United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 07-384**
	)	**Issued: June 15, 2007**
U.S. POSTAL SERVICE, COMPUTERIZED FORWARDING SYSTEM, St. Louis, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 27, 2006 appellant filed a timely appeal from the decisions of the Office of Workers' Compensation Programs dated June 7 and October 13, 2006, finding that appellant was not entitled to a schedule award for an additional impairment to his left upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award decision.

ISSUE

The issue is whether appellant has established that he has more than a 15 percent permanent impairment of the left upper extremity.

FACTUAL HISTORY

On May 9, 2001 appellant, then a 50-year-old modified general clerk, filed an occupational disease claim alleging that he tore his left rotator cuff through the repetitive use of his hands and arms. On May 10, 2001 he underwent acromioplasty and repair of the left rotator

cuff. By decision dated November 16, 2001, the Office accepted appellant's claim for a torn left rotator cuff. On July 23, 2002 the Office issued him a schedule award for the 15 percent impairment of his left upper extremity.[1]

On November 4, 2004 appellant, who was then retired, filed a claim for recurrence of disability alleging that his left rotator cuff had torn again as a result of his original injury. He underwent a repair of his rotator cuff on September 23, 2004. By decision dated December 29, 2004, the Office accepted the recurrence of appellant's left rotator cuff tear.

On October 24, 2005 appellant filed a request for an additional schedule award. Dr. Clayton Perry, the Board-certified orthopedic surgeon who performed both of appellant's rotator cuff repair surgeries, stated that on January 23, 2006 appellant's left shoulder had reached maximum medical improvement. On April 25, 2006 the Office referred appellant to Dr. Jack Tippett, a Board-certified orthopedic surgeon, to determine whether he had sustained permanent impairment as a result of his recurrence of disability. Dr. Tippett was instructed to use the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The statement of accepted facts provided to Dr. Tippett indicated that in addition to the schedule award issued on July 24, 2002 appellant received one on October 6, 1980 for the five percent impairment of his left arm in Office File No. 11-0031613.

On May 16, 2006 Dr. Tippett conducted his examination. He noted that appellant had a form of muscular dystrophy that primarily affected his lower extremities and that appellant's chief complaints were pain, stiffness and weakness in his left shoulder. Dr. Tippett reported that appellant injured his left shoulder in 1979 and underwent a successful arthroplasty of the left acromioclavicular joint with resection of a small segment of the distal clavicle. He stated that appellant had not experienced any complications after his 2001 or 2004 shoulder surgeries and that his treating physician found that he had reached maximum medical improvement. Dr. Tippett reported that appellant's left shoulder was "doing reasonably well" but still had stiffness and soreness, especially when performing activities with the left arm. Appellant informed him that he had difficulty shaving, carrying objects and rotating his shoulder outward.

On examination Dr. Tippett noted mild tenderness of the left shoulder generally and slight, symmetrical atrophy of the muscles in both shoulders. He measured active range of motion in the shoulders using a 12-inch goniometer. In the left shoulder Dr. Tippett measured 70 degrees of abduction, 50 degrees of adduction, 0 degrees of external rotation, 90 degrees of internal rotation, 60 degrees of flexion and 50 degrees of extension. He stated that appellant's right shoulder was used as a comparison and had normal range of motion in all areas. Based on the A.M.A., *Guides*, Figure 16-40, page 476, Figure 16-41, page 477, and Figure 16-46, page 479, Dr. Tippett found a total left upper extremity impairment of 25 percent based on impairments of 8 percent for limited flexion, 5 percent for limited abduction, and 12 percent for loss of external rotation. He stated that he also referred to other methods to determine impairment, including radiographic evaluation, complaints and symptoms and muscle strength. Dr. Tippett opined that muscle strength was not a reasonable method for determining impairment

[1] Appellant received a 14 percent impairment rating for diminished range of motion and a 1 percent rating for abduction weakness.

because of appellant's known muscular disorder and that the other methods were less effective than range of motion.

On May 29, 2006 the Office medical adviser found that appellant was not entitled to an additional schedule award. He noted that Dr. Tippett had considered range of motion, pain and sensory change and weakness in evaluating appellant's impairment. The Office medical adviser found that Dr. Tippett had correctly stated the impairment ratings for abduction and flexion, but had incorrectly stated that the impairment rating for zero degrees of external rotation was 12 percent, rather than the 2 percent indicated by Figure 16-46, page 479 of the A.M.A., *Guides*. He found that, based on the results of Dr. Tippet's examination, appellant had a 15 percent impairment rating. Dr. Zimmerman noted that appellant received schedule awards for the 5 percent impairment of his left arm in 1980 and the 15 percent impairment of his left arm in 2002. Because these schedule awards covered impairment ratings totaling 20 percent, the 15 percent impairment rating indicated by Dr. Tippett's examination did not warrant an increase in appellant's schedule award.

By decision dated June 7, 2006, the Office denied appellant's claim for a schedule award.

