United States Department of Labor
Employees' Compensation Appeals Board

STEVEN M. HACH, Appellant	)	
and	)	**Docket No. 04-355**
	)	**Issued: July 26, 2005**
DEPARTMENT OF THE ARMY, DSS MAINTENANCE, Fort Sheridan, IL, Employer	)	

Appearances:
Steven M. Hach, pro se
Miriam D. Ozur, Esq., for the Director

Oral Argument May 26, 2005

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 24, 2003 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated June 26 and November 6, 2003, which found that he was not entitled to a schedule award greater than the two percent previously awarded for an impairment of the right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over both decisions.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he has greater than a two percent impairment of the right upper extremity for which he received a schedule award.

FACTUAL HISTORY

On January 6, 1999 appellant, then a 48-year-old electronics mechanic, sustained a cervical fascial strain, spinal subluxation and temporary aggravation of right shoulder

impingement syndrome causally related to his federal employment when he was injured in a motor vehicle accident. He retired in April 1999. On August 3, 2002 appellant filed a schedule award claim and submitted a May 9, 2002 report in which his attending physician, Dr. Joel P. Carroll, Board-certified in emergency medicine, provided range of motion findings for appellant's right shoulder, noting 170 degrees of flexion and 40 to 45 degrees of extension. He briefly referenced the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[1] and concluded that he was entitled to a six percent right upper extremity impairment.

In a July 29, 2002 report, Dr. David H. Garelick, an Office medical consultant Board-certified in orthopedic surgery, reviewed the medical evidence of record, including Dr. Carroll's May 9, 2002 report and advised that, under Figure 16-40 of the A.M.A., *Guides*, 170 degrees of flexion was equal to a 1 percent impairment and 40 degrees of extension was equal to a 1 percent impairment, for a total 2 percent right upper extremity impairment. He stated that maximum medical improvement had been reached on July 29, 2002. On September 11, 2002 appellant was granted a schedule award for a two percent impairment of the right upper extremity.

Appellant timely requested a hearing that was held on May 8, 2003. Subsequent to the hearing, he submitted additional medical evidence, including an April 17, 2003 report in which Dr. Aftab A. Ansari, Board-certified in orthopedic surgery, advised that appellant had full range of motion of his right shoulder including external rotation of 60 degrees and opined that he could not say with certainty that he had permanent aggravation. In reports dated June 6 and 13, 2003, Dr. Subbanna Jayaprakash, Board-certified in physical medicine and rehabilitation, reported the history of injury and diagnosed right C6 radiculopathy due to C5-6 and C6-7 disc herniations, adhesive capsulitis of the right shoulder and recurrent supraspinatus tendinitis. He provided range of motion findings for the cervical spine and shoulders, noting right shoulder findings of 95 degrees of abduction, 141 degrees of forward flexion, 25 degrees of extension, 22 degrees of external rotation and 85 degrees of internal rotation. Utilizing the fifth edition of the A.M.A., *Guides*, Dr. Jayaprakash advised that appellant had a seven percent cervical spine impairment and a five percent shoulder impairment. He stated that maximum medical improvement had been reached on June 13, 2003. By decision dated June 25, 2003, an Office hearing representative affirmed the prior decision.

Appellant requested reconsideration and submitted a July 6, 2003 report in which Dr. Jayaprakash reiterated his previous diagnoses and advised by providing a check mark that the diagnosed conditions were caused by the January 6, 1999 motor vehicle accident. He referenced Figures 16-40 and 16-46 of the A.M.A., *Guides*, finding that appellant had a five percent shoulder impairment. Dr. Jayaprakash also referenced Tables 15-12 and 15-13, concluding that appellant had a seven percent cervical spine impairment. In an August 26, 2003 report, Dr. Carroll repeated his previous physical findings and referenced Figures 16-40 and 16-46 of the A.M.A., *Guides* to conclude that appellant had a six percent right upper extremity impairment and Tables 15-12 and 15-13 to find a seven percent impairment of his cervical spine.

