United States Department of Labor
Employees' Compensation Appeals Board

JIMMY SANTIAGO, Appellant	)	
and	)	**Docket No. 06-17**
	)	**Issued: March 20, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Long Branch, NJ, Employer	)	

Appearances:
Carolyn Uliase, Esq., for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 3, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated May 19, 2005. Under 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 a 16 percent permanent impairment to his right upper extremity.

FACTUAL HISTORY

Appellant, a 49-year-old letter carrier, filed a Form CA-2 claim for benefits on April 17, 2000, alleging that he developed a right shoulder condition causally related to factors of his employment. The Office accepted the claim for right shoulder impingement syndrome. The Office authorized surgery for arthroscopy and subacromial decompression of the right shoulder, which appellant underwent on July 14, 2000. Surgery consisted of arthroscopy of the right glenohumeral joint with debridement of a rotator cuff tear and superior labrum, arthroscopic

subacromial decompression with partial acromioplasty and mini open rotator cuff repair of the right shoulder.

On September 13, 2001 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his right upper extremity.

In a report dated June 29, 2001, Dr. David Weiss, an osteopath, found that appellant had a 29 percent impairment of the right upper extremity. He calculated a loss of range of motion in the right shoulder based on forward elevation of the right shoulder of 170/180 degrees and abduction of 165/180 degrees and internal rotation of T10 on the right as opposed to T6 on the left. Using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fifth edition (A.M.A., *Guides*), Dr. Weiss found that appellant had a one percent impairment for range of motion deficit based on flexion pursuant to Figure 16-40 at page 476 of the A.M.A., *Guides* and a one percent impairment for range of motion deficit based on abduction pursuant to Figure 16-43 at page 477 of the A.M.A., *Guides*. Dr. Weiss listed a 24 percent impairment for right shoulder arthroplasty pursuant to Table 16-27 at page 506 of the A.M.A., *Guides* and a 3 percent impairment for pain pursuant to Figure 18-1 at page 574 of the A.M.A., *Guides*, for a total 29 percent right upper extremity impairment.

On October 4, 2001 an Office medical adviser found that appellant had not yet reached maximum medical improvement because Dr. Weiss stated that he needed further treatment, including surgery, to promote healing of his rotator cuff tear. Therefore, the Office medical adviser found that appellant was not eligible for a schedule award.

By decision dated October 5, 2001, the Office denied appellant's claim for a schedule award on the grounds that appellant had not reached maximum medical improvement.

By letter dated October 12, 2001, appellant's attorney requested a hearing, which was held on May 15, 2002.

By decision dated July 23, 2002, an Office hearing representative set aside the October 5, 2001 decision noting that pursuant to Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Determining Schedule Awards*, Chapter 3.700.3(a)(1)(a), while additional medical treatment such as surgery may be recommended in order to improve a claimant's condition, a claimant was not required to undergo such treatment in order to be eligible for a schedule award.[1] The case was remanded for further development and calculation of the percentage of impairment causally related to appellant's accepted right shoulder impingement condition.

On August 6, 2002 an Office medical adviser found that appellant had 16 percent right upper extremity impairment under the A.M.A., *Guides*. The Office medical adviser utilized Dr. Weiss' report as to loss of range of motion and pain, but reduced the impairment for arthroplasty to 10 percent for a partial arthroplasty. The Office medical adviser found that Dr. Weiss had mistakenly used the 24 percent figure for a full right shoulder arthroplasty when in fact appellant underwent a subacromial arthroplasty and debridement. The Office medical

[1] Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Determining Schedule Awards*, Chapter 3.700.3(a)(1)(a).

adviser stated that the procedure in Table 16-27 embodying the greatest similarity to appellant's July 2000 partial arthroplasty was a partial distal clavicle excision, which represented a 10 percent impairment. Using the Combined Values Chart, the Office medical adviser calculated a total 16 percent impairment rating for appellant's right upper extremity.

On September 5, 2002 the Office granted appellant a schedule award for a 16 percent permanent impairment of the right upper extremity for the period from September 13, 2001 to August 28, 2002, for a total of 49.92 weeks of compensation.

By letter dated September 13, 2002, appellant's attorney requested a hearing, which was held on August 27, 2002.

