United States Department of Labor
Employees' Compensation Appeals Board

G.C., Appellant	)	
and	)	**Docket No. 07-2220**
	)	**Issued: October 20, 2008**
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, New Cumberland, PA, 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 August 29, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' January 5 and August 3, 2007 merit decisions regarding his entitlement to schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a 31 percent permanent impairment of his right arm and a 23 percent permanent impairment of his left arm, for which he received schedule award compensation.

FACTUAL HISTORY

The Office accepted that on August 25, 1985 appellant, then a 41-year-old laborer, sustained a lumbar strain, fractured right clavicle and lumbar radiculopathy of both legs due to a

fall at work.[1] He continued to work in limited-duty positions but stopped work for various periods. The Office accepted that on February 26, 1996 appellant sustained a lumbar strain due to lifting a 12-pound box.[2] On April 4, 1996 appellant's legs weakened and he fell as he was walking down stairs. The Office accepted that this fall, as well as several later accidents, were a consequence of his August 27, 1985 and February 26, 1996 employment injuries. It accepted the following additional work-related conditions: clavicle fractures, fifth through seventh rib fractures, bilateral shoulder tendinitis, right carpal tunnel syndrome, left plantar fasciitis, left wrist de Quervain's, displacement of lumbar disc without myelopathy, left knee contusion and left meniscal tear.

On February 20, 2001 appellant underwent a right carpal tunnel release which was authorized by the Office. On August 12, 2001 Dr. Philip Wirganowicz, a Board-certified orthopedic surgeon serving as an Office referral physician, indicated that appellant chiefly complained of bilateral shoulder, wrist and hand pain, lower back pain which radiated into his right leg and right hip pain. Appellant's pain was exacerbated with activities such as walking, bending and lifting. Dr. Wirganowicz indicated that motor strength in the extremities was full and noted that there was no atrophy in the extremities. In an accompanying form, Dr. Wirganowicz carried out various range of motion tests, including a test for range of shoulder motion which showed that appellant had the following motions in each shoulder: 90 degrees of flexion, 40 degrees of extension, 90 degrees of abduction, 40 degrees of adduction, 40 degrees of internal rotation and 45 degrees of external rotation. He indicated that appellant's bilateral shoulder pain was moderate in nature.

On August 19, 2001 Dr. Leonard A. Simpson, a Board-certified orthopedic surgeon serving as an Office medical adviser, summarized the findings of Dr. Wirganowicz and found that appellant reached maximum medical improvement on August 11, 2001. Dr. Simpson noted that, under the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), appellant had an 80 percent grade for sensory loss associated with the right S1 nerve root. He stated that multiplying this figure by the five percent maximum value for such loss yielded a right leg impairment of four percent. Dr. Simpson indicated that appellant did not have any impairment due to atrophy or weakness of the lower extremities and there was no evidence of limitation of hip, knee, ankle, subtalar or toe range of motion. He found no basis to rate impairment of the left leg.

Dr. Simpson indicated that appellant had a 60 percent pain grade in each shoulder associated with an unspecified nerve which when multiplied by the 5 percent maximum sensory loss value for that unspecified nerve yielded a 3 percent impairment in each arm.[3] Appellant also had a 14 percent impairment in each arm due to limited shoulder motion, comprised of a 6 percent impairment due to 90 degrees of flexion, a 4 percent impairment due to 90 degrees of abduction, a 3 percent impairment due to 40 degrees of internal rotation and 1 percent

[1] The claim was given the case file number 13-00775338,

[2] The claim was given the case file number 13-1088658. On March 21, 2000 the Office combined the two claims for more consistent case management.

[3] It appears from the medical record that Dr. Simpson was referring to either the axillary or the suprascapular nerve, each of which has a five percent maximum value. *See* A.M.A., *Guides* 492, Table 16-15.

impairment due to 45 degrees of external rotation. Dr. Simpson indicated that appellant had a 50 percent grade for motor loss in each arm associated with the suprascapular nerve which when multiplied by the maximum 16 percent motor loss value for that nerve yielded an 8 percent impairment in each arm for motor loss.

