

**United States Department of Labor
Employees' Compensation Appeals Board**

L.V., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Jackson, MS, Employer**

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**Docket No. 07-1775
Issued: December 11, 2007**

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 June 21, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' April 18, 2007 merit decision concerning 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 met his burden of proof to establish that he has more than a four percent permanent impairment of his left arm, for which he received a schedule award.

FACTUAL HISTORY

The Office accepted that on April 6, 2005 appellant, then a 55-year-old housekeeping aid, sustained lumbar and left shoulder strains and a left complete rotator cuff rupture due to pulling

linen from a hamper.¹ He began working in a limited-duty position for the employing establishment and the Office paid appropriate compensation for periods of disability.²

On April 12, 2006 Dr. Buddy Savoie, an attending Board-certified orthopedic surgeon, performed left rotator cuff repair surgery. He observed a moderate to large supraspinatus tear and entered the subacromial space to conduct a complete bursectomy. Dr. Savoie removed a large os acromiale and stated: "The distal clavicle was not resected." The procedure was authorized by the Office.

On August 3, 2006 Dr. Savoie indicated that appellant's left shoulder looked "really good" although he still had disability from work. He indicated that appellant should return in six weeks for a "final check" on his shoulder. On September 28, 2006 Dr. Savoie stated that appellant's left shoulder was status post dual row rotator cuff repair and indicated that he probably had reached maximum medical improvement. Appellant did not have any subluxation or crepitation of his left shoulder. Dr. Savoie performed range of motion testing of the left shoulder motion and indicated that under Figures 16-40, 16-43 and 16-46 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001) appellant had a one percent impairment due to 170 degrees of flexion, a one percent impairment due to 40 degrees of extension, a one percent impairment due to 160 degrees of abduction, a zero percent impairment due to 40 degrees of adduction, a zero percent impairment due to 90 degrees of external rotation and a one percent impairment due to 70 degrees of internal rotation. He determined that under Table 16-27 of the A.M.A., *Guides* appellant had 10 percent impairment due to a resection arthroplasty of his left distal clavicle.³ Dr. Savoie concluded that appellant had a 14 percent permanent impairment of his left shoulder which was comprised of 4 percent impairment for range of motion deficits and 10 percent impairment for a distal clavicle resection.

On February 8, 2007 Dr. James W. Dyer, a Board-certified orthopedic surgeon who served as an Office medical adviser, reviewed the medical evidence, including the reports of Dr. Savoie and concluded that appellant had a four percent permanent impairment of his left arm. Dr. Dyer determined that Dr. Savoie properly found that appellant had four percent impairment for range of motion deficits upon flexion, extension, abduction and internal rotation. He also found that it was improper for Dr. Savoie to assign 10 percent impairment for a resection arthroplasty of the left distal clavicle as the April 12, 2006 surgery report specifically indicated that the distal clavicle was not resected.

Appellant claimed entitlement to schedule award compensation due to his accepted injury. In an April 18, 2007 award of compensation, the Office granted appellant a schedule

¹ The findings of April 12, 2005 magnetic resonance imaging scan testing of appellant's left shoulder showed a tear at the insertion of the supraspinatus tendon.

² Effective August 1, 2006, appellant elected to receive Office of Personnel Management benefits.

³ Dr. Savoie also noted that under Table 16-26 appellant did not have any impairment for left shoulder instability.

award for a four percent permanent impairment of his left arm. The award ran for 12.48 weeks from September 28 to December 24, 2006.⁴

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing regulations⁶ 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 regulations as the appropriate standard for evaluating schedule losses.⁷

ANALYSIS

The Office accepted that on April 6, 2005 appellant sustained lumbar and left shoulder strains and a left complete rotator cuff rupture due to pulling linen from a hamper. On April 12, 2006 Dr. Savoie, an attending Board-certified orthopedic surgeon, performed left rotator cuff repair surgery. Appellant claimed entitlement to schedule award compensation due to his accepted injury. In an April 18, 2007 award of compensation, the Office granted appellant a schedule award for a four percent permanent impairment of his left arm.

The Board finds that appellant did not meet his burden of proof to establish that he has more than a four percent permanent impairment of his left arm. On February 8, 2007 Dr. Dyer, a Board-certified orthopedic surgeon who served as an Office medical adviser, reviewed the medical evidence, including the reports of Dr. Savoie. Dr. Dyer properly determined that appellant has a four percent permanent impairment of his left arm under the relevant standards of the A.M.A., *Guides*. He agreed with Dr. Savoie's assessment that appellant has a one percent impairment due to 170 degrees of flexion, a one percent impairment due to 40 degrees of extension, a one percent impairment due to 160 degrees of abduction and a one percent impairment due to 70 degrees of internal rotation.⁸ Dr. Dyer properly found, however, that it was inappropriate for Dr. Savoie to assign 10 percent impairment for a resection arthroplasty of

⁴ Appellant submitted additional evidence after the Office's April 18, 2007 decision, but the Board cannot consider such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

⁷ *Id.*

⁸ See A.M.A., *Guides* 476-77, 479, Figures 16-40, 16-43 and 16-46.

the left distal clavicle under Table 16-27 as the April 12, 2006 report of appellant's surgery specifically indicated that the distal clavicle was not resected.⁹

As the report of the Dr. Dyer provided the only evaluation which conformed to the A.M.A., *Guides*, it constitutes the weight of the medical evidence.¹⁰ Therefore, appellant has not shown that he has more than a four percent permanent impairment of his left arm.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 18, 2007 decision is affirmed.

Issued: December 11, 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

⁹ See A.M.A., *Guides* 506, Table 16-27. In the April 12, 2006 report, Dr. Savoie stated: "The distal clavicle was not resected." There was no impairment under Table 16-26 as Dr. Savoie had indicated that appellant did not have left shoulder instability. See A.M.A., *Guides* 505, Table 16-26.

¹⁰ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).