In a September 24, 2003 report, an Office medical adviser noted Dr. Jayaprakash's diagnosis of adhesive capsulitis and stated that this would account for the decreased range of

[1] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

motion. The Office medical adviser advised that this condition is self-limiting, stating, "if indeed [appellant] has adhesive capsulitis, then his [range of motion] should return, albeit slowly (greater than one year for full resolution)." He concluded that Dr. Jayaprakash's range of motion findings could not be used for an impairment evaluation and that appellant should be reevaluated once the adhesive capsulitis had resolved. In a decision dated November 6, 2003, the Office denied modification of the prior decision.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[2] and section 10.404 of the implementing federal regulations,[3] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[4] Chapter 16 provides the framework for assessing upper extremity impairments.[5]

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*. However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment.[6]

It is well established that the period covered by the schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted employment injury. The Board has explained, and the A.M.A., *Guides* provides, that maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.[7] It is understood that an individual's condition is dynamic and maximum medical improvement refers to a date from which further recovery or deterioration is not anticipated, although over time there may be some expected change. Once an impairment has reached maximum medical improvement, a permanent impairment rating may be

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[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *See Joseph Lawrence, Jr., supra* note 1; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[5] A.M.A., *Guides, supra* note 1 at 433-521.

[6] *Robert V. Disalvatore*, 54 ECAB ___ (Docket No. 02-2256, issued January 17, 2003).

[7] *Mark A. Holloway*, 55 ECAB ____ (Docket No. 03-2144, issued February 13, 2004); *see* A.M.A., *Guides, supra* note 1 at 19.

performed.[8] The determination of whether maximum medical improvement has been reached is based on the probative medical evidence of record and is usually considered to the date of the evaluation by the attending physician which is accepted as definitive by the Office.[9]

No schedule award is payable for permanent loss of or loss of use, of anatomical members or functions or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use, of the back or the body as a whole, no claimant is entitled to such an award.[10] Amendments to the Act, however, modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. As the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.[11]

When an injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct.[12] It is well established that when a factor of employment aggravates, accelerates or otherwise combines with a preexisting, nonoccupational pathology, the employee is entitled to compensation.[13] Likewise, any preexisting impairment to the schedule member is to be included.[14] As noted by Larson, this is "sometimes expressed by saying that the employer takes the employee as he finds him."[15]

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[16]

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[8] *Patricia J. Penney-Guzman*, 55 ECAB ____ (Docket No. 04-1052, issued September 30, 2004).

[9] *Mark A. Holloway, supra* note 7.

[10] The Act specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19); *see Jesse Mendoza*, 54 ECAB ___ (Docket No. 03-1516, issued September 10, 2003); *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

[11] *See Tomas Martinez*, 54 ECAB ___ (Docket No. 03-396, issued June 16, 2003); *Thomas J. Engelhart*, 50 ECAB 319 (1999).

[12] *Bobbie D. Daly*, 53 ECAB 691 (2002).

[13] *Chris Wells*, 52 ECAB 445 (2001).

[14] *Michael C. Milner*, 53 ECAB 446 (2002).

[15] *Id*.

[16] 5 U.S.C. § 8123(a).

ANALYSIS

In the instant case, the Office accepted that appellant sustained an employment-related cervical fascial strain, spinal subluxation and temporary aggravation of right shoulder impingement syndrome and paid a schedule award for the right upper extremity totaling two percent.

The Board initially finds that appellant would not be entitled to a schedule award for his cervical spine injury based on the range of motion findings reported by Dr. Jayaprakash as no schedule award is payable for the back.[17] However, as stated above, appellant could be entitled to a schedule award for an impairment to an extremity even though the cause of the impairment originated in the spine.[18] In this case, the Office accepted his claim for a cervical condition and Dr. Jayaprakash diagnosed C6 radiculopathy due to C5-6 and C6-7 disc herniations and advised by providing a check mark "yes," that these conditions were caused by the January 6, 1999 motor vehicle accident. Thus, while appellant may not receive a schedule award for permanent impairment to his cervical spine, he could be entitled to a schedule award for permanent impairment to his extremities if the accepted cervical spine condition caused such impairment.[19] However, the Board has long held that the checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[20] Appellant, therefore, has not established that he is entitled to a schedule award based on his employment-related cervical fascial strain.[21]

Regarding appellant's contention that he is entitled to an increased award because of chronic shoulder pain, the Board notes that the fifth edition of the A.M.A., *Guides* provides that "the impairment ratings in the body system organ chapters make allowance for any accompanying pain."[22] FECA Bulletin No. 01-05[23] notes that "examiners should not use [Chapter 18] to rate pain-related impairment for any condition that can be adequately rated on

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[17] *Supra* note 10.

