United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 06-2040**
	)	**Issued: February 9, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Somerdale, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 September 5, 2006 appellant filed a timely appeal from decisions dated October 24, 2005 and March 28, 2006 of the Office of Workers' Compensation Programs, adjudicating his schedule award claim. 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 21 percent permanent impairment of his right upper extremity.

FACTUAL HISTORY

On February 13, 1999 appellant, then a 38-year-old distribution/window clerk, filed an occupational disease claim alleging that he injured his right shoulder on November 10, 1998 when he pulled a cage that was stuck in a vestibule. The Office accepted his claim for right shoulder impingement syndrome. On March 21, 2000 appellant underwent surgery consisting of arthroscopic limited joint debridement, open acromioplasty, rotator cuff repair and

acromioclavicular (AC) arthroplasty performed by Dr. Robert M. Dalsey, an attending Board-certified orthopedic surgeon, specializing in hand surgery. The Office accepted appellant's claim for a recurrence of disability on March 21, 2000. On June 11, 2001 appellant filed a claim for a schedule award.

By decisions dated July 2, 2002 and April 2, 2004, the Office granted appellant a schedule award for 65.52 weeks from April 25, 2001 to July 27, 2002, based on a 21 percent impairment of the right upper extremity. By decisions dated December 16, 2003 and May 23, 2005, these decisions were set aside and remanded for further development of the medical evidence.

In an April 25, 2001 report, Dr. David Weiss, an osteopath and family practitioner, found that appellant had a 40 percent combined impairment of the right upper extremity according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) fifth edition.[1] The 40 percent impairment included 24 percent for appellant's right shoulder arthroplasty, based on Table 16-27 at page 506; 4 percent for motor deficit of the supraspinatus muscle and 9 percent for motor deficit of the deltoid muscle, based on Table 16-11 at page 484 and Table 16-15 at page 492; and 10 percent for right grip strength deficit and based on Table 16-34 at page 509. On October 1, 2003 Dr. Weiss stated that appellant underwent excision of the distal clavicle as well as open acromioplasty. Consequently, he had 10 percent impairment for resection arthroplasty of the distal clavicle, based on Table 16-27 at page 506 of the A.M.A., *Guides.* Dr. Weiss stated: "Since [appellant] also underwent acromioplasty, it is my opinion that an additional 5 [percent] should be added, bringing us to a total of 15 [percent] for the right shoulder arthroplasty."

On June 10, 2002 the district medical adviser found that appellant had a 21 percent combined impairment of the right upper extremity, including 10 percent for his surgery based on Table 16-27 at page 506, 4 percent for motor deficit of the supraspinatus muscle and 8 percent for the deltoid muscle, based on Table 16-11 at page 484 and Table 16-15 at page 492. He noted that the 24 percent given by Dr. Weiss for right shoulder arthroplasty was actually limited to a replacement (implant) in the A.M.A., *Guides*. The district medical adviser stated that the grip strength impairment found by Dr. Weiss (10 percent) seemed to have no relationship to his shoulder surgery and injury.

On January 5, 2004 the district medical adviser stated:

> "10 [percent] was given for the acromioplasty and AC joint arthroplasty. This means a part of the distal clavicle and a part of the acromion is resected. Table 16-27 at page 506 only lists the distal clavicle under resection arthroplasty and gives no [impairment] for the small part of the acromion removed. The maximum allowance is 10 [percent]. If the doctor did a total shoulder resection arthroplasty that would be a 30 [percent] impairment (see table). This means the entire or a major portion of the humeral head is resected and no implant inserted. This does n[o]t apply in this case. I also allowed 12 [percent] for some motor weakness of the supraspinatus and deltoid [muscles] which, [according] to the [A.M.A.,]

[1] A.M.A., *Guides* (5th ed. 2001).

> *Guides* is not an exclusion and can be combined with the resection arthroplasty. Total 21 [percent] impairment of the right upper [extremity.]" (Emphasis omitted

In reports dated June 21 to September 27, 2004, Dr. Dalsey provided findings on physical examination and noted that appellant had intermittent right shoulder stiffness, pain and discomfort. He did not indicate any problem with grip strength.

In an April 1, 2005 report, Dr. Weiss stated that appellant had a 37 percent impairment of the right upper extremity, including 15 percent for right shoulder arthroplasty, based on Table 16-27 at page 506 of the A.M.A., *Guides*, 9 percent for motor deficit of the deltoid muscle, based on Tables 16-11 and 16-15 at pages 484 and 492, a 10 percent impairment for right grip strength deficit and 3 percent for pain, based on Table 18-1 at page 574.

On September 15, 2005 the district medical adviser stated that appellant had a 21 percent of the right upper extremity. He stated:

> "The operative report [indicates that] [appellant] really did not have a resection of the outer end of the clavicle for which I allowed 10 [percent]. He merely had some shaving of the undersurface of the clavicle and a small amount of acromioplasty.[2] The 15 [percent] discussed by Dr. Weiss is excessive and does not follow the A.M.A., *Guides* [fifth] edition. The most the [A.M.A.,] *Guides* allows is 10 [percent] for resection of the outer end of the clavicle…. The treating physician in all of his reports found no grip weakness or any other weakness of the shoulder muscle."

