United States Department of Labor
Employees' Compensation Appeals Board

ROGER M. TROJANOWSKI, Appellant	)	
and	)	**Docket No. 05-1232**
	)	**Issued: November 17, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Southeastern, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 13, 2005 appellant, through counsel, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated December 7, 2004 which affirmed a January 27, 2004 schedule award finding a 14 percent impairment of the left upper extremity. 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 has more than a 14 percent impairment of the left upper extremity for which he received a schedule award.

FACTUAL HISTORY

On February 19, 2002 appellant, then a 63-year-old custodian, filed a traumatic injury claim alleging that, on February 15, 2002, he injured his shoulder while moving a desk in the performance of duty. The Office accepted his claim for a left rotator cuff tear and authorized

surgical repairs performed on April 5 and December 4, 2002. Appellant returned to light duty on May 19, 2003.

On June 6, 2003 the Office referred appellant to Dr. Steven Valentino, an osteopath, for a second opinion evaluation. In a report dated June 25, 2003, Dr. Valentino stated that appellant continued to have residuals of the work-related rotator cuff tear. He provided range of motion findings of the left shoulder and noted negative shoulder instability and impingement. Dr. Valentino further reported a negative Sulcus sign and drop arm test. He noted weakness in abduction but no pain over the shoulder area. Bicipital tendon was grossly normal. Dr. Valentino found that appellant continued to be partially disabled due to a diminished range of motion and weakness, adding that appellant had reached maximum medical improvement on that date. The physician did not provide an impairment rating.

On October 15, 2003 appellant, through counsel, filed a claim for a schedule award and submitted a July 10, 2003 report from Dr. David Weiss, an attending osteopath, who found a 17 percent left upper extremity impairment. He based his recommendation on loss of range of motion findings, which included 90 degrees of flexion, or a 6 percent impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), Figure 16-40, page 476 and 90 degrees of abduction, Figure 16-43 page 477, or a 4 percent impairment. Dr. Weiss added these impairments to find a 10 percent impairment based on loss of range of motion of the left upper extremity. He also noted a decreased sensation to light touch and pin prick over the C8 dermatome in the left extremity and stated that appellant had a 4 percent sensory deficit based on Tables 15-15 & 15-17, page 424. Dr. Weiss then combined the sensory loss with the loss of range of motion to find a 14 percent impairment for the left upper extremity. He then added an additional impairment of 3 percent for pain based on Figure 18-1, page 574 of the A.M.A., *Guides* for a total of 17 percent impairment of the left upper extremity. Dr. Weiss found that appellant had reached maximum medical improvement on that date.

On October 8, 2003 the Office medical adviser stated that Dr. Weiss improperly calculated appellant's impairment rating by duplicating pain impairments. The Office medical adviser utilized Dr. Weiss' range of motion determination of a 10 percent impairment and a 4 percent sensory deficit (as it was higher then the 3 percent pain impairment) to find at a 14 percent impairment of the left upper extremity.

On January 27, 2004 the Office granted appellant a schedule award of 14 percent for the left upper extremity. The award ran for 43.68 weeks, from July 11, 2003 to January 24, 2004. On February 2, 2004 appellant, through counsel, requested an oral hearing.

A hearing was held on September 28, 2004. In a December 7, 2004 decision, a hearing representative affirmed the Office's January 27, 2004 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] sets 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* (5th ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[3]

ANALYSIS

The Office accepted appellant's claim for left rotator cuff and authorized left shoulder surgeries. The Office subsequently referred appellant to Dr. Valentino, an osteopath and second opinion physician, who stated that appellant remained symptomatic with left shoulder residuals associated with rotator cuff tear and found he had reached maximum medical improvement. The physician's range of motion findings for the left shoulder were as follows: flexion to 115 degrees, extension to 50 degrees, abduction to 110 degrees, adduction to 50 degrees, external rotation to 80 degrees, and internal rotation of 80 degrees. The resulting impairment rating based on the A.M.A., *Guides* was 8 percent for the left upper extremity.[4]

