United States Department of Labor
Employees' Compensation Appeals Board

WILLIAM H. FIELDS, Appellant	)	
and	)	**Docket No. 05-476**
	)	**Issued: June 3, 2005**
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, RED RIVER DEFENSE DISTRIBUTION DEPOT, Texarkana, TX, Employer	)	

Appearances:
William H. Fields, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 16, 2004 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated June 17 and November 29, 2004, denying his claims for an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the schedule award issue in the case.

ISSUE

The issue is whether appellant has established that he sustained greater than a 15 percent permanent impairment of the right upper extremity, for which he received a schedule award.

FACTUAL HISTORY

The Office accepted that on June 5, 1998 appellant, then a 53-year-old materials handler, sustained a right upper arm and shoulder strain when he lifted a five-gallon bottle of water. The

Office later accepted a rupture of the right biceps tendon caused by the June 5, 1998 lifting incident.

In a June 21, 2000 report, Dr. Harold G. Weems, an attending orthopedic surgeon, noted an obvious deformity of the right biceps with proximal retraction and wrist weakness. Dr. Weems diagnosed a distal biceps tendon tear caused by the June 5, 1998 injury. He explained that appellant was not a candidate for surgical reconstruction as the injury occurred two years before.

On August 16, 2000 appellant claimed a schedule award.

In a January 17, 2001 report, Dr. Roshan Sharma, an attending Board-certified physiatrist, provided a history of injury and treatment.[1] On examination Dr. Sharma found a ruptured right biceps tendon causing atrophy and deformity of the right biceps muscle with weakness of supination, flexion and external rotation. He opined that appellant had reached maximum medical improvement. Referring generally to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), hereinafter, Dr. Sharma found that appellant had a 19 percent permanent impairment of the right upper extremity, 10 percent due to loss of strength and 9 percent due to pain.[2]

On May 14, 2001 the Office requested that an Office medical adviser determine the percentage of permanent impairment according to the fifth edition of the A.M.A., *Guides*. In a May 17, 2001 report, an Office medical adviser reviewed Dr. Sharma's report. He opined that according to Table 16-35, page 510 of the A.M.A., *Guides*,[3] a 25 percent loss of supination of the elbow equaled a 4 percent impairment, a 25 percent loss of elbow flexion equaled a 5 percent impairment and a 25 percent loss of external rotation of the shoulder equaled a 2 percent impairment. The medical adviser totaled these percentages to equal an 11 percent impairment of the right upper extremity. The medical adviser then calculated the percentage of impairment due to pain. He determined a maximum 5 percent impairment of the axillary nerve and multiplied it by the 80 percent value accorded a Grade 2 pain impairment, resulting in a 4 percent impairment due to pain. The Office medical adviser then combined the 11 and 4 percent impairments, resulting in a 15 percent impairment of the right upper extremity. He commented that, as Dr. Sharma relied on the fourth edition of the A.M.A., *Guides*, the percentage of motor deficit accorded was slightly different. The Office medical adviser commented that Dr. Sharma's determination of a nine percent impairment of the right upper extremity due to pain was excessive.

[1] In an October 19, 2000 letter, the Office authorized appellant to change physicians from Dr. Weems to Dr. Sharma.

[2] In a January 16, 2002 report, Dr. Sharma noted that appellant continued to have pain and weakness in the right upper extremity due to the traumatic rupture of the right biceps tendon. He opined that appellant had reached maximum medical improvement and that his condition was permanent.

[3] Table 16-35, page 510 of the A.M.A., *Guides* is entitled, "Impairment of the Upper Extremity Due to Strength Deficit From Musculoskeletal Disorders Based on Manual Muscle Testing of Individual Units of Motion of the Shoulder and Elbow."