On June 9, 2006 appellant requested a review of the written record by an Office hearing representative. He challenged Dr. Tippet's methods, particularly his decision not to take strength and pain into account in his impairment rating determination. Appellant stated that, when he received an impairment rating evaluation for his right shoulder in 2000, the physician performed a variety of tests that Dr. Tippet did not perform in his evaluation. He also stated that his diagnosed limb-girdle muscular dystrophy caused loss of strength that should have been considered in Dr. Tippett's evaluation. Appellant stated that he knew his left shoulder had gotten worse because he had more difficultly with daily activities than previously. He requested that the Office conduct a new evaluation that took all pertinent information into account and was based on all necessary tests.

Appellant attached medical reports from Dr. Glenn Lopate, a Board-certified neurologist from June 26, 2003, July 1, 2004 and July 7, 2005 that included strength tests done on his deltoids, biceps, triceps and wrist extensors. In the 2005 report, Dr. Lopate stated that appellant's limb-girdle muscular dystrophy had progressed mildly since the previous year. He noted that appellant's upper extremity weakness was "patchy" in that it was severe in his biceps, less severe in his deltoids and almost nonexistent in his triceps and other arm muscles.

By decision dated October 13, 2006, the Office hearing representative affirmed that appellant did not have greater than the 20 percent permanent impairment of his left arm that had been previously awarded. She found that the Office medical adviser had properly relied on the findings provided by Dr. Tippett in arriving at the overall impairment rating. The Office hearing representative noted that appellant had not submitted any additional medical opinions providing an impairment rating of his left arm.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standards applicable to all claimants.[4] Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.[5]

The standards for evaluation of the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.[6] Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedure for determining impairments of the upper extremities due to pain, discomfort, loss of sensation or loss of strength.[7] However, decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities or absence of parts that prevent effective application of maximal force in the region being evaluated.[8]

Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.[9]

ANALYSIS

The Board finds that the Office medical adviser correctly followed the procedures outlined in the A.M.A., *Guides* in determining appellant's permanent impairment.

Based on Dr. Tippett's detailed and objective examination results, the Office medical adviser found that appellant had a left upper extremity impairment rating of 15 percent. He properly found that, according to Figure 16-46, page 479, appellant's impairment for zero degrees of external rotation was two percent. Appellant's impairment for 70 degrees of

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] 20 C.F.R. § 10.404(a).

[5] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[6] *See Paul A. Toms*, 28 ECAB 403 (1987).

[7] A.M.A., *Guides* 433-521, Chapter 16, The Upper Extremities, (5th ed. 2001).

[8] *Id*. at 508.

[9] *See Thomas J. Fragale*, 55 ECAB 619 (2004); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (August 2002).

abduction was five percent using Figure 16-43, page 477. His impairment for 60 degrees of flexion was eight percent using Figure 16-40, page 476. The other range of motion findings made by Dr. Tippett did not form the basis of impairment ratings. In accordance with the A.M.A., *Guides*, the Office medical adviser did not rate appellant's decreased strength because an award was given for decreased motion.[10] When the above left upper extremity impairment loss of range of motion ratings are added, the result is 15 percent. Accordingly, the Board finds that the Office medical adviser properly established that the impairment rating and the Office correctly relied on it in issuing its schedule award decision.

Appellant contends on appeal that the medical findings relied on by the Office medical adviser were flawed because Dr. Tippett did not follow the procedures outlined in the A.M.A., *Guides*. He contended that his pain should have been included in his impairment rating. The Board notes that the impairment ratings in the A.M.A., *Guides* already account for the pain typically associated with various diseases and injuries.[11] Therefore pain does not need to be separately considered unless the impairment rating does not adequately address a claimant's level of impairment.[12] Dr. Tippet stated that he considered appellant's complaints and symptoms to be less effective than range of motion in determining his level of impairment. Appellant did not provide a medical opinion to the contrary. The Board therefore finds that the Office medical adviser properly did not include appellant's complaints of pain in the final impairment rating.

Appellant also argued that his weakness, which was caused primarily by his limb-girdle muscular dystrophy, should have been considered in his impairment rating. The Board notes that, under the A.M.A., *Guides*, impairment ratings based on motor weakness arising from degenerative neuromuscular conditions such as muscular dystrophy are treated differently from general loss of strength, which cannot be rated in cases of decreased movement.[13] These impairment ratings are not based on strength, but on the ability to perform certain activities of daily living.[14] Though appellant provided some medical reports indicating that his muscular dystrophy impacted his upper extremities, he submitted no medical evidence to establish that this increased the level of his left arm impairment. Without this evidence, appellant has not established entitlement to an additional impairment of the left upper extremity over the 20 percent impairment previously awarded.

CONCLUSION

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

[10] *See* A.M.A., *Guides* 508, section 16.8a ("Decreased strength *cannot* be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts (*e.g.*, thumb amputation) that prevent effective application of maximal force in the region being evaluated.") (Emphasis in the original.)

[11] A.M.A., *Guides* 570, section 18.3.

[12] *Id.*

[13] *Id.* at 508, section 16.8a; *see also id.* at 351, section 13.9e.

[14] *Id.* at 351, section 13.9e

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 7, 2006 and the decision of the Office hearing representative dated October 13, 2006 are affirmed.

Issued: June 15, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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