United States Department of Labor
Employees' Compensation Appeals Board

B.T., Appellant	)	
and	)	**Docket No. 11-1543**
	)	**Issued: May 17, 2012**
U.S. POSTAL SERVICE, POST OFFICE, San Francisco, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 16, 2011 appellant filed a timely appeal from Office of Workers' Compensation Programs' (OWCP) merit decisions dated December 23, 2010 and April 26, 2011. 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 a seven percent permanent impairment of the left arm, for which she received a schedule award.

FACTUAL HISTORY

On February 24, 2004 appellant, a 55-year-old video coding clerk, experienced a sharp pain in her left shoulder while adjusting her workstation. She filed a claim for benefits, which OWCP

[1] 5 U.S.C. § 8101 *et seq.*

accepted for temporary aggravation of left shoulder strain.[2] The claim was expanded to include permanent aggravation of left shoulder rotator cuff tendinitis/impingement syndrome.

In an August 7, 2007 report, Dr. Dave M. Atkin, Board-certified in orthopedic surgery, stated that appellant appeared to have a left shoulder rotator cuff tear which he attributed to the February 24, 2004 employment incident. He advised that she was treated conservatively but continued to have significant pain in the anterior aspect of her shoulder, exacerbated by activities of daily living. On December 3, 2007 Dr. Atkin performed arthroscopic surgery to repair the rotator cuff tear in appellant's left shoulder. The surgery was authorized by OWCP.

On September 17, 2008 appellant filed a Form CA-7 claim for schedule award based on a partial loss of use of her left upper extremity.

In a March 4, 2010 report, Dr. Atkin found that appellant had a five percent permanent impairment of the left upper extremity pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). In an impairment worksheet, he noted that he relied on section 16 of the A.M.A., *Guides*, the section which pertains to lower extremity impairments.

In a May 9, 2010 report, an OWCP medical adviser found that appellant had a seven percent impairment of the left arm stemming from her accepted left shoulder rotator cuff tear. Applying the net adjustment formula at section 15, pages 406, 410 and 411 of the A.M.A., *Guides*,[3] she found that appellant had a default impairment of class 1 based on rotator cuff tear, which yielded a grade C impairment. The medical adviser found that the grade at Table 15-7, page 406 for functional history was 2, for a moderate problem; the grade at Table 15-9 for clinical studies was 2, for a moderate problem; and the grade for physical examination at Table 15-8, page 408 was 1, for a mild problem. Pursuant to the formula set forth at Table 15-21, page 411, she then subtracted the grade modifier 1 from grade 2 for both functional history and clinical history at Table 15-7, which yielded a net adjusted grade 1 plus 1 -- a total grade 2, which moved the default position to E, which equated to a seven percent impairment of the left upper extremity at Table 15-5, page 402.[4]

By decision dated May 20, 2010, OWCP granted appellant a schedule award for seven percent impairment of the left arm for the period April 15 to September 14, 2008 or a total of 21.84 weeks of compensation. It noted that the medical adviser had rated greater impairment for her accepted left shoulder condition than her treating physician.

Appellant submitted an August 19, 2010 x-ray report of the left upper extremity which showed normal results and no evidence of a fracture.

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[2] Appellant has previously filed 14 claims with OWCP. There are two cases which remain open for continued medical treatment: case number xxxx386, an emotional condition case and case number xxxxxx737, for bilateral carpal tunnel syndrome. Appellant has testified that her claim pertaining to her wrist condition remains open for medical treatment only based upon the termination of benefits for refusal of suitable work.

[3] A.M.A., *Guides* at 406, 410-11.

[4] *Id*. at 402.

In a report dated August 19, 2010, Dr. Atkin found that appellant had a 25 percent impairment of the left upper extremity. He reiterated his rating of a five percent impairment, citing again section 16, which applies to lower extremity impairments. Dr. Atkin advised that appellant demonstrated a four out of five in motor strength and muscle strength in the left shoulder. Based on these calculations, he accorded her an additional 20 percent left upper extremity impairment for grip strength.

By letter dated September 27, 2010, appellant requested reconsideration.

In an October 12, 2010 report, an OWCP medical adviser reviewed Dr. Atkin's August 19, 2010 report and found that it did not provide a basis for an additional schedule award. She stated that the sixth edition of the A.M.A., *Guides* provided for diagnosis-based impairments and he provided no rationale for an additional award pursuant to the sixth edition.

By decision dated December 23, 2010, OWCP denied modification of the May 20, 2010 schedule award decision.

By letter dated January 20, 2011, appellant requested reconsideration.

In a report dated December 28, 2010, received by OWCP on January 14, 2011, Dr. Atkin stated findings on examination and related that appellant continued to experience left shoulder pain. He advised that she had administered subacromial and corticosteroid injections in August 2010, which helped alleviate the pain until October 2010, when her left shoulder began to hurt again. Dr. Atkin explained that appellant's symptoms stemmed from glenohumeral arthritis in addition to adhesive capsulitis.

Appellant underwent a magnetic resonance imaging (MRI) scan on January 6, 2011 which demonstrated tendinopathy versus partial tear of the superspinatus tendon. The study found no evidence of a complete tear and degenerative changes of the glenohumeral joint. Appellant also underwent x-ray testing on March 1, 2011 which showed very minimal degenerative changes and a slightly widened acromioclavicular joint, with no discrete fractures, no bony lesions and normal soft tissues.

In a March 1, 2011 report, Dr. Atkin stated that he had reviewed the March 1, 2011 left shoulder x-ray results and the January 6, 2011 MRI scan and determined that appellant had bicipital tendinitis. In addition, he reiterated his previously stated findings and conclusions.

