United States Department of Labor
Employees' Compensation Appeals Board

JIMMY D. PYLE, Appellant	)	
and	)	**Docket No. 06-437**
	)	**Issued: June 9, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Coppell, TX, Employer	)	

Appearances:
Jimmy D. Pyle, 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

JURISDICTION

On December 19, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 27, 2005 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 sustained more than a 10 percent permanent impairment of his left arm, for which he received schedule awards.

FACTUAL HISTORY

On October 3, 2000 appellant, then a 34-year-old postal clerk, filed an occupational disease claim alleging that he sustained injury to his left shoulder and upper back due to the repetitive duties of his job. Appellant did not stop work but began working in a limited-duty position for the employing establishment. The employing establishment advised appellant that it no longer had limited-duty work and he stopped work on November 11, 2000.

The Office accepted appellant's employment-related thoracic outlet syndrome. On February 15, 2001 appellant underwent left thoracic outlet syndrome release surgery which was authorized by the Office. In May 2001 appellant began working in a limited-duty position for the employing establishment as a modified distribution clerk.[1]

Appellant claimed entitlement to schedule award compensation in connection with his employment-related thoracic outlet syndrome.

In a report dated May 28, 2002, Dr. Phillip Hansen, an attending Board-certified orthopedic surgeon, determined that appellant had a seven percent permanent impairment of his left arm. He indicated that appellant had weakness upon abduction and external rotation to a greater extent than upon internal rotation. Dr. Hansen noted that the 7 percent impairment was calculated by multiplying 35 percent (the maximum value for loss of strength associated with the axillary nerve) times 20 percent (the grade of appellant's left arm weakness). He indicated that appellant had full passive range of motion of the neck and left shoulder per the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

In a report dated July 20, 2002, the Office's district medical adviser indicated that he agreed with Dr. Hansen's calculations that appellant had a seven percent permanent impairment of his left arm due to loss of strength associated with the axillary nerve.

By decision dated August 13, 2002, the Office granted appellant a schedule award for a seven percent permanent impairment of his left arm.[2]

Appellant continued to be treated by Dr. Hansen who indicated in a July 22, 2003 report that he experienced neck and left shoulder pain and obliteration of the radial pulse upon abduction and external rotation of the left shoulder. The findings of October 14, 2003 magnetic resonance imaging (MRI) testing of the left brachial plexus region revealed flow voids in the left brachiocephalic and superior veins consistent with vessel patency.[3]

In late 2003, appellant began to be treated by Dr. Michael Taba, a Board-certified orthopedic surgeon. In a report dated October 20, 2003, he stated that appellant had no acromioclavicular joint or scapular tenderness, a negative test for impingement of the left shoulder, and no giveaway weakness of the left shoulder. Dr. Taba indicated that appellant had full range of motion of the left shoulder, elbow and wrist.[4]

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[1] In an October 17, 2002 decision, the Office determined that appellant's work as a modified distribution clerk represented his wage-earning capacity. Appellant periodically stopped work and then returned to limited-duty positions with the employing establishment.

[2] The Office inadvertently stated that the award was for the right arm rather than the left arm.

[3] Based on these findings, the Office also accepted that appellant sustained employment-related left brachial plexus lesions.

[4] Dr. Taba stated that appellant had full pronation, supination, extension and flexion of the left elbow. In an October 20, 2003 report, Dr. Taba stated that, although appellant had no giveaway weakness of the left shoulder, he was weaker on the left when forceful opposition was applied.

Dr. Taba referred appellant to Dr. Erwin A. Cruz, a Board-certified neurologist, and in a March 11, 2004 report, Dr. Cruz stated that his examination revealed 5/5 strength throughout appellant's extremities, full range of motion and symmetrical muscle stretch reflexes. In a report dated March 30, 2004, Dr. Cruz noted that he found no evidence of focal motor, sensory, reflex or anatomic deficits and indicated that appellant's symptoms were out of proportion to the minor abnormalities seen on diagnostic testing. The findings of March 1, 2004 MRI testing of the cervical spine revealed mild disc desiccation and minimal disc osteophyte complex without central canal or neural foraminal stenosis. The findings of March 11, 2004 electromyogram (EMG) and nerve conduction studies showed some left C6 nerve root irritation.[5]

In a report dated August 4, 2004, Dr. Taba indicated that appellant continued to have left upper extremity weakness and pain that radiated from his neck into his left upper extremity. He posited that appellant's cervical radicular syndrome was employment related. In a report dated April 13, 2005, Dr. Taba stated that appellant still complained of left upper extremity weakness but had a negative drop arm test even with resistance. He noted that appellant did not complain of any pain and that he exhibited full range of motion of the left upper extremity.