In an October 19, 2005 memorandum, the Office district medical adviser stated that the findings of Dr. Weiss yielded a 29 percent impairment of the right upper extremity, including 10 percent for grip strength weakness based on Table 16-34 at page 509 of the A.M.A., *Guides,* 10 percent for right shoulder arthroplasty, based on Table 16-27 at page 506 and 12 percent for deltoid muscle motor deficit, based on Tables 16-11 and 16-15 at pages 484 and 492. He stated that the 29 percent impairment rating assumes objective grip strength weakness which Dr. Dalsey did not find in his reports. The district medical adviser also noted that grip strength weakness did not seem to be related to a shoulder injury. He disallowed the 10 percent impairment for grip strength weakness and found that appellant had a 21 percent impairment of the right upper extremity.[3]

---

[2] The March 21, 2000 operative report indicated that the surgery consisted of arthroscopy with limited debridement, open anterior acromioplasty, AC arthroplasty and rotator cuff repair.

[3] The district medical director calculated appellant's impairment based on the findings of Dr. Dalsey at 12 percent. He apparently selected the impairment rating provided by Dr. Weiss (minus the impairment for grip strength) because it provided a higher impairment percentage.

By decision dated October 24, 2005, the Office denied appellant's claim for an additional schedule award.

Appellant requested an oral hearing that was held on February 7, 2006.

By decision dated March 28, 2006, an Office hearing representative affirmed the October 24, 2005 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulation[5] set 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*[6] has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[7]

ANALYSIS

In his second and final impairment rating dated April 1, 2005, Dr. Weiss found that appellant had a 37 percent combined impairment of the right upper extremity according to the A.M.A., *Guides,* including 15 percent for his right shoulder arthroplasty, based on Table 16-27 at page 506; 9 percent for motor deficit of the deltoid muscle, based on Table 16-11 at page 484 and Table 16-15 at page 492; 10 percent for right grip strength deficit, based on Table 16-34 at page 509 and 3 percent for pain, based on Table 18-1 at page 574.

As to the 15 percent for appellant's right shoulder arthroplasty, the district medical adviser found that appellant only had a 10 percent impairment for his surgery based on Table 16-27 at page 506 of the A.M.A., *Guides.* He stated that a 10 percent impairment for the surgery was the maximum allowed for a distal clavicle resection arthroplasty. The district medical adviser stated that the 15 percent given by Dr. Weiss did not follow the A.M.A., *Guides,* fifth edition.

Dr. Weiss found a nine percent impairment due to motor deficit of the deltoid muscle based on Table 16-11 at page 484 and Table 16-15 at page 492. On January 5, 2004 the district medical adviser applied the findings of Dr. Weiss and found a 12 percent impairment due to motor deficit of the deltoid and supraspinatus muscles based on based on Tables 16-11 and 16-15

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *See supra* note 1; *Joseph Lawrence, Jr.,* 53 ECAB 331 (2002).

[7] *See supra* note 5.

at pages 484 and 492 of the A.M.A., *Guides.*[8] It appears that the district medical adviser found that appellant had a Grade 4 impairment which equals a maximum 25 percent impairment for motor deficit according to Table 16-11 at page 484. Multiplying 25 percent by the maximum 35 percent for the axillary nerve[9] in Table 16-15 at page 492 equals 8.75 percent, rounded to 9 percent. Multiplying 25 percent by the 16 percent maximum for the suprascapular nerve[10] equals 4 percent impairment for motor deficit. Combining 9 percent and 4 percent according to the Combined Values Chart at page 604 equals 13 percent impairment due to motor deficit, rather than the 12 percent found by the district medical adviser.

Regarding grip strength weakness, Dr. Dalsey did not indicate such a finding in his reports. The district medical adviser also noted that grip strength weakness did not seem to have any relationship to a shoulder injury. The Board finds that the medical evidence is not sufficient to establish any impairment of the right upper extremity due to loss of grip strength.

Regarding the three percent impairment due to pain, Dr. Weiss did not support, with medical rationale, his calculation of a three percent impairment based on Chapter 18 of the A.M.A., *Guides*. Section 18.3b of Chapter 18 at page 571 of the fifth edition of the A.M.A., *Guides* provides that "Examiners should not use this chapter to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters of the [A.M.A.,] *Guides*."[11] Dr. Weiss did not explain why appellant's pain-related impairment could not be adequately addressed by applying Chapter 16 of the A.M.A., *Guides* which addresses upper extremity impairment, specifically section 16.5 "Impairment of the Upper Extremities Due to Peripheral Nerve Disorders" which provides for rating sensory deficits or pain in Table 16-10. He did not explain why application of Chapter 16 was not adequate to calculate appellant's impairment due to upper extremity pain, justifying application of Chapter 18 of the A.M.A., *Guides*.

The Board finds that the weight of the medical evidence establishes that appellant has a combined 22 percent of the right upper extremity, including 10 percent for his right shoulder surgery and 13 percent for motor deficit.

CONCLUSION

The Board finds that appellant has a 22 percent impairment of the right upper extremity. On return of the record, the Office should issue a corrected schedule award and determine the additional compensation to which appellant is entitled.

---

[8] It appears that on October 19, 2005 the district medical adviser inadvertently mentioned only the deltoid muscle in noting a 12 percent motor deficit, leaving out the supraspinatus muscle.

[9] The axillary nerve affects the deltoid muscle. A.M.A., *Guides* 485, Table 16-12a.

[10] The suprascapular nerve affects the supraspinatus muscle. A.M.A., *Guides* 485, Table 16-12a.

[11] *See also* FECA Bulletin No. 01-05, issued January 29, 2001.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 28, 2006 and October 24, 2005 are affirmed as modified.

Issued: February 9, 2007
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