By decision dated April 26, 2011, OWCP denied modification of the May 20, 2010 schedule award decision.

LEGAL PRECEDENT

The schedule award provision of FECA[5] and its implementing regulations[6] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from

[5] 5 U.S.C. § 8107.

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

loss or loss of use, of scheduled members or functions of the body. However, it 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.[7]

ANALYSIS

OWCP accepted the conditions of left shoulder strain, permanent aggravation of left shoulder rotator cuff tendinitis/impingement syndrome and authorized surgery for torn left rotator cuff repair. In its May 20, 2010 decision, it granted appellant a schedule award for a seven percent impairment of the left upper extremity, using the applicable tables of the sixth edition of the A.M.A., *Guides*. The section of the A.M.A., *Guides* which rates diagnosis-based impairments for the upper extremities is located at Chapter 15, which states at page 387, section 15.2 that impairments are defined by class and grade. This section states:

> "The impairment class is determined first, by using the corresponding diagnosis-based regional grid. The grade is then determined using the adjustment grids provided in [s]ection 15.3.
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> "Once the impairment class has been determined, based on the diagnosis, the grade is initially assigned the default value 'C'. The final impairment grade, within the class, is calculated using the grade modifiers or nonkey factors, as described in [s]ection 15.3. Grade modifiers include functional history, physical examination and clinical studies. The grade modifiers are used on the [n]et [a]djustment [f]ormula described in [s]ection at 15.3d to calculate a net adjustment. The final impairment grade is determined by adjusting the grade up or down the default value C by the calculated net adjustment. The lowest possible grade is A and adjustments less than [minus] 2 from the default value C will automatically be considered A; the highest possible grade is E and adjustments greater than [plus] 2 will automatically be considered E."

The regional grid is used for 2 purposes: (1) to determine the most appropriate class for a specific regional diagnosis; and (2) to determine the final impairment after appropriate adjustments are made using the grade modifiers.[8]

Pursuant to the diagnosis-based impairment methodology, under Table 15-5,[9] a greater impairment finding can be made if appellant's diagnosis is rated for rotator cuff tear, rather than shoulder tendinitis or impingement syndrome. The maximum impairment for a rotator cuff tear is seven percent while the maximum impairment value for tendinitis or impingement syndrome

[7] *Id.*

[8] A.M.A., *Guides* 387.

[9] Table 15-5 at pages 402 and 403.

is five percent. Using the formula above and the net adjustment formula outlined at pages 406 to 411 of the A.M.A., *Guides*, OWCP's medical adviser found that appellant's diagnosis of rotator cuff tear, full thickness tear was a class 1 impairment at Table 15-7 and a grade C impairment, with residual loss, functional with normal motion. She then applied the net adjustment formula at pages 406, 410 and 411 of the A.M.A., *Guides*, Tables 15-7 and 15-9, finding that appellant had a grade modifier 2 for functional history, a grade modifier 2 for clinical history and a grade modifier 1 for physical examination, for an adjusted overall grade modifier 2, which resulted in an adjusted grade E impairment. Table 15-5 class 1, for rotator cuff tear allows a maximum permanent impairment award of seven percent for the grade E impairment. The Board finds that the seven percent impairment is the maximum allowable award for appellant's diagnosis of rotator cuff tear of the left upper extremity at Table 15-5, page 402.

The Board notes that the rating by Dr. Atkin, appellant's treating physician, is of diminished probative weight because he relied on section 16 of the A.M.A., *Guides*, which rates impairment for the lower extremity. The medical adviser provided the only impairment rating of record in accordance with the applicable protocols and tables. OWCP properly granted a schedule award for a seven percent upper extremity in its May 20, 2010 decision.

Appellant subsequently sought an additional award and requested reconsideration. In an August 19, 2010 report, Dr. Atkin rated 25 percent left upper extremity impairment. This report was based on the same criteria upon which he relied in his March 4, 2010 report; he accorded appellant the 5 percent left upper extremity impairment erroneously based on section 16 and an additional 20 percent impairment for decreased grip strength. The medical adviser found that Dr. Atkin's report was not sufficient for an additional award. While she erred in finding that grip strength is not permitted under the sixth edition of the A.M.A., *Guides*, any error, however, is harmless, in this issue. While it is unclear whether the loss of grip strength is due to appellant's accepted wrist or shoulder conditions, she is not entitled to an additional award for either. Appellant would not be entitled to an additional schedule award based on impairment for grip strength, due to her wrist condition, as benefits were terminated for this claim based upon a refusal of suitable work. Section 8106(c) is a penalty provision that terminates monetary entitlement to compensation for wage-loss and schedule award benefits from that date forward.[10]

Dr. Atkin submitted additional reports which noted that appellant continued to experience left shoulder pain; but the physician did not provide any additional impairment ratings.[11] OWCP properly found that the opinion of its medical adviser constituted sufficient medical evidence to support its May 20, 2010 schedule award decision. Appellant did not submit any medical evidence to support a greater than seven percent impairment of the left upper extremity. The Board will affirm OWCP's December 23, 2010 and April 26, 2011 decisions.

[10] *Richard P. Cortes*, 56 ECAB 200 (2004); *Joan F. Burke*, 54 ECAB 406 (2003).

[11] The Board further notes that a description of appellant's impairment must be obtained from her physician, which 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 resulting restrictions and limitations. *See Peter C. Belkind*, 56 ECAB 580, 585 (2005).

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 no more than a seven percent permanent impairment of the left upper extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2011 and December 23, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 17, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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