United States Department of Labor
Employees' Compensation Appeals Board

W.M., Appellant	)	
and	)	**Docket No. 07-1455**
	)	**Issued: July 18, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
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 January 16, 2007 appellant, through counsel, filed a timely appeal from the March 24, 2006 and January 9, 2007 decisions 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 the appeal.

ISSUE

The issue is whether appellant has more than 10 percent impairment of his left upper extremity, for which he received a schedule award and any impairment to his right upper extremity.

FACTUAL HISTORY

The Office accepted appellant's January 28, 2004 occupational disease claim for tendinopathy and impingement to both shoulders and cervical radiculopathy caused by his repetitive work duties as a modified distribution clerk.[1]

On August 31, 2005 appellant filed a claim for a schedule award for his right upper extremity. He also claimed additional impairment to his left shoulder greater than the 10 percent previously awarded.

On February 7, 2006 the Office advised appellant that the evidence of record was not sufficient to establish the extent of permanent impairment. It requested that he submit a medical report from an attending physician which assessed the impairment to his upper extremities based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The physician was requested to address the date of maximum medical improvement.

In a March 24, 2006 decision, the Office denied appellant's claim for a schedule award. It found that he failed to submit any medical evidence to establish permanent impairment due to his accepted injury.

Appellant requested reconsideration and submitted the April 27, 2006 report of Dr. George L. Rodriguez, Board-certified in physical medicine and rehabilitation, who obtained a history of injury and reviewed appellant's medical treatment. He complained of pain in the neck, shoulders and right hand with increased activities during the workday. On physical examination, Dr. Rodriguez found a full range of motion of the neck with pain on right rotation and moderate tenderness in the right trapezius. The left shoulder revealed a normal range of motion and the right shoulder was limited only in abduction to 160 degrees. Neurological evaluation revealed a positive Tinel's sign of the ulnar nerve area proximal to the medial epicondyle. Dr. Rodriguez reported mild atrophy in the right hypothenar eminence when compared to the left. He provided findings on grip strength testing. Dr. Rodriguez advised that appellant had degenerative disc disease with radiculopathy, bilateral shoulder tendinitis, bilateral impingement rotator cuff syndrome, a partial tear of the right rotator cuff and ulnar nerve entrapment of the right elbow. He noted appellant's status postsurgery for a left shoulder rotator cuff tear and acromioplasty. Dr. Rodriguez advised that appellant had reached maximum medical improvement as of February 2, 2002. Utilizing the A.M.A., *Guides*, he found one percent impairment of the right shoulder due to the 160 degrees of abduction at Figure 16-43.[2] Dr. Rodriguez advised that appellant had a Grade 4 sensory deficit of the C5 and C6 nerves, stating that each contributed one percent impairment or a total of two percent, for sensory loss.

[1] Appellant had several previous claims accepted by the Office. In File No. 03-0213170, the Office accepted that appellant sustained a left shoulder sprain on October 31, 1995. He underwent arthroscopic surgery and returned to light-duty work. In File No. 03-0219264, the Office accepted that appellant sustained a cervical strain with right shoulder myositis and bilateral carpal tunnel syndrome. In File No. 03-2006214, the Office accepted that he sustained a right shoulder strain on March 1, 2002. On December 9, 2002 the Office granted appellant a schedule award for 10 percent impairment of his left upper extremity.

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

He combined the impairment ratings for loss of range of motion and sensory loss to find three percent impairment of the right upper extremity.[3] Dr. Rodriguez advised that appellant had 10 percent impairment to the left upper extremity based on the diagnosis based estimate allowed for the acromioplasty and distal clavicle resection under Table 16-27.[4]

On January 5, 2007 an Office medical adviser reviewed the report of Dr. Rodriguez and concurred that appellant reached maximum medical improvement as of February 6, 2002. He agreed with the impairment rating to the left shoulder based on the distal clavicle resection, noting it constituted 10 percent impairment to the upper extremity. However, Dr. Rodriguez opined that appellant had no ratable impairment to the right upper extremity, advising that his cervical nerve root deficits were not attributable to the conditions accepted by the Office. He noted that a June 13, 2006 electromyogram and nerve conduction studies showed no evidence of spinal nerve root impairment. The medical adviser noted that Dr. Rodriguez assigned one percent impairment for loss of abduction to the right shoulder; however, he had previously reported a full range of motion on February 6, 2002. The medical adviser stated that in making an impairment rating, measurements reflecting the individual's best effort should be used. He opined that the one percent loss of abduction could represent a temporary exacerbation that should not be considered in rating the right shoulder. The medical adviser noted that several other examining physicians had opined that appellant's work-related injury had resolved.

On January 9, 2007 the Office denied appellant's claim for a schedule award. It found that the medical evidence did not establish more than 10 percent impairment of his left arm for which he previously received a schedule award. Moreover, the weight of medical evidence did not establish any permanent impairment of the right arm.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[5] and its implementing regulation[6] 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 should 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.[7] 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.[8]

[3] *Id.* at 489, Table 16-13 and 482, Table 16-10.

