

On appeal, appellant submits an April 8, 2009 report from Dr. Salomon to support that she has a 10 percent impairment of her left upper extremity due to loss of shoulder motion. The Board cannot review this new evidence for the first time on appeal. The Board's jurisdiction is limited to reviewing the evidence that was in the case record before the Office at the time of the March 4, 2009 decision.[7] The Board will note, however, that the Office based appellant's July 9, 2004 schedule award on a 12 percent impairment due to loss of shoulder motion. So any evidence that she now has less than 12 percent impairment due to loss of shoulder motion would not, by itself, show that she is entitled to an additional schedule award.

[3] 20 C.F.R. § 10.404.

[4] A.M.A., *Guides* 477 (Figure 16-43), 479 (Figure 16-46).

[5] Dr. Salomon misread Figure 16-43, page 477 of the A.M.A. *Guides* when he reported 15 percent impairment for adduction.

[6] A.M.A., *Guides* 476 (Figure 16-40), 477 (Figure 16-43), 479 (Figure 16-46).

[7] 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that appellant is not entitled to an additional schedule award.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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