By decision dated June 26, 2001, the Office granted appellant a schedule award for a 15 percent impairment of the right upper extremity. The period of the award ran from January 17 to December 10, 2001.[4]

The Office also accepted a recurrence of disability commencing August 29, 2001. Appellant returned to duty, stopped work on December 7, 2001 and did not return.[5]

On November 1, 2003 appellant claimed an additional schedule award. In support of his claim, appellant submitted a September 23, 2003 report by Dr. Sharma. On examination Dr. Sharma found two centimeters of atrophy of the right bicep, right upper extremity weakness and supination of the right elbow limited to 60 degrees. Dr. Sharma noted a normal range of right shoulder motion and related appellant's complaints of severe right upper extremity pain. He opined that appellant had reached maximum medical improvement as of January 17, 2001. Referring to the fifth edition of the A.M.A., *Guides*, Dr. Sharma opined that, according to Tables 16-10,[6] 16-11[7] and 16-15,[8] appellant had a 5 percent upper extremity impairment due to weakness in the musculocutaneous nerve, a 1 percent impairment due to pain and a 1 percent impairment due to elbow supination limited to 60 degrees. Dr. Sharma determined that appellant had a seven percent impairment of the right upper extremity.

On December 8, 2003 the Office requested that an Office medical adviser review Dr. Sharma's September 23, 2003 report and determine the appropriate percentage of permanent impairment of the right upper extremity according to the A.M.A., *Guides*. In a December 22, 2003 report, an Office medical adviser concurred with Dr. Sharma's method of assessment and determination of a seven percent impairment of the right upper extremity.

Dr. Sharma then submitted an April 6, 2004 report, assessing an additional percentage of impairment. Dr. Sharma diagnosed significant atrophy of the right biceps and triceps with a tear of the right triceps tendon. He opined that, according to Table 16-15 of the fifth edition of the A.M.A., *Guides*, appellant had a 5.25 percent impairment of the musculocutaneous nerve and a 10.5 percent impairment of the radial nerve. Dr. Sharma also found that, according to Table 16-

[4] In a June 2, 2004 addendum to the statement of accepted facts, the Office noted that appellant had not received an additional one percent schedule award issued on December 8, 2003. However, there is no decision of record dated December 8, 2003. A March 11, 2004 compensation computerized worksheet labeled "worksheet only" shows a one percent supplemental schedule award for the right upper extremity equivalent to 21.84 days of entitlement. As the decisions of record and reports of Office medical advisers refer only to a 15 percent impairment of the right upper extremity and not 16 percent, it appears that the Office did not issue appellant a schedule award for an additional one percent impairment of the right upper extremity.

[5] Appellant elected to receive compensation for temporary total disability commencing December 29, 2002.

[6] Table 16-10, page 482 of the fifth edition of the A.M.A., *Guides* is entitled, "Dtermining Impairment of the Upper Extremity Due to Sensory Deficits or Pain Resulting From Peripheral Nerve Disorders."

[7] Table 16-11, page 484 of the fifth edition of the A.M.A., *Guides* is entitled "Determining Impairment of the Upper Extremity Due to Motor and Loss-of-Power Deficits Resulting From Peripheral Nerve Disorders Based on Individual Muscle Rating."

[8] Table 16-15, page 492 of the fifth edition of the A.M.A., *Guides* is entitled "Maximum Upper Extremity Impairment Due to Unilateral Sensory or Motor Deficits or to *Combined* 100 percent Deficits of the Major Peripheral Nerves." (Emphasis in original).

18,[9] appellant had the following impairments due to limited right shoulder motion: 3 percent for flexion limited to 140 degrees; 2 percent for abduction limited to 140 degrees; 2 percent for internal rotation limited to 60 degrees. Additionally, he found a 1 percent upper extremity impairment due to supination in the right elbow limited to 60 degrees. Dr. Sharma then totaled these percentages to arrive at a 24 percent permanent impairment of the right upper extremity.

On June 2, 2004 the Office requested that an Office medical adviser perform a schedule award calculation. In a June 15, 2004 report, the Office medical adviser reviewed Dr. Sharma's April 6, 2004 report and found that appellant had reached maximum medical improvement as of that date. The medical adviser noted that there was no medical evidence establishing a causal relationship between the recent right triceps tendon rupture and the accepted injuries. He explained that therefore he would not "use loss of strength in the right triceps region to determine further impairment." The medical adviser also found that, although Dr. Sharma recommended an additional percentage of impairment based on restricted right shoulder motion, there was no evidence of record "that will support the condition of loss of motion in the shoulder as being related to the rupture of the biceps tendon in 1998." Therefore, the Office medical adviser excluded loss of right shoulder motion in calculating the percentage of permanent impairment. Referring to the fifth edition of the A.M.A., *Guides*, the medical adviser found that, according to Table 16-15, page 492, motor deficit of the musculocutaneous nerve equaled a 25 percent impairment. According to Table 16-40, page 482, a Grade 4 impairment equaled a 25 percent impairment. He then multiplied the 25 percent impairment for motor deficit by the 25 percent for a Grade 4 impairment to total a 5 percent permanent impairment of the right upper extremity. He noted that appellant had previously been awarded a schedule award for a 15 percent permanent impairment of the right upper extremity. Therefore, the medical adviser opined that Dr. Sharma's April 6, 2004 findings did not indicate that he had sustained any additional percentage of impairment.

