United States Department of Labor
Employees' Compensation Appeals Board

F.L., Appellant	)	
and	)	**Docket No. 07-180**
	)	**Issued: May 3, 2007**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Southeastern, PA, 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 October 25, 2006 appellant filed a timely appeal from a May 5, 2006 decision of the Office of Workers' Compensation Programs, adjudicating a 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 15 percent impairment of his left upper extremity.

FACTUAL HISTORY

On March 29, 1993 appellant, then a 37-year-old mail handler, sustained acute cervical, thoracic and lumbosacral strains and sprains, and a left shoulder strain and sprain in the performance of duty.[1] On November 20, 2003 he filed a claim for a schedule award.

On August 12, 2003 Dr. David Weiss, an attending osteopathic orthopedist, found that appellant had a 24 percent impairment of the left upper extremity, including 10 percent for left shoulder resection arthroplasty (surgery involving a joint), based on Table 16-27 at page 506 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment,*[2] 10 percent for grip strength deficit, based on Table 16-32 and 16-34 at page 509, 2 percent for decreased range of motion, including flexion of 170 degrees (1 percent) and abduction of 160 degrees (1 percent), based on Figure 16-40 at page 476 and Figure 16-43 at page 477, and 3 percent for pain-related impairment, based on Figure 18-1 at page 574.

On February 23, 2004 a district medical adviser, found that appellant had a 15 percent impairment of the right upper extremity based on the physical findings of Dr. Weiss, including 10 percent for appellant's arthroplasty, 3 percent for pain and 2 percent for decreased range of motion. He indicated that the fifth edition of the A.M.A., *Guides* at page 508 precluded grip strength impairment in situations involving impairment due to pain, decreased range of motion or absence of parts (resection), all of which were included in the impairment rating of Dr. Weiss.

By decision dated March 3, 2004, the Office granted appellant a schedule award for 46.8 weeks for the period August 12, 2003 to July 4, 2004 based on a 15 percent impairment of the left upper extremity.[3]

Appellant requested a hearing that was held on February 28, 2006.

On May 5, 2006 the Office hearing representative denied modification of the March 3, 2004 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

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[1] The file for the 1993 left shoulder injury was combined with the file for appellant's accepted September 13, 1989 injury which included the conditions of a left shoulder acromioclavicular joint separation, rotator cuff tear and adhesive capsulitis. Appellant underwent left shoulder surgery in 1990 consisting of arthrotomy, acromioplasty, ligament resection (excision of a structure) and debridement of the rotator cuff.

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

[3] The Federal Employees' Compensation Act provides for 312 weeks of compensation for 100 percent loss or loss of use of an arm. 5 U.S.C. § 8107(c)(1). Multiplying 312 weeks by 15 percent equals 46.8 weeks of compensation.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

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

The Office accepted that appellant sustained a left shoulder acromioclavicular joint separation, rotator cuff tear, adhesive capsulitis, acute cervical, thoracic and lumbosacral strains and sprains, and a left shoulder strain and sprain in the performance of duty and related surgery which included arthrotomy, acromioplasty, ligament resection and debridement of the rotator cuff.

Dr. Weiss found that appellant had a 24 percent impairment of the left upper extremity, including 10 percent for arthroplasty, based on Table 16-27 at page 506 of the A.M.A., *Guides*; 10 percent for grip strength deficit, based on Table 16-32 and 16-34 at page 509, 2 percent for decreased range of motion, including flexion of 170 degrees (1 percent) and abduction of 160 degrees (1 percent), based on Figure 16-40 at page 467 and Figure 16-43 at page 477, and 3 percent for pain-related impairment, based on Figure 18-1 at page 574.

The district medical adviser found that appellant had a 15 percent impairment of the left upper extremity based on the physical findings of Dr. Weiss,[8] including 10 percent for the arthroplasty, 3 percent for pain and 2 percent for decreased range of motion.

Regarding grip strength, the A.M.A., *Guides* states in section 16.8 at page 508:

> "In a rare case, if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the [A.M.A.], *Guides*, the loss of strength may be rated separately…. If the examiner judges that loss of strength should be rated separately in an extremity that presents other impairments, the impairment due to loss of strength *could be combined* with the other impairments, *only* if based on unrelated etiologic or pathomechanical causes. *Otherwise, the impairment ratings based on objective anatomic findings take precedence.* Decreased strength *cannot* be rated in the presence of decreased motion [range of motion], painful conditions, deformities,

[6] *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[7] 20 C.F.R. § 10.404.

[8] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

> or absence of parts (*e.g.*, thumb amputation) that prevent effective application of maximal force in the region being evaluated." (Emphasis in the original.)

There is no basis for including impairment due to loss of grip strength in appellant's left upper extremity impairment rating. Dr. Weiss provided objective anatomic findings based on appellant's resection arthroplasty and range of motion and he also found impairment due to pain. Therefore, additional impairment based on grip strength is precluded by the procedures in the A.M.A., *Guides*.

Regarding 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 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*." 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 states at page 482:

> "Upper extremity impairments due to sensory deficits or pain resulting from peripheral nerve disorders are determined according to the grade of severity in diminution or loss of function and the relative maximum upper extremity impairment value of the nerve structure involved, as shown in the classification (a) and procedural (b) steps described in Table 16-10 and the impairment determination method detailed in section 16.5b."

Dr. Weiss 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*. In turn, the district medical adviser incorporated the pain rating of Dr. Weiss under Chapter 18 without explaining why application of Chapter 16 was not adequate to calculate appellant's impairment due to upper extremity pain. The Board finds that further development of the medical evidence is required regarding appellant's impairment due to sensory loss or pain based on application of the procedures in Chapter 16 of the fifth edition of the A.M.A., *Guides*.

CONCLUSION

The Board finds that this case is not in posture for a decision. Further development of the medical evidence is required regarding appellant's left upper extremity impairment due to pain.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 5, 2006 is set aside and the case is remanded for further action consistent with this decision.

Issued: May 3, 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