With regard to the accepted right carpal tunnel syndrome, appellant had a 25 percent grade for sensory loss associated with the right median nerve. Multiplying this grade times the maximum value of 39 percent for sensory loss associated with that nerve yielded a 10 percent impairment. Dr. Simpson indicated that appellant exhibited some diminution of grip strength, but noted that Chapter 16 of the A.M.A., *Guides* indicated that a separate rating for grip strength loss was not to be utilized when compressive neuropathy was present. He used the Combined Values Chart of the A.M.A., *Guides* to combine the various values for appellant's arms. Dr. Simpson concluded that appellant had a 31 percent permanent impairment of his right arm, a 23 percent permanent impairment of his left arm, a 4 percent permanent impairment of his right leg and a 0 permanent impairment of his left leg.

In a September 4, 2001 decision, the Office granted appellant a schedule award for a 31 percent permanent impairment of his right arm, a 23 percent permanent impairment of his left arm and a 4 percent permanent impairment of his right leg. It determined that appellant did not have any ratable permanent impairment of his left leg. The award ran for 180 weeks from August 11, 2001 to January 21, 2005.

Appellant lost intermittent time from work during the schedule award and the Office interrupted the award to pay compensation for wage loss. In an April 9, 2002 decision, the Office issued another schedule award for the percentages previously awarded but took into account the interruptions for compensation payments for wage loss. On March 26, 2003 appellant underwent a left wrist de Quervain's release which was authorized by the Office. In a June 3, 2003 decision, the Office issued another schedule award for the same percentages in order to account for the interruptions of the award to pay compensation for wage loss.

On July 11, 2003 appellant filed a Form CA-7 to claim an additional impairment. On July 22, 2003 the Office advised appellant that his schedule award claim could not be processed as his medical condition had not reached maximum medical improvement after his March 26, 2003 left wrist surgery.

The findings of December 9, 2005 electromyogram (EMG) and nerve conduction velocity (NCV) testing of appellant's arms showed no evidence of carpal tunnel syndrome, myopathy or cervical radiculopathy bilaterally. The left radial sensory study was not recordable. On July 26, 2006 appellant underwent a partial meniscectomy of his left knee which was authorized by the Office.

On August 30, 2006 Dr. Feng Bai, a Board-certified orthopedic surgeon serving as an Office referral physician, noted that appellant complained of left shoulder pain and a bilateral wrist and hand pain (more on the left). The left shoulder pain was worsened by lifting, carrying, pushing, pulling or engaging in overhead activity. Dr. Bai stated that the peripheral joints of both upper extremities showed no gross atrophy or edema and that sensation was normal to light touch and pinprick in both upper extremities. Testing for Tinel's sign was negative in both and

testing for Phalen's sign was questionably positive on the right and negative on left. Dr. Bai indicated that manual muscle strength testing in both upper extremities is 5/5 with normal tone but there was mild give-way weakness of left shoulder due to pain without focal weakness and mild give-way weakness of the left wrist and thumb due to pain without focal weakness.

With respect to right shoulder motion, Dr. Bai indicated that appellant had 180 degrees of flexion, 50 degrees of extension, 170 degrees of abduction, 40 degrees of adduction, 80 degrees of internal rotation and 90 degrees of external rotation. On the left, he had 160 degrees of flexion, 50 degrees of extension, 160 degrees of abduction, 40 degrees of adduction, 80 degrees of internal rotation and 90 degrees of external rotation. Impingement and apprehension testing in both shoulders was negative. In both elbows, appellant had 140 degrees of flexion, 0 degrees of extension, 90 degrees of pronation and 85 degrees of supination. In both wrists, he had 50 degrees of extension, 70 degrees of flexion, 20 degrees of radial deviation and 30 degrees of ulnar deviation. The findings of August 28, 2006 EMG and NCV testing of appellant's arms showed normal results.[4]

On November 20, 2006 the Office submitted the case record to Dr. Simpson, for evaluation of appellant's permanent impairment. On December 1, 2006 Dr. Simpson concluded that, based on Dr. Bai's examination, appellant sustained no more than a five percent permanent impairment of each arm. He stated that appellant did not have any impairment associated with his right shoulder as Dr. Bai did not document right shoulder pain or loss of motion. With respect to appellant's right carpal tunnel syndrome and attendant median nerve compression, Dr. Simpson stated that there was a questionably positive Phalen's sign on the right. He indicated that given appellant's normal sensibility and opposition strength with abnormal sensory and/or motor latency he qualified for an impairment rating not to exceed five percent of the right arm.

