United States Department of Labor
Employees' Compensation Appeals Board

B.G., Appellant	)	
and	)	**Docket No. 06-1135**
	)	**Issued: December 7, 2006**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Marion, IN, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 18, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated April 6, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has more than a 13 percent impairment of his right upper extremity for which he received a schedule award.

FACTUAL HISTORY

On November 12, 2003 appellant, then a 47-year-old psychiatric nursing assistant, filed a traumatic injury claim alleging that on October 22, 2003 he sustained injuries to his left shoulder, right arm and a bulging disc in his lower back in the performance of duty.[1] On December 22, 2003 the Office accepted his claim for lumbar strain and right rotator cuff tear.

On June 16, 2004 appellant requested a schedule award.

By letter dated June 22, 2004, the Office advised appellant that it received his claim for a schedule award. The Office requested that he obtain an assessment of permanent impairment from his physician based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (A.M.A., *Guides*).

In a July 13, 2004 report, Dr. Daniel J. Edwards, a Board-certified orthopedic surgeon and treating physician, noted appellant's history of injury which included a February 4, 2004 procedure for a right shoulder glenohumeral arthroscopy with subacromial arthroscopy and debridement of bursa, arthroscopic arthrogram and closed manipulation of the right shoulder. He utilized the A.M.A., *Guides* and determined that for the right upper extremity appellant had external rotation of zero percent and internal rotation of two percent. Dr. Edwards noted that appellant had forward flexion of four percent, extension of one percent, two percent for abduction and one percent for adduction. He noted that this equated to a 10 percent impairment of the upper extremity and opined that this would equate to a 6 percent impairment of the whole person. Dr. Edwards further explained that he referred to Tables 16-15 and 16-3[2] to determine strength loss. He explained that for abduction, external rotation and elbow flexion of the right upper extremity appellant had a Grade IV, which equaled a strength loss index of approximately 80 percent retained and 20 percent loss. Dr. Edwards referred to Table 16-15[3]and noted that impairment of the suprascapular nerve was equal to 16 percent multiplied by 0.2 which equaled 3 percent upper extremity impairment. He found that, pursuant to Table 16-3,[4] 10 percent plus 3 percent equaled 13 percent of the arm, which equaled 8 percent impairment of the whole person and added that appellant reached maximum medical improvement on July 8, 2004.

In an August 6, 2004 report, the Office medical adviser noted that there was not enough information in Dr. Edwards' report to provide "any kind of assessment." He explained that there was not a "single specific documented exam[ination] in the file." The Office medical adviser

[1] The record reflects that appellant was off work from October 28 to 29, 2003. He returned to restricted duty from October 30, 2003 and he underwent surgery on February 4, 2004. Thereafter, he was placed off work on total disability. Appellant was released to light duty on March 19, 2004. He returned to work on March 29, 2004 with restrictions. The Office indicated that appellant had previous injuries to his left arm and two minor injuries to the lower back on January 10, 2001 and January 29, 2003. The prior claims include a left shoulder claim under No. 09-2032329, a left shoulder claim that included surgery, No. 09-2043075 and a right shoulder claim that included surgery. No. 09-2040021.

[2] A.M.A., *Guides* 492, 439.

[3] A.M.A., *Guides* 492.

[4] A.M.A., *Guides* 438.

indicated that the range of motion, strength loss and sensation needed to be documented and that appellant's history needed to be included.

The Office continued to develop the claim and on November 23, 2004, referred appellant for a second opinion, along with a statement of accepted facts, a set of questions and the medical record to Dr. Alois E. Gibson, a Board-certified orthopedic surgeon.

In a December 13, 2004 report, Dr. Gibson noted appellant's history of injury and treatment and conducted a physical examination. Regarding the right shoulder, he advised that appellant had extension which was limited to 25 degrees and flexion of 110 degrees. Dr. Gibson noted that abduction was 100 degrees. Regarding external rotation, he found that appellant had 65 degrees of external rotation and 60 degrees of internal rotation. Dr. Gibson also indicated that these motions were "somewhat limited" and carried out to the "point of discomfort." He referred to Figures 16-40, 16-43 and 16-46[5]and opined that this would equate to an impairment of 13 percent of the right upper extremity or 8 percent as a whole.

In his January 10, 2005 addendum, Dr. Gibson opined that appellant had reached maximum medical improvement. He noted that the exact date should be obtained from the treating physician.

