United States Department of Labor
Employees' Compensation Appeals Board

E.S., Appellant	)	
and	)	**Docket No. 08-280**
	)	**Issued: November 3, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Largo, FL, Employer	)	

Appearances:
Appellant, pro se
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 November 5, 2007 appellant filed a timely appeal from August 10, 2007 and February 1, 2008 decisions of the Office of Workers' Compensation Programs, denying his claim for an additional schedule award, and a September 11, 2007 decision denying his request for reconsideration. 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 26 percent permanent impairment to each upper extremity.

FACTUAL HISTORY

On October 28, 1996 appellant, then a 48-year-old city carrier, filed an occupational disease claim alleging that he developed osteoarthritis in both upper extremities caused by casing and delivering mail for 28 years. The Office accepted his claim for permanent aggravation of osteoarthritis of both shoulders. Appellant subsequently filed a claim for a schedule award. By

decisions dated January 21, 2000, February 7, 2003, September 2, 2004, August 4, 2005 and August 16, 2006, the Office granted him schedule awards totaling 26 percent impairment to each upper extremity.

On May 19, 2007 appellant filed a claim for an additional schedule award for his right and left upper extremities. He submitted a May 8, 2007 report in which Dr. David J. Kaler, a Board-certified orthopedic surgeon, found that appellant had 30 percent impairment to his right upper extremity for decreased range of motion, including 10 degrees of internal and external rotation, 60 degrees of forward elevation (flexion), 10 degrees of backward elevation (extension), 20 degrees of abduction and 5 degrees of adduction. Dr. Kaler found that appellant had 28 percent impairment to his left upper extremity, including 10 degrees of internal and external rotation, 60 degrees of flexion, 10 degrees of extension, 20 degrees of abduction and 5 degrees of adduction.[1]

On June 26, 2007 an Office medical adviser found that appellant had 26 percent impairment to each upper extremity, based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*). This included five percent for 10 degrees of internal rotation and two percent for 10 degrees of external rotation, according to Figure 16-46 at page 479 of the A.M.A., *Guides*, eight percent for 60 degrees of flexion and two percent for 10 degrees of extension, according to Figure 16-40 at page 476, seven percent for 20 degrees of abduction and two percent for 5 degrees of adduction, according to Figure 16-43 at page 477.[2]

By decision dated August 10, 2007, the Office denied appellant's claim for an additional schedule award on the grounds that the evidence did not establish that he had more than 26 percent impairment to each upper extremity.

Appellant requested reconsideration. He did not submit any new evidence or argument. By decision dated September 11, 2007, the Office denied appellant's request for reconsideration on the grounds that the evidence did not warrant further merit review of his schedule award claim.

Appellant requested reconsideration. He submitted October 16, 2007 and January 11, 2008 reports in which Dr. Kaler found 30 percent impairment to appellant's right upper extremity for decreased range of motion, including 10 degrees of internal and external rotation, 45 degrees of flexion, 10 degrees of extension, 20 degrees of abduction and 5 degrees of adduction. Dr. Kaler found 28 percent impairment to appellant's left upper extremity for decreased range of motion, including 10 degrees of internal and external rotation, 60 degrees of flexion, 10 degrees of extension, 20 degrees of abduction and 5 degrees of adduction. He did not

[1] There is no explanation as to why Dr. Kaler found a difference in impairment between the right and left upper extremities based on the same range of motion findings.

[2] *See* Federal (FECA) Procedural 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).

explain how he determined appellant's impairment with reference to applicable sections of the A.M.A., *Guides*.

On January 25, 2008 Dr. Howard P. Hogshead, a Board-certified orthopedic surgeon and Office medical adviser, found that appellant had 24 percent impairment to his right upper extremity based on the physical findings in Dr. Kaler's report, including 5 percent for 10 degrees of internal rotation and 2 percent for 10 degrees of external rotation, according to Figure 16-46 at page 479 of the A.M.A., *Guides*, 9 percent for 60 degrees of flexion and 2 percent for 10 degrees of extension, according to Figure 16-40 at page 476, 7 percent for 20 degrees of abduction and 1 percent for 5 degrees of adduction, according to Figure 16-43 at page 477. He found 23 percent impairment to appellant's left upper extremity, including 5 percent for 10 degrees of internal rotation and 2 percent for 10 degrees of external rotation, according to Figure 16-46 at page 479 of the A.M.A., *Guides*, 8 percent for 60 degrees of flexion and 2 percent for 10 degrees of extension, according to Figure 16-40 at page 476, 7 percent for 20 degrees of abduction and 1 percent for 5 degrees of adduction, according to Figure 16-43 at page 477.

By decision dated February 1, 2008, the Office affirmed the August 10, 2007 schedule award decision.[3]

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[4] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[5]

ANALYSIS

The Board finds that this case is not in posture for a decision.

Appellant sustained employment-related permanent aggravation of osteoarthritis of his shoulders. The Office granted him schedule awards totaling 26 percent impairment to each upper extremity. This included five percent for 10 degrees of internal rotation and two percent for 10 degrees of external rotation, according to Figure 16-46 at page 479 of the A.M.A., *Guides*, eight percent for 60 degrees of flexion and two percent for 10 degrees of extension, according to Figure 16-40 at page 476, seven percent for 20 degrees of abduction and two percent for 5 degrees of adduction, according to Figure 16-43 at page 477.