Dr. Simpson indicated that appellant exhibited left shoulder pain and posited that multiplying a 60 percent grade for pain associated with the axillary nerve (derived from Table 16-10 on page 482 for pain that might interfere with activities) times the 5 percent maximum value for that nerve (derived from Table 16-15 on page 492) yielded a 3 percent impairment for sensory loss. He stated that appellant had a two percent impairment for limited left shoulder motion comprised of a one percent impairment for 160 degrees of flexion and a one percent impairment for 160 degrees of left abduction. Dr. Simpson concluded had very mild weakness of the left shoulder, wrist and thumb did not rise to the level of a ratable permanent impairment. Appellant did not have limitation of left wrist motion.

[4] Appellant alleged that he sustained another recurrence of disability on September 17, 2006. In a November 15, 2006 decision, the Office denied appellant's claim for a recurrence of disability. In a May 8, 2007 decision, an Office hearing representative set aside the Office's decision and ordered referral of appellant for a second opinion examination to determine whether he sustained a recurrence on September 17, 2006. The matter of whether appellant sustained such a recurrence of disability is not currently before the Board.

Appellant claimed that he was entitled to additional schedule award compensation for permanent impairment of his arms.[5] In a January 5, 2007 decision, the Office determined that appellant did not submit medical evidence showing that he was entitled to additional compensation for permanent impairment of his arms. It noted that the December 1, 2006 report of Dr. Simpson showed that appellant was not entitled to additional schedule award compensation.

Appellant requested a hearing before an Office hearing representative. At the May 25, 2007 hearing, he testified that he was unable to bend and that he had difficulty walking. In a July 10, 2007 report, Dr. Dean Karnaze, an attending Board-certified orthopedic surgeon, stated that appellant had complaints of carpal tunnel syndrome, mild cervical radiculopathy and low back pain with lumbar radiculopathy. Dr. Karnaze did not provide any impairment rating.[6]

In an August 3, 2007 decision, the Office hearing representative affirmed the Office's January 3, 2007 decision. The Office hearing representative found that the medical evidence of record did not show that appellant had more than a 31 percent permanent impairment of his right arm or a 23 percent permanent impairment of his left arm, for which he received schedule award compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[7] and its implementing regulation[8] 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.[9]

ANALYSIS

In a September 4, 2001 decision, the Office granted appellant a schedule award for a 31 percent permanent impairment of his right arm and a 23 percent permanent impairment of his

[5] The Board notes that the question of whether appellant has permanent impairment of his left leg or is entitled to additional schedule award compensation for his right leg is not the subject of the present appeal.

[6] Appellant also submitted a June 5, 2007 report in which Dr. Edward Cahill, an attending Board-certified orthopedic surgeon, indicated that appellant had a two percent permanent impairment of his left leg due to undergoing a partial left medial meniscectomy. As previously noted, the question of whether appellant has permanent impairment of his left leg is not the subject of the present appeal.

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404 (1999).

[9] *Id*.

left arm.[10] It based its award on an August 19, 2001 report of Dr. Simpson, a Board-certified orthopedic surgeon serving as an Office medical adviser. Dr. Simpson reached his impairment ratings after reviewing the medical evidence of record including an August 12, 2001 report of Dr. Wirganowicz, a Board-certified orthopedic surgeon who served as an Office referral physician.

Dr. Simpson stated that appellant had a 60 percent pain grade in each shoulder associated with an unspecified nerve which when multiplied by the 5 percent maximum sensory loss value for that unspecified nerve yielded a 3 percent impairment in each arm.[11] Appellant also had a 14 percent impairment in each arm due to limited shoulder motion, comprised of a 6 percent impairment due to 90 degrees of flexion, a 4 percent impairment due to 90 degrees of abduction, a 3 percent impairment due to 40 degrees of internal rotation and a 1 percent impairment due to 45 degrees of external rotation.[12] Dr. Simpson indicated that appellant had a 50 percent grade for motor loss associated with the suprascapular nerve in each arm which when multiplied by the maximum 16 percent motor loss value for that nerve yielded an 8 percent impairment in each arm for motor loss.[13] With regard to the accepted right carpal tunnel syndrome, appellant had a 25 percent grade for sensory loss associated with the right median nerve which when multiplied times the maximum value of 39 percent for sensory loss associated with that nerve yielded a 10 percent impairment.[14] Dr. Simpson used the Combined Values Chart of the A.M.A., *Guides* to combine the various values for appellant's arms.[15]

Appellant contends that he warrants an additional schedule award for permanent impairment of his arms. The Board finds, however, that appellant did not submit medical evidence showing that he has more than a 31 percent permanent impairment of his right arm or a 23 percent permanent impairment of his left arm, for which he received schedule award compensation.