[4] *Id*. at 506.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id*. at § 10.404(a).

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

A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulation. As neither the Act nor the regulation provide for the payment of a schedule award for the permanent loss of use of the back or spine, no claimant is entitled to such an award.[9] However, as the Act makes provision for the upper extremities, a claimant may be entitled to a schedule award for permanent impairment to an upper extremity even though the cause of the impairment originates in the spine.[10]

ANALYSIS

The Office accepted appellant's claim for bilateral tendinopathy and impingement of both shoulders together with cervical radiculopathy caused by his employment as a distribution clerk. Appellant underwent arthroscopic surgery of his left shoulder and, on December 9, 2002, received a schedule award for 10 percent of his left arm.

In support of his claim for greater impairment due to his accepted conditions, appellant submitted the April 27, 2006 report of Dr. Rodriguez, an attending physician. In addressing impairment to appellant's left upper extremity, Dr. Rodriguez set forth findings on physical examination and noted appellant's prior surgery. Under Table 16-27, page 506, of the A.M.A., *Guides*, he rated impairment due to the left shoulder resection acromioplasty as 10 percent of the left arm. In rating appellant's right upper extremity, Dr. Rodriguez advised that appellant has sensory impairment due to the C5 and C6 nerve roots. The Board notes that Table 16-13, page 489, provides a maximum percentage of upper extremity impairment due to C5 sensory deficit or pain of five percent and C6 sensory deficit or pain of eight percent. Dr. Rodriguez found that appellant's sensory deficit was best described under Table 16-10, page 482, as Grade 4 or a 25 percent sensory deficit. Applying the grading to the maximum percentages allowed, he found one percent sensory impairment contributed by both the C5 and C6 nerve roots and a total two percent sensory loss. The Board notes that applying the 25 percent Grade 4 deficit to the C5 maximum of 5 percent, results in 1.25 percent which was rounded down to 1 percent. However, a 25 percent Grade 4 deficit applied to the C6 maximum of 8 percent, results in 2 percent impairment. Therefore, the total sensory loss under Tables 16-13 and 16-10 for impairment of the C5 and C6 nerve roots would equal three percent. Dr. Rodriguez also found loss in range of motion of abduction to 160 degrees in the right shoulder. Table 16-43, page 477, provides that 160 degrees of abduction represents one percent impairment of the upper extremity. Therefore, the medical evidence establishes that appellant has a total four percent impairment of the right arm after combining the sensory loss with the loss of range of motion.[11]

The Office medical adviser agreed with the 10 percent left arm impairment rating of Dr. Rodriguez, noting that appellant did not have any greater impairment than previously awarded for that member. However, the medical adviser disagreed with the impairment rating provided for the right arm. He stated that appellant's cervical nerve root deficits were not attributable to the conditions accepted by the Office and that a prior examination in 2002 had

[9] *George E. Williams*, 44 ECAB 530 (1993).

[10] *Id.*

[11] *See* Combined Values Chart, page 604.

demonstrated a full range of shoulder motion. The Board finds that the opinion of the Office medical adviser is of diminished probative value. Among the conditions accepted by the Office were a cervical sprain and cervical radiculopathy to both shoulders related to appellant's work as a distribution clerk. Dr. Rodriquez, as the examining physician, properly rated sensory loss (pain) affecting the right arm utilizing the proper tables in Chapter 16 of the A.M.A., *Guides*. He also rated impairment of the right shoulder due to loss of range of motion.[12] The mere fact that appellant had previously demonstrated a full range of motion in 2002 does not preclude the loss attributed to the right shoulder on examination in 2006.[13] The Board finds that the Office medical adviser did not provide adequate rationale for rejecting the right upper extremity findings of Dr. Rodriguez.

The Board finds that, the report of Dr. Rodriguez, the examining physician, constitutes the weight of medical opinion. His findings on evaluation of appellant's upper extremities are sufficient to allow the Board to clearly visualize the extent of impairment in this case.[14] The medical evidence does not establish that appellant has greater than 10 percent impairment of his left arm, for which he previously received a schedule award. The Board will modify the January 9, 2007 decision to find that appellant has four percent impairment to his right upper extremity.

CONCLUSION

The Board finds that appellant has 10 percent impairment of his left arm and 4 percent impairment of his right arm.

[12] The Board notes that loss of strength cannot be rated in the presence of decreased motion; however, this does not preclude loss of motion being combined with sensory impairment. *Compare Patricia J. Horney*, 56 ECAB 226 (2005) and *Tara L. Hein*, 56 ECAB 431 (2005).

[13] A claimant may seek a schedule award if the evidence establishes that he or she sustained increased impairment at a later date causally related to the employment injury. *See Linda T. Brown*, 51 ECAB 115 (1999).

[14] *See Renee M. Straubinger*, 51 ECAB 667 (2000).

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2007 decision of the Office of Workers' Compensation Programs be affirmed, as modified.

Issued: July 18, 2008
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