[18] *Supra* note 11.

[19] *See Tania R. Keka*, 55 ECAB ___ (Docket No. 04-177, issued February 27, 2004).

[20] *Linda Thompson*, 51 ECAB 694 (2000). Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000). Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994). Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship. *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[21] *Tomas Martinez, supra* note 11.

[22] A.M.A., *Guides, supra* note 1, Chapter 2.5e, page 20.

[23] Issued January 29, 2001.

the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides* and specifically provides that Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain, identifying those as Chapters 13, 16 and 17.[24] Appellant, therefore, would not be entitled to an increased schedule award due to pain.

The Board also finds that the Office properly issued appellant a schedule award for a two percent impairment of the right upper extremity on September 11, 2002 based on the medical evidence of record at that time. The Office medical adviser properly reviewed the May 9, 2002 report of Dr. Carroll, appellant's attending physician, and used the only range of motion measurements he provided, 170 degrees of flexion and 40 degrees of extension, to evaluate appellant's right upper extremity under the fifth edition of the A.M.A., *Guides*. The Office medical adviser properly found that under Figure 16-40 shoulder flexion of 170 degrees provided a 1 percent impairment and shoulder extension of 40 degrees a 1 percent impairment,[25] for a total right upper extremity impairment of 2 percent.[26] While Dr. Carroll concluded that appellant had a total six percent impairment of the right upper extremity, he provided no additional measurements or any additional explanation. He, therefore, provided no basis for an additional impairment rating. As the Office medical adviser provided the only evaluation conforming with the A.M.A., *Guides*, it constituted the weight of the medical evidence in establishing that appellant was entitled to a schedule award for a two percent right upper extremity impairment.[27]

A claimant, however, retains the right to file a claim for an increased schedule award based on new exposure or on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated.[28] In this case, appellant submitted several reports from his attending physiatrist, Dr. Jayaprakash, who provided range of motion findings for his right shoulder, diagnosed *inter alia*, adhesive capsulitis and advised that maximum medical improvement had been reached on June 13, 2003. The Office medical adviser, however, advised that adhesive capsulitis is self-limiting, stating that, if appellant had this condition, then his range of motion should slowly return and that he should be reevaluated once the adhesive capsulitis had resolved.

The Board, therefore, finds that this case is not in posture for decision as a conflict in medical evidence has been created based on the difference of opinion between appellant's attending physiatrist, Dr. Jayaprakash, and the Office medical adviser regarding the diagnosis of adhesive capsulitis, whether it preexisted or was a consequence of the January 6, 1999 employment-related motor vehicle accident and whether maximum medical improvement has been reached. The case will be remanded to the Office for further development. On remand the

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[24] *See Mark A. Holloway, supra* note 7.

[25] A.M.A., *Guides, supra* note 1 at 476.

[26] A.M.A., *Guides, supra* note 1 at 472.

[27] *See Linda R. Sherman*, 56 ECAB ____ (Docket No. 04-1510, issued October 14, 2004).

[28] *Tommy R. Martin*, 56 ECAB ____ (Docket No. 03-1491, issued January 21, 2005); *Linda T. Brown*, 51 ECAB 115 (1999).

Office should refer appellant, an updated statement of accepted facts and a list of specific questions to an appropriate Board-certified physician for an impartial medical evaluation regarding his right shoulder condition and his entitlement to an increased schedule award. After such further development as the Office deems necessary, the Office shall issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for decision, as a conflict in medical evidence has been created regarding whether appellant is entitled to an increased schedule award for his right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 6 and June 25, 2003 be set aside and the case be remanded for further action consistent with this decision.

Issued: July 26, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member