In a December 1, 2006 report, Dr. Simpson concluded that appellant sustained no more than a five percent permanent impairment of each arm. He based his impairment rating on the findings of the August 30, 2006 report of Dr. Bai, a Board-certified orthopedic surgeon who served as an Office referral physician. With respect to appellant's right carpal tunnel syndrome and attendant median nerve compression, Dr. Simpson properly found that appellant qualified for an impairment rating not to exceed five percent of the right arm given he had normal sensibility

[10] Appellant also received compensation for four percent permanent impairment of his right leg, but the permanent impairment of appellant's legs is not the subject of the present appeal.

[11] *See* A.M.A., *Guides* at 482, 492, Tables 16-10, 16-15. It appears from the medical record that Dr. Simpson was referring to either the axillary or suprascapular nerve, each of which has a maximum value for sensory loss of five percent. *See id.* at 492, Table 16-15.

[12] *See id*. at 476-77, 479, Figures 16-40, 16-43 and 16-46.

[13] *See id.* at 484, 492, Tables 16-11, 16-15.

[14] *See id.* at 482, 492, Tables 16-10, 16-15.

[15] *See id.* at 604-05, Combined Values Chart.

and opposition strength with abnormal sensory and/or motor latency.[16] He correctly noted that appellant did not have any impairment associated with his right shoulder as Dr. Bai did not document right shoulder pain or ratable loss of motion.[17]

Dr. Simpson properly determined that appellant's level of left shoulder pain warranted a 60 percent grade for pain associated with the axillary nerve which when multiplied by the 5 percent maximum value for that nerve yielded a 3 percent impairment for sensory loss.[18] He also properly found that appellant had a two percent impairment for limited left shoulder motion comprised of a one percent impairment for 160 degrees of flexion and a one percent impairment for 160 degrees of left abduction.[19] Dr. Simpson concluded that appellant had very mild weakness of the left shoulder, wrist and thumb which did not rise to the level of a ratable permanent impairment.[20]

The Board notes that, although Dr. Simpson indicated that appellant did not have any impairment for wrist motion, his wrist extension of 50 degrees on each side would entitle him to an additional two percent impairment rating in each arm.[21] However, adding these impairment ratings to the 5 percent impairment ratings in each arm found by Mr. Simpson would not show that appellant has more than a 31 percent permanent impairment of his right arm or a 23 percent permanent impairment of his left arm. In support of his claim, appellant submitted a July 10, 2007 report of Dr. Karnaze, an attending Board-certified orthopedic surgeon, who did not provide any impairment rating. The record does not contain any other medical evidence assessing the permanent impairment of appellant's arms.

For these reasons, appellant did not meet his burden of proof to show that he has greater permanent impairment of his arms.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than a 31 percent permanent impairment of his right arm or a 23 percent permanent impairment of his left arm, for which he received schedule award compensation.

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[16] *See id.* at 495 (subsection entitled "Carpal Tunnel Syndrome"). Dr. Bai's examination showed that appellant had normal sensibility and strength in his right arm and that he had abnormal sensory and/or motor latency on the right as exhibited by an ostensibly positive Phalen's sign.

[17] Applying the relevant range of shoulder motion standards to the right shoulder motion findings of Dr. Bai shows no impairment in this regard. *See supra* note 12.

[18] *See id.* at 482, 492, Tables 16-10, 16-15.

[19] *See supra* note 12.

[20] Dr. Bai noted that appellant had left wrist pain but the pain was not associated with any particular nerve distribution and it did not otherwise entitle him to an impairment rating under the standards of the A.M.A., *Guides.*

[21] *See* A.M.A., *Guides* at 467, 469, Figures 16-28 and 16-31. Dr. Bai's range of elbow motion findings would not entitle appellant to any additional impairment rating. *See id.* at 472, 474, Figures 16-34 and 16-37.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 3 and January 5, 2007 decisions are affirmed.

Issued: October 20, 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