Appellant's treating physician, Dr. Weiss, determined a total impairment of the left upper extremity impairment of 17 percent. An Office medical adviser reviewed both Dr. Valentino's and Dr. Weiss' reports and determined that appellant had a 14 percent left upper extremity impairment as a result of his rotator cuff tear and surgical repairs. He utilized the range of motion findings of Dr. Weiss to determine that left shoulder flexion of 90 degrees equaled a 6 percent impairment and abduction of 90 degrees equaled a 4 percent impairment, which, when added, resulted in a 10 percent impairment.[5] The Office medical adviser properly determined that appellant had a 10 percent impairment based on loss of range of motion.[6] He also noted that Dr. Weiss determined that appellant had a sensory impairment at C8 of 4 percent when, combined to the 10 percent impairment for loss of range of motion, resulted in a 14 percent

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404.

[3] *Willie C. Howard*, 55 ECAB ___ (Docket No. 04-342 & 04-464, issued May 27, 2004).

[4] Dr. Valentino's findings when referred to the A.M.A., *Guides* were: 115 degrees of flexion equaled a 5 percent impairment and extension of 50 degrees equaled a 0 percent impairment based on the A.M.A., *Guides* 476, Figure 16-40; abduction of 100 degrees for a 3 percent impairment, adduction of 50 degrees for a 0 percent impairment based on Figure 16-43, and external and internal rotation of 80 degrees each for a 0 percent impairment based on Figure 16-46. This equaled an 8 percent impairment of the left upper extremity.

[5] A.M.A., *Guides* 476, Figure 16-40; 477, Figure 16-43.

[6] *Id*. at 474, section 16.4i.

impairment of the left upper extremity.[7] The Office medical adviser noted that Dr. Weiss allowed three percent for pain under Table 18-1. However, this impairment rating duplicated the four percent rating for sensory loss. Moreover, Chapter 18 should not be used to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.[8] Dr. Weiss did not explain why appellant's condition was not adequately rated under other chapters, especially where sensory impairment was already taken into account by the rating he provided under Chapter 16. The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to the findings contained in the medical record and determined that appellant has no more than a 14 percent impairment of the left upper extremity.

Appellant asserts on appeal that there is an unresolved conflict in the medical opinion evidence between Dr. Weiss and the Office medical adviser necessitating resolution of the conflict by referral to an impartial medical specialist.[9] The Board finds that there is not a conflict in medical opinion as the rating of Dr. Weiss did not conform with the A.M.A., *Guides* and Office procedures with regard to the pain rating under Chapter 18. The only difference of opinion between the medical adviser and Dr. Weiss concerned a three percent impairment rating under Table 18-1. Office procedures direct that Chapter 18 not be used in combination with other methods for measuring impairment due to sensory pain. Dr. Weiss did not base his evaluation of appellant's permanent impairment on correct application of the A.M.A., *Guides*. There is no medical evidence in the record, conforming with the A.M.A., *Guides*, to establish that appellant has more than a 14 percent impairment to his left upper extremity.

CONCLUSION

The Board finds that appellant has failed to establish that he is entitled to more than a 14 percent schedule award for the left upper extremity.

[7] Dr. Weiss identified Table 15-15, which is the table for lower extremity sensory deficits. The relevant table in this case is Table 16-10, which provides an identical grading scheme as Table 15-15. A.M.A., *Guides* 482. Dr. Weiss' examination findings are consistent with a Grade 2 impairment for decreased superficial cutaneous pain and tactile sensibility with abnormal sensation or moderate pain that may prevent some activity. The range for Grade 2 is 61 to 80 percent of the maximum. When the maximum, 80, is multiplied by 5 percent, the maximum percent of sensory loss of the C8, under Table 15-17 or Table 16-13, the resulting impairment is 4 percent.

[8] *See* FECA Bulletin No. 01-05 (issued January 31, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 Exhibit 4 (June 2003). *See also Philip A. Norulak*, 55 ECAB ___ (Docket No. 04-817, issued September 3, 2004) (a separate pain calculation under Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain as outlined in Chapters 13, 16 and 17 of the fifth edition of the A.M.A., *Guides*).

[9] Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 7, 2004 is affirmed.

Issued: November 17, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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