In a report June 29, 2005, Dr. Taba provided an extensive history of the findings of appellant's medical treatment. He reported that on examination appellant exhibited full range of motion of his neck and both upper extremities, but that he had decreased strength of the left upper extremity, especially to resistance.[6] Dr. Taba indicated that appellant had reached maximum medical improvement and concluded that he had a 10 percent permanent impairment of his left upper extremity which was comprised of a 6 percent impairment due to motor loss associated with the C5 nerve distribution added to a 4 percent impairment due to motor loss associated with the C6 nerve distribution. He indicated that the 6 percent impairment rating due to motor loss associated with the C5 nerve distribution was calculated by multiplying 20 percent (an upper-level Grade 4 motor loss derived from Table 15-16 of the A.M.A., *Guides*) times the maximum value 30 percent associated with C5 (derived from Table 15-17). Dr. Taba noted that the 4 percent impairment rating due to motor loss associated with the C6 nerve distribution was calculated by multiplying 10 percent (a middle-level Grade 4 motor loss derived from Table 15-16 of the A.M.A., *Guides*) times the maximum value of 35 percent associated with C6 (derived from Table 15-17).[7]

In a report dated September 15, 2005, the Office district medical adviser explained that he agreed with Dr. Taba's calculations that appellant had a 10 percent permanent impairment of his left upper extremity.

By decision dated September 27, 2005, the Office granted appellant a schedule award for an additional three percent permanent impairment of his left arm.

[5] On July 6, 2004 appellant filed an occupational disease claim alleging that he sustained a cervical radicular syndrome due to his job duties. The Office accepted that appellant sustained aggravation of cervical degeneration and combined the files for appellant's thoracic and cervical claims into the present case file.

[6] Dr. Taba also stated that appellant had no swelling, color or temperature changes in the left upper extremity.

[7] Dr. Taba rounded the figure of 3.5 percent up to 4 percent.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[8] and its implementing regulation[9] sets 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.[10]

ANALYSIS

The Office accepted that appellant sustained thoracic outlet syndrome, left brachial plexus lesions and aggravation of cervical degeneration. The Office granted appellant schedule awards for a total permanent impairment of his left arm of 10 percent.

The Board finds that the Office properly awarded appellant schedule awards for a 10 percent permanent impairment of his left arm based on the opinion of Dr. Taba, an attending Board-certified orthopedic surgeon. In a report dated June 29, 2005, he properly concluded that appellant had a 10 percent permanent impairment of his left upper extremity which was comprised of a 6 percent impairment due to motor loss associated with the C5 nerve distribution added to a 4 percent impairment due to motor loss associated with the C6 nerve distribution. Dr. Taba correctly indicated that the 6 percent impairment rating due to motor loss associated with the C5 nerve distribution was calculated by multiplying 20 percent (an upper-level Grade 4 motor loss derived from Table 15-16 of the A.M.A., *Guides*) times the maximum value 30 percent associated with C5 (derived from Table 15-17).[11] He properly noted that the 4 percent impairment rating due to motor loss associated with the C6 nerve distribution was calculated by multiplying 10 percent (a middle-level Grade 4 motor loss derived from Table 15-16 of the A.M.A., *Guides*) times the maximum value of 35 percent associated with C6 (derived from Table

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404 (1999).

[10] *Id.*

[11] *See* A.M.A., *Guides* 424, Tables 15-16, 15-17. A Grade 4 is appropriate for active motion against gravity with some resistance. *Id.* at Table 15-16. The findings of physical examination in the record show that this assessment of motor loss was appropriate.

15-17).[12] He correctly determined that appellant was not entitled to any impairment rating for sensory loss or limited motion of the left upper extremity.[13]

As the report of the Dr. Taba provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.[14] The Office properly awarded appellant schedule awards for a 10 percent permanent impairment of his left arm.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained more than a 10 percent permanent impairment of his left arm, for which he received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 27, 2005 decision is affirmed.

Issued: June 9, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

[12] *See* A.M.A., *Guides* 424, Tables 15-16, 15-17. It was appropriate for Dr. Taba to round the resultant figure of 3.5 percent up to 4 percent. *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b (June 2003). The findings on examination and diagnostic testing show motor loss associated with the axillary nerve which involves both the C5 and C6 nerve roots. *See* A.M.A., *Guides* 485, Tables 16-12a.

[13] Dr. Taba noted that by April 2005 appellant was no longer reporting pain in his left arm. The record contains reports from several physicians showing the appellant never exhibited any limited motion of his left arm, including left shoulder, elbow or wrist. *See* A.M.A., *Guides* 450-83.

[14] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).