United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
	)	**Docket No. 08-249**
and	)	**Issued: July 11, 2008**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Long Beach, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 1, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' August 17, 2007 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than 11 percent permanent impairment of the right upper extremity for which he received a schedule award.

FACTUAL HISTORY

On July 16, 2004 appellant, then a 54-year-old x-ray technician, filed an occupational disease claim alleging right shoulder tendinitis as a result of performing repetitive work duties, including pushing and pulling x-ray machines and manipulating cassettes. The Office accepted

his claim for tendinitis of the right shoulder. Appellant did not stop work but continued in a limited-duty position. He retired on April 29, 2005.[1]

Appellant came under the treatment of Dr. Duc T. Ngo, a Board-certified orthopedic surgeon, who treated him from May 13, 2004 to February 7, 2005 for bilateral shoulder tendinitis and diagnosed right shoulder tendinitis and impingement syndrome. Dr. Ngo treated appellant conservatively with exercise and physical therapy and advised that he could return to work with restrictions. On January 19, 2005 he reported that appellant's condition worsened and he recommended steroid injections which were performed on January 19 and February 7, 2005. A November 11, 2004 magnetic resonance imaging (MRI) scan of the right shoulder revealed abnormal supraspinatus musculotendinious junction, no definite tear noted and glenohumeral and acromioclavicular joint arthritis.

On September 29, 2005 appellant filed a claim for a schedule award. He submitted reports from Dr. Ngo dated April 29, 2005 to June 16, 2006. Dr. Ngo noted his complaints of increasing pain in the right shoulder and recommended physical therapy. He reported that appellant retired on April 29, 2005.

On December 30, 2005 the Office advised appellant that the medical evidence in his case did not establish that he had reached maximum medical improvement and, therefore, a schedule award could not be considered.

On September 22, 2006 the Office referred appellant to Dr. H. Harlan Bleeker, a Board-certified orthopedic surgeon, for an evaluation of the extent of permanent partial impairment of the right arm pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment.*[2] In an October 12, 2006 report, Dr. Bleeker noted that appellant's physical examination of the right and left shoulder revealed abduction of 140 degrees bilaterally, forward flexion of 140 degrees bilaterally, external rotation of 90 degrees bilaterally, internal rotation of 40 degrees bilaterally and extension of 40 degrees bilaterally. He noted positive impingement sign on the right and normal sensory and motor examination. Dr. Bleeker diagnosed impingement syndrome of the right shoulder and degenerative arthritis in the acromioclavicular joint on the right and opined that the impingement syndrome was causally related to the work injury. He found no sensory loss, atrophy or weakness, no evidence of reflex sympathetic dystrophy causalgia or ankylosis and mild loss of forward flexion and abduction. Dr. Bleeker opined that appellant reached maximum medical improvement and could return to work with restrictions. He did not provide an impairment rating based on the A.M.A., *Guides.*

On November 18, 2006 an Office medical adviser reviewed Dr. Bleeker's October 12, 2006 report and found that appellant had one percent impairment of the right arm under the A.M.A., *Guides*. He noted appellant had no impairment for loss of motion, muscle weakness,

[1] The record reflects that appellant filed a claim for an injury sustained on March 6, 2002, which was accepted for strain/sprain of the knee, medial collateral ligament, File No. 13-2048737; on December 11, 2003 appellant filed a claim for an injury which was accepted for strain/sprain of the left arm, File No. 13-2095204; and on February 18, 2005 appellant filed a claim for a left arm injury which was denied, File No. 13-2125855.

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

atrophy or instability. The medical adviser determined that appellant had one percent impairment for sensory deficit or loss. He calculated a Grade 4 pain/decreased sensation that is forgotten with activity[3] of the axillary nerve/deltoid muscle,[4] resulting in one percent impairment of the right upper extremity.

On November 3, 2006 Dr. Ngo treated appellant for intermittent pain of the right shoulder and diagnosed rotator cuff syndrome.

In a decision dated December 1, 2006, the Office granted appellant a schedule award for one percent permanent impairment of the right arm. The period of the schedule award was from April 29 to May 20, 2005.

On January 12, 2007 appellant requested reconsideration. He submitted physical therapy notes dated June 10 and July 18, 2004. Appellant resubmitted a work capacity evaluation prepared by Dr. Bleeker dated October 12, 2006 four copies of Kaiser Permanente's documentation of medical impairment.

By decision dated March 22, 2007, the Office denied appellant's reconsideration request on the grounds that the evidence was insufficient to warrant further review of the merits.

On June 21, 2007 appellant requested reconsideration. In reports dated April 18 to May 11, 2007, Dr. Ngo noted appellant's complaints of pain in the right shoulder and diagnosed rotator cuff syndrome. In reports dated May 24 and June 14, 2007, he provided findings upon physical examination of tenderness of the right subacromial, deltoids and supraspinatus, right shoulder flexion of 125 degrees, abduction of 125 degrees, motor examination revealed motor strength of 4/5 for both deltoids and supraspinatii muscles and an intact sensory examination. On July 24, 2007 Dr. Ngo noted that the findings upon physical examination were unchanged and appellant was permanent and stationary as of September 26, 2005.