On March 8, 2005 the Office received examination findings from Dr. Edwards dated July 8, 2004. Dr. Edwards referred to Figures 16-40, 16-43 and 16-46[6] and noted findings for the right shoulder, which included that appellant had forward flexion of 120 degrees, abduction of 135 degrees and external rotation of 45 degrees. He noted that internal rotation was 60 degrees and external rotation was 90 degrees.[7] Dr. Edwards noted that appellant had strength equivalent to a Grade IV for abduction and external rotation of the elbows and this correlated to a strength loss index 80 percent or a 20 percent loss. He referred to Table 16-15[8] and determined that 16 percent multiplied by 0.2 percent was equal to 3 percent. Dr. Edwards further noted that appellant was unable to throw overhead, sleep on his right arm and he was unable to lift his right arm without pain while driving. He opined that appellant reached maximum medical improvement on July 8, 2004. Dr. Edwards noted that appellant had an impairment of 13 percent of the upper extremity or 8 percent whole person impairment.

On February 9, 2006 appellant repeated his claim for a schedule award.

In a February 22, 2006 report, the Office medical adviser noted appellant's history of injury and treatment, including that maximum medical improvement was reached.[9] For the right

[5] A.M.A., *Guides* 476, 477, 479.

[6] *Id.*

[7] His notes are in cursive and difficult to read; however, it appears that these are the findings he presented.

[8] A.M.A., *Guides* 492.

[9] In a memorandum dated April 5, 2006, the Office noted that the date of maximum improvement was determined by the attending physician and was determined to be July 8, 2004.

upper extremity, he referred to Figure 16-40[10] and determined that flexion of 110 degrees was equal to a 5 percent impairment of the upper extremity and extension of 25 degrees was equal to a 2 percent impairment of the upper extremity. Regarding abduction of 100 degrees, the Office medical adviser referred to Figure 16-43[11] and determined that this was equal to 4 percent impairment. He referred to Figure 16-46[12] and noted that appellant had external rotation of 65 degrees and that this did not warrant a rating. The Office medical adviser explained that appellant had internal rotation of 60 degrees which was equal to a 2 percent impairment of the right upper extremity. He added the values for restricted range of motion and determined that he was entitled to a 13 percent impairment of the right upper extremity. The Office medical adviser noted that he had a preexisting low back condition which had resolved and for which he had already been compensated.

On April 6, 2006 the Office granted appellant a schedule award for 13 percent impairment of the right upper extremity. The award covered a period of 40.56 weeks from July 8, 2004 to April 17, 2005.[13]

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[14] sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[15] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[16] The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[17]

ANALYSIS

In the present case, appellant's claim was accepted for lumbar strain and rotator cuff tear. The record contains reports from his treating physician, the second opinion physician and the Office medical adviser. All of the physicians concurred that he was entitled to an impairment of 13 percent of the right upper extremity.

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[10] A.M.A., *Guides* 476.

[11] A.M.A., *Guides* 477.

[12] A.M.A., *Guides* 479.

[13] The Office corrected a previous schedule award decision dated March 29, 2006.

[14] 5 U.S.C. §§ 8101-8193.

[15] 5 U.S.C. § 8107.

[16] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[17] A.M.A., *Guides* (5th ed. 2001); 20 C.F.R. § 10.404.

The Board finds that the Office properly rated the impairment to appellant's right shoulder. Dr. Gibson, the Office referral physician, determined that appellant had 13 percent impairment of the right arm. An Office medical adviser reached the same conclusion. Applying Figures 16-40, 16-43 and 16-46 of the fifth edition of the A.M.A., *Guides*[18] to the findings of Dr. Gibson, an Office medical adviser properly assigned 5 percent impairment for 110 degrees of flexion, 2 percent for 25 degrees of extension, 4 percent for 100 degrees of abduction, 0 percent for 65 degrees of external rotation and 2 percent for 60 degrees of internal rotation, for a total of 13 percent impairment for loss of motion.

The Board also notes that appellant's treating physician, Dr. Edwards, determined that appellant was entitled to an impairment of 13 percent to the right upper extremity. Although he arrived at his conclusion in a slightly different manner, the outcome was the same. The Board notes that Dr. Edwards referred to Tables 16-15[19] to determine appellant's combined motor deficit loss. He explained that appellant had a Grade IV motor deficit involving the suprascapular nerve which equaled a 20 percent loss.[20] Dr. Edwards referred to Table 16-15[21] and noted that an impairment of the suprascapular nerve was equal to 16 percent motor deficit, which when multiplied by the 20 percent for motor deficit equaled 3 percent upper extremity impairment. He combined this value with the 10 percent for the range of motion findings and determined that appellant was entitled to an impairment of 13 percent to the right upper extremity.

Accordingly, the Board finds that the evidence supports that appellant has no greater impairment than a 13 percent impairment of the right upper extremity.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he has more than a 13 percent impairment of the right upper extremity for which he received a schedule award.

[18] A.M.A., *Guides* 476, 477, 479.

[19] A.M.A., *Guides* at 492.

[20] This appears to be consistent with Table 16-11 of the A.M.A., *Guides* at 484.

[21] A.M.A., *Guides* at 492.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 6, 2006 is affirmed.

Issued: December 7, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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