By decision dated June 17, 2004, the Office denied appellant's claim for an additional schedule award.

On July 12, 2004 appellant requested a review of the written record by a representative of the Office's Branch of Hearings and Review. He submitted additional evidence.

In a July 27, 2004 report, Dr. Weems noted appellant's account of increasing triceps atrophy during the past year. Dr. Weems opined that, although appellant related this muscle wasting to the accepted injury, "the timing [was] substantial from his biceps injury to the time he noticed his triceps wasting away." On examination Dr. Weems noted significant atrophy in the right triceps muscle and a loss of five degrees of right elbow extension. He diagnosed right triceps atrophy "the cause of which is not exactly clear." Dr. Weems referred appellant for electromyographic and nerve conduction velocity studies of the right upper extremity, performed on August 20, 2004. These studies revealed moderate to severe carpal tunnel syndrome in the right wrist. In an August 25, 2004 report, Dr. Weems opined as that electrodiagnostic studies showed no abnormality of the right triceps, the atrophy was "most likely … related to disuse"

[9] Table 16-18, page 499 of the fifth edition of the A.M.A., *Guides* is entitled "Maximum Impairment Values for the Digits, Hand, Wrist, Elbow and Shoulder Due to Disorders of Specific Joints or Units."

and recommended an exercise program. Dr. Weems also diagnosed a moderate to severe right carpal tunnel syndrome requiring surgical intervention, which appellant refused.

In an August 19, 2004 report, Dr. Charles E. Graham, a Board-certified orthopedic surgeon and second opinion physician, provided a history of injury and treatment. On examination Dr. Graham found tenderness to palpation in the right upper extremity with swelling at the right elbow, a contracted upper bicep on the right, detachment of the right biceps tendon from the radial head, biceps atrophy, an absent biceps reflex on the right and a "mass at the triceps tendon on the right" and tenderness at the metacarpophalangeal joints of both thumbs related to gouty arthritis. He also observed a 50 percent loss of shoulder motion bilaterally, right elbow extension limited to negative 15 degrees and extension to 130 degrees. Dr. Graham diagnosed "[g]outy arthritis with a gouty tophus, ruptured right biceps tendon, inflamed right triceps tendon."

Dr. Graham referred appellant for a functional capacity evaluation, performed on September 28, 2004. The test results were not considered valid due to symptom magnification but indicated that appellant was able to perform sedentary work. Dr. Graham submitted a September 30 and October 14, 2004 supplemental reports, finding that a "lot of [appellant's] problem could be from gouty arthritis [a]ffecting these tendons" which required aggressive treatment. Dr. Graham found appellant capable of full-time sedentary work.[10]

By decision dated and finalized November 29, 2004, the Office hearing representative affirmed the June 17, 2004 decision, finding that appellant had not established that he sustained greater than a 15 percent impairment of the right upper extremity. The Office hearing representative found that the Office medical adviser properly applied the appropriate tables and grading schemes of the fifth edition of the A.M.A., *Guides* to Dr. Sharma's April 6, 2004 findings.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[11] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a mater which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[12] As of February 1,

[10] On October 22, 2004 appellant filed an occupational disease claim (Form CA-2) alleging that he sustained "major depressive disorder secondary to his physical condition." On November 11, 2004 appellant filed an occupational disease claim alleging that he sustained a hearing loss in the performance of duty on or before June 12, 1994. There are no final decisions of record regarding the emotional condition or hearing loss claims. Therefore, these issues are not before the Board on the present appeal.

