United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 07-1719**
	)	**Issued: December 19, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 13, 2007 appellant filed a timely appeal from the July 3, 2006 merit decision of the Office of Workers' Compensation Programs, which denied an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the schedule award issue. The Board also has jurisdiction to review the Office hearing representative's January 19, 2007 merit decision affirming the denial.

ISSUE

The issue is whether appellant has more than an 18 percent permanent impairment of his right upper extremity.

FACTUAL HISTORY

On the prior appeal,[1] the Board noted that appellant, a maintenance worker, injured his right shoulder when he struck a bolt with a hammer. The Office accepted his claim for right

[1] Docket No. 06-275 (issued April 6, 2006).

rotator cuff strain. Appellant underwent surgery and received a schedule award for an 18 percent permanent impairment of the right upper extremity.[2] The Board found, however, that further development of the evidence was warranted because the impartial medical specialist did not explain how he calculated five percent impairment for strength deficit and why he did not include an impairment for right shoulder pain.[3]

On June 16, 2006 Dr. Robert R. Bachman, the impartial medical specialist, provided a supplemental report:

> "I calculate the [five] percent impairment for strength deficit based on Table 16-35, page 510 of the [American Medical Association, *Guides to the Evaluation of Permanent Impairment*] (A.M.A., *Guides*). My reasoning is as follows. At the time of my examination there was a minimal decrease in strength of the right shoulder in all directions. I rated his strength of the right shoulder to be 4+ out of a possible 5. This means that the strength is almost normal. When I referred to Table 16-35, I simply used the smallest percentage in the chart that is [five] percent. The asterisk advises one to use clinical judgment to select appropriate percentage in the range of values shown on the severity grade. I did exercise that clinical judgment and found the strength impairment to be [five] percent. I have no other explanation.
>
> "It is true that he did complain of pain in the right shoulder but this was incorporated in the ratings recommended for decrease in strength and range of motion. If you note on page 512, II, item #3, shoulder region, it states that the determining impairments are to be determined due to loss of motion and other disorders and combine such. In my clinical judgment the loss of strength constitutes the other disorder in addition to the loss of motion. It is my opinion he does not have a chronic pain syndrome due to RSD [reflex sympathetic dystrophy]. There were no objective findings for such a condition."

In a decision dated July 3, 2006, the Office found that appellant had no more than an 18 percent permanent impairment of his right upper extremity, for which he had received compensation. In a decision dated January 19, 2007, an Office hearing representative affirmed.

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.

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[2] On January 4, 2002 he underwent a right shoulder arthroscopy with biceps debridement, rotator cuff debridement, superior labral repair, arthroscopic subacromial decompression and arthroscopic distal clavicle resection.

[3] The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

[4] 5 U.S.C. § 8107.

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]

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.[6] When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[7]

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.[8] Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Act will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.[9]

ANALYSIS

The Board remanded this case on the prior appeal so that Dr. Bachman, the impartial medical specialist, could explain how he calculated five percent impairment for strength deficit and why he did not include an impairment rating for pain. Dr. Bachman fully answered these questions in his June 16, 2006 supplemental report.

Dr. Bachman's examination showed appellant's right shoulder strength to be almost normal in all directions. He graded the strength 4+ out of 5. Table 16-35, page 510 of the A.M.A., *Guides* gives an impairment range of five to 25 percent for Grade 4 strength, so one would expect Grade 4+ strength to fall at the very low end of that range. Using his clinical judgment, Dr. Bachman stated that he selected a five percent rating for strength deficit.

[5] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the fifth edition.

[6] 5 U.S.C. § 8123(a).

[7] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

[8] *Nathan L. Harrell*, 41 ECAB 402 (1990).

[9] *Harold Travis*, 30 ECAB 1071 (1979).

If there is a reason to question this rating, it is that strength evaluations are not usually rated separately. The A.M.A., *Guides* cautions against their use and places a burden on the evaluating physician to show that loss of strength represents an impairing factor that has not been considered adequately by other methods, that the loss of strength is based on unrelated etiologic or pathomechanical causes and that decreased motion or painful conditions do not prevent effective application of maximal force in the region being evaluated.[10] Because Dr. Bachman did not show that appellant was one of those rare cases that justified a separate rating for strength, the Office could have excluded this rating from appellant's schedule award. It was to appellant's benefit that the Office included the rating and as Dr. Bachman has rationally explained how he calculated it, the Board will not find that appellant is entitled to a greater percentage for strength deficit.

Dr. Bachman's explanation for not including a pain-related impairment is straightforward: Right shoulder pain was already incorporated in the other ratings. The A.M.A., *Guides* states that the impairment ratings in the body organ system chapters make allowance for any accompanying pain.[11] So pain alone is insufficient to justify a separate pain-related impairment. As was the case for strength evaluations, the A.M.A., *Guides* places a burden on the physician to support any separate rating for pain, stating:

> "Finally, at a practical level, a chapter of the [A.M.A.,] *Guides* devoted to pain-related impairment should not be redundant of or inconsistent with principles impairment rating described in other chapters. The [A.M.A.,] *Guides'* impairment ratings currently include allowances for the pain that individuals typically experience when they suffer from various injuries or diseases, as articulated in Chapter 1 of the [A.M.A.,] *Guides*: 'Physicians recognize the local and distant pain that commonly accompanies many disorders. Impairment ratings in the [A.M.A.,] *Guides* already have accounted for pain. For example, when a cervical spine disorder produces radiating pain down the arm, the arm pain, which is commonly seen, has been accounted for in the cervical spine impairment rating' (p. 10). Thus, if an examining physician determines that an individual has pain-related impairment, he or she will have the additional task of deciding whether or not that impairment has already been adequately incorporated into the rating the person has received on the basis of other chapters of the[A.M.A.,] *Guides*."[12]

Dr. Bachman explained that appellant's pain has already been adequately incorporated in the ratings derived from other chapters in the A.M.A., *Guides*. So notwithstanding the presence of pain in all ranges of shoulder motion, there is no basis for increasing appellant's schedule award to reflect a separate pain-related impairment.[13]

[10] A.M.A., *Guides* 507-08 (5th ed. 2001).

[11] *Id*. at 20.

[12] *Id*. at 570.

[13] Appellant argues that he does not have RSD. Any suggestion by Dr. Bachman to the contrary must be considered harmless, as he found no objective findings for such a condition.

With Dr. Bachman's supplement report, the Board finds that opinion of the impartial medical specialist is entitled to special weight and resolves the conflict on the extent of appellant's permanent impairment. The Board will affirm the Office decisions finding that appellant has no more than an 18 percent impairment of his right upper extremity, for which he has received compensation.

CONCLUSION

The Board finds that appellant has no more than an 18 percent permanent impairment of his right upper extremity. The weight of the medical opinion evidence rests with Dr. Bachman, the impartial medical specialist.

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2007 and July 3, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 19, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board