[3] Subsequent to the February 1, 2008 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001).

In October 16, 2007 and January 11, 2008 reports, Dr. Kaler found that appellant had 30 percent impairment to his right upper extremity for decreased range of motion, including 10 degrees of internal and external rotation, 45 degrees of flexion,[6] 10 degrees of extension, 20 degrees of abduction and 5 degrees of adduction. He found 28 percent impairment to appellant's left upper extremity for decreased range of motion, including 10 degrees of internal and external rotation, 60 degrees of flexion, 10 degrees of extension, 20 degrees of abduction and 5 degrees of adduction. As noted, Dr. Kaler did not explain how he determined appellant's impairment with reference to applicable sections of the A.M.A., *Guides*.

Dr. Hogshead found that appellant had 24 percent to his right upper extremity based on the physical findings in Dr. Kaler's report, including 5 percent for 10 degrees of internal rotation and 2 percent for 10 degrees of external rotation, according to Figure 16-46 at page 479 of the A.M.A., *Guides*, 9 percent for 45 degrees of flexion and 2 percent for 10 degrees of extension, according to Figure 16-40 at page 476, 7 percent for 20 degrees of abduction and 1 percent for 5 degrees of adduction, according to Figure 16-43 at page 477.[7] He found 23 percent impairment to appellant's left upper extremity, including 5 percent for 10 degrees of internal rotation and 2 percent for 10 degrees of external rotation, according to Figure 16-46 at page 479 of the A.M.A., *Guides*, 8 percent for 60 degrees of flexion and 2 percent for 10 degrees of extension, according to Figure 16-40 at page 476, 7 percent for 20 degrees of abduction and 1 percent for 5 degrees of adduction, according to Figure 16-43 at page 477.

The Board finds that Dr. Hogshead did not correctly apply the A.M.A, *Guides* to Dr. Kaler's findings. Dr. Hogshead combined the various range of motion impairments of appellant's shoulders using the Combined Values Chart at page 604 of the A.M.A., *Guides*, rather than adding them. Section 16.4i, entitled "Shoulder Motion Impairment," at page 474 provides that "The upper extremity impairment resulting from abnormal shoulder [range of] motion is calculated from the pie charts by *adding* directly the upper extremity impairment values contributed by each [range of] motion unit." (Emphasis in the original.) The section entitled "Determining Impairment Due to Abnormal Shoulder Motion" at page 479 states:

> "1. Using Figures 16-40, 16-43 and 16-46, determine the impairment of the upper extremity contributed by each shoulder unit [range] of motion (flexion and extension, abduction and adduction, internal and external rotation) by adding [the impairment values].
>
> "2. Because the relative upper extremity value of each shoulder functional unit has been taken into consideration in the impairment pie charts, the impairment values contributed by each unit of motion are *added* to determine the impairment

[6] The Board notes that the only change between Dr. Kaler's earlier impairment rating on May 19, 2007 and his October 16, 2007 and January 11, 2008 impairment rating is a change in appellant's right shoulder flexion measurement from 60 degrees to 45 degrees.

[7] The Board notes that the Office previously accepted that appellant had two percent impairment to each shoulder for five degrees of adduction. In Figure 16-43 at page 477 of the A.M.A., *Guides*, zero degrees of shoulder adduction constitutes two percent impairment. Ten degrees of adduction constitutes one percent impairment. Appellant's five degrees of shoulder adduction falls between these measurements and an Office medical adviser previously selected the higher value, two percent.

of the upper extremity due to abnormal shoulder motion…." (Emphasis in the original.)

Additionally, Dr. Hogshead did not explain how he determined impairment for appellant's right shoulder flexion range of motion measurement that fell between numbers in the pie chart of Figure 16-40 at page 476. He found nine percent impairment for 45 degrees of flexion. Section 16.4i, "Shoulder Motion Impairment," provides that "*Impairment values for motion measurements falling between those shown in the pie chart may be adjusted or interpolated proportionally in the corresponding interval.*" (Emphasis in the original.) In Figure 16-40 at page 476, 40 degrees of shoulder flexion constitutes 10 percent impairment. Fifty degrees of shoulder flexion constitutes nine percent impairment. Appellant's 45 degrees of right shoulder flexion falls between these measurements and Dr. Hogshead selected the lower number, nine percent. He did not explain why he selected the lower number, rather than the higher number, for appellant's right shoulder flexion range of motion measurement that fell between two figures on the pie chart in Figure 16-40.

On remand the Office should obtain a revised impairment rating from Dr. Hogshead or another Office medical adviser that addresses these two issues regarding appellant's right shoulder range of motion impairment. After such further development as it deems necessary, it should issue an appropriate decision on his claim for an additional schedule award for his right upper extremity.

CONCLUSION

The Board finds that this case is not in posture for a decision. It requires further development of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 1, 2008 and September 11 and August 10, 2007 are set aside and the case is remanded for further action consistent with this decision.

Issued: November 3, 2008
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