[11] 5 U.S.C. §§ 8101-8193.

[12] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

2001, schedule awards are calculated according to the fifth edition of the A.M.A., *Guides*, published in 2000.[13]

The standards for evaluating the percentage of impairment of upper extremities can be found in Chapter 16 of the fifth edition of the A.M.A., *Guides*. Upper extremity impairment ratings evaluate factors such as abnormal motion, pain, weakness and sensory loss. Multiple impairments are combined to determine the total impairment of the unit (*e.g.*, finger) before conversion to the next larger unit (*e.g.*, hand).[14] Similarly, multiple regional impairments, such as those of the hand, wrist, elbow and shoulder, are first expressed individually as upper extremity impairments and then combined to determine the total upper extremity impairment.[15] Section 16.1 states that "[r]egional impairments resulting from the hand, wrist, elbow and shoulder regions are combined to provide the upper extremity impairment."

ANALYSIS

The Office accepted that appellant sustained a right upper arm or shoulder strain and a ruptured right biceps tendon on June 5, 1998 when he lifted a five-gallon jug of water. He then claimed a schedule award. By decision dated June 26, 2001, the Office awarded appellant a schedule award for a 15 percent permanent impairment of the right upper extremity related to the accepted injuries. The Office based the award on an Office medical adviser's application of the fifth edition of the A.M.A., *Guides* to the findings of Dr. Sharma.

In support of his claim for an additional schedule award, appellant submitted reports from Dr. Sharma, finding 7 and 24 percent impairments of the right upper extremity respectively. In an April 6, 2004 report, Dr. Sharma noted a 5.25 percent impairment of the musculocutaneous nerve and a 10.5 percent impairment of the radial nerve according to Table 16-15 of the fifth edition of the A.M.A., *Guides*, but did not provide the clinical findings substantiating these percentages of impairment or set forth the details of his calculations. Dr. Sharma also found that according to Table 16-18, appellant had a total of an 8 percent impairment of the right upper extremity due to limited flexion, abduction and internal rotation and a 1 percent impairment for limited supination of the right elbow.

As the April 6, 2004 report contained more comprehensive physical findings, the Office referred it for review by an Office medical adviser. On June 15, 2004 the Office medical adviser found that Dr. Sharma incorrectly applied the A.M.A., *Guides* and noted that the objective findings described warranted only a five percent impairment of the right upper extremity. The Office medical adviser applied Tables 16-15 and 16-40 of the fifth edition of the A.M.A., *Guides* to find a 5 percent impairment of the right upper extremity. Based on this determination, the Office denied appellant's claim as the medical evidence showed a lesser percentage of impairment than that previously awarded.

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[13] *See* FECA Bulletin 01-05 (issued January 29, 2001) (schedule awards calculated as of February 1, 2001 should be evaluated according to the fifth edition of the A.M.A., *Guides*. Any recalculations of previous awards which result from hearings, reconsideration or appeals should, however, be based on the fifth edition of the A.M.A., *Guides* effective February 1, 2001).

[14] *See* A.M.A., *Guides*, Chapter 16.1(c), *Combining Impairment Ratings*, page 438.

[15] A.M.A., *Guides*, para. 16.1c, page 438.

Appellant requested a review of the written record and submitted the July 27 and August 25, 2004 reports from Dr. Weems, an attending orthopedic surgeon, who diagnosed right carpal tunnel syndrome and disuse atrophy of the right triceps. However, Dr. Weems did not provide a schedule award calculation or otherwise address whether appellant had sustained an additional percentage of impairment. The Office also obtained a second opinion from Dr. Graham, a Board-certified orthopedic surgeon, who provided reports addressing appellant's work capacity. Dr. Graham did not provide a schedule award calculation in any of his reports or address the relevant issue in this case of impairment of the right upper extremity. The medical evidence submitted does not demonstrate an increased impairment beyond the 15 percent previously awarded. Therefore, appellant has received the correct amount of schedule award compensation in this case.[16]

CONCLUSION

The Board finds that appellant has not established that he has more than a 15 percent impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 29 and June 17, 2004 are affirmed.

Issued: June 3, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

[16] *See Linda R. Sherman,* 56 ECAB ___ (Docket No. 04-1510, issued October 14, 2004).