The Office referred Dr. Ngo's report to an Office medical adviser. In a July 25, 2007 report, the medical adviser advised that appellant had 11 percent impairment of the right arm. He advised that appellant reached maximum medical improvement on May 24, 2007. The medical adviser calculated flexion of 125 degrees for four percent impairment[5] and abduction of 125 degrees for three percent impairment,[6] or a total of seven percent impairment for loss of motion. He found that appellant had four percent impairment of the right arm for motor deficit in the distribution of the suprascapular nerve under Table 16-11 of the A.M.A., *Guides*.[7] The medical adviser noted that the distribution of the suprascapular nerve under Table 16-15[8]

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

[4] *Id.* at 492, Table 16-15.

[5] *Id*. at 476, Figure 16-40.

[6] *Id*. at 477, Figure 16-43.

[7] *Id*. at 482, Table 16-11.

[8] *Id.* at 492, Table 16-15.

provides a maximum 16 percent impairment of the suprascapular nerve due to motor deficit. He opined that appellant's motor deficit was consistent with Grade 4 under Table 16-11, or a motor deficit of 25 percent. Pursuant to Table 16-11, the medical adviser multiplied the 25 percent grade with the 16 percent maximum allowed for the suprascapular nerve to arrive at 4 percent impairment for motor deficit in the distribution of the suprascapular nerve for the right upper extremity.[9] He utilized the Combined Values Chart to find 11 percent impairment of the right upper extremity.

In a decision dated August 17, 2007, the Office granted appellant a schedule award of 11 percent permanent impairment of the right arm. It noted that appellant was previously paid a schedule award of 1 percent impairment of the right arm and would receive compensation for an additional 10 percent permanent impairment. The period of that award was from May 24 to December 28, 2007.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[10] and its implementing regulation[11] 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[12]

ANALYSIS

On appeal, appellant contends that he has greater impairment than that found by the Office. The Office accepted appellant's claim for tendinitis of the right shoulder. It granted appellant 11 percent impairment of the right upper extremity on August 17, 2007.

Appellant's attending physician, Dr. Ngo, prepared a report dated May 24, 2007 noting findings upon physical examination of the right shoulder of tender subacromial, deltoids and supraspinatus. He found flexion of 125 degrees and abduction of 125 degrees. Motor examination revealed motor strength of 4/5 for both deltoids and supraspinatii muscles and the sensory examination was intact. Dr. Ngo noted appellant was permanent and stationary as of September 26, 2005.

On July 25, 2007 an Office medical adviser reviewed the report of Dr. Ngo to find 11 percent permanent impairment of the right upper extremity under the A.M.A., *Guides*. He

[9] *Id*. at 484, 492, Tables 16-11, 16-15.

[10] 5 U.S.C. § 8107.

[11] 20 C.F.R. § 10.404.

[12] *Michele Tousley*, 57 ECAB 130 (2005).

advised that appellant reached maximum medical improvement on May 24, 2007. The medical adviser correctly calculated flexion of 125 degrees for four percent impairment[13] and abduction of 125 degrees for a three percent impairment,[14] for a seven percent impairment for loss of motion.

With regard to decreased strength and weakness, the medical adviser found that appellant had four percent impairment of the right upper extremity for motor deficit in the distribution of the suprascapular nerve under Table 16-11 of the A.M.A., *Guides*.[15] In calculating motor deficit impairment, Dr. Ngo indicated that the distribution of the suprascapular nerve under Table 16-15[16] has a maximum 16 percent impairment of the suprascapular nerve due to motor deficit. The medical adviser found appellant's motor deficit was consistent with grade 4 under Table 16-11 for which there is a maximum motor deficit of 25 percent. He followed the procedure in Table 16-11 and multiplied the 25 percent grade with the 16 percent maximum allowed for the suprascapular nerve to arrive at 4 percent impairment for motor deficit in the distribution of the suprascapular nerve for the right upper extremity.[17] Using the Combined Values Chart appellant would be entitled to 11 percent permanent impairment of the right upper extremity.[18]

The Board finds that the medical adviser provided a reasoned opinion as to the degree of permanent impairment under the fifth edition of the A.M.A., *Guides*. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no greater impairment. Dr. Ngo did not rate appellant's impairment and the Office medical adviser used the findings from his reports to rate appellant's impairment. There is no medical evidence that supports any greater impairment of the right arm.

CONCLUSION

The Board finds that appellant has no more than 11 percent permanent impairment of the right arm for which he has received a schedule award.[19]

[13] A.M.A., *Guides*, Figure 16-40 at 476.

[14] *Id*. at Figure 16-43, at 477.

[15] *Id*. at Table 16-11, at 482.

[16] *Id.* at Table 16-15, at 492.

[17] *Id.* at Tables 16-11, 16-15, at 484, 492.

[18] *See id.* at 604, Combined Values Chart.

[19] On appeal appellant alleges that he also has symptoms in his left upper extremity. However, the Office claim before the Board and the decision over which the Board has jurisdiction pertains only to the right arm. The Board does not have jurisdiction over any matter pertaining to the left arm. *See* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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