By decision dated December 5, 2003, the Office hearing representative set aside the September 5, 2002 decision, finding that there was a conflict in the medical evidence between the impairment ratings of Dr. Weiss and the Office medical adviser. The Office remanded the case for referral to an impartial medical specialist for an evaluation of appellant's impairment due to the July 2000 right shoulder arthroplasty.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Ian B. Fries, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a report dated March 4, 2004, Dr. Fries determined that appellant had a 16 percent right upper extremity impairment. He stated:

> "Dr. Weiss did not perform all the measurements required by [the A.M.A., *Guides*], improperly using a total shoulder arthroplasty rating when this was not the procedure performed and added rather th[a]n combined values.
>
> "The shoulder procedure performed on [appellant] does not qualify as a total shoulder arthroplasty (neither implant nor resection) as required by Table 16-27, [p]age 506.
>
> "There is no specific mention in [the A.M.A., *Guides*] of the type of surgery performed. There is no requirement surgery not specifically mentioned in the [A.M.A.,] *Guides* be given a rating beyond that for other parameters like motion and neurologic impairment. Dr. Lawrence equates the operation to an isolated distal clavicular resection and I consider this reasonable.
>
> "[Appellant] has collapsing pain several times during the examination at the inferior angles of both scapulae. This is a nonphysiologic manifestation and does not relate to rotator cuff pathology. It is also similar bilateral. This and his description of pain makes me dubious he justifies an additional three percent impairment offered by Dr. Weiss and also considered by [the Office medical adviser]. Also all three of us have added a percentage for surgery and that encompasses some degree of pain."

In estimating 16 percent right upper extremity impairment, Dr. Fries allowed the one percent impairment for loss of flexion and abduction, one percent impairment for adduction based on Figure 16-41 at page 477 of the A.M.A., *Guides*; and added a 4 percent impairment for

loss of internal rotation based on Figure 16-46 at page 479 of the A.M.A., *Guides*, for a total 7 percent impairment based on loss of range of motion. Dr. Fries also found that appellant had a 10 percent impairment for a partial right shoulder arthroplasty pursuant to Table 16-27 at page 506 of the A.M.A., *Guides*. Using the Combined Values Chart, this yielded a total 16 percent right upper extremity impairment.

On March 23, 2004 the Office medical adviser adopted Dr. Fries' findings and conclusions and agreed that appellant had a 16 percent impairment of his right upper extremity.

By decision dated April 13, 2004, the Office found that Dr. Fries' impartial medical opinion represented the weight of the medical evidence and that appellant had no greater than a 16 percent impairment for his right upper extremity.

By letter dated April 19, 2004, appellant's attorney requested an oral hearing, which was held on February 15, 2005.

By decision dated May 19, 2005, an Office hearing representative affirmed the August 8, 2003 Office decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] sets forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[3] However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides*, fifth edition as the standard to be used for evaluating schedule losses.[4]

Section 8123(a) of the Act provides that, 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.[5]

ANALYSIS

In this case, the Office found a conflict in the medical evidence between the impairment rating of Dr. Weiss, who estimated a 29 percent right upper extremity impairment and an Office medical adviser, who rated impairment of 16 percent for the right upper extremity. The physicians disagreed on the impairment estimated to be rated for appellant's July 2000

[2] 5 U.S.C. §§ 8101-8193*; see* 5 U.S.C. § 8107(c).

[3] 5 U.S.C. § 8107(c)(19).

[4] 20 C.F.R. § 10.404.

[5] 5 U.S.C. § 8123(a).

arthroplasty. Dr. Weiss allowed 24 percent for a full shoulder arthroplasty and the Office medical adviser rated impairment of 10 percent for partial arthroplasty for the right shoulder.

The case was referred to Dr. Fries, an impartial medical specialist, who found that Dr. Weiss incorrectly characterized the July 2000 surgical procedure as a total shoulder arthroplasty pursuant to Table 16-27, page 506 of the A.M.A., *Guides* and had added rather than combined the cited impairment values. Dr. Fries stated that there was no specific mention in the A.M.A., *Guides* of the type of surgery performed and no requirement that surgery not specifically listed be given a rating beyond that for other parameters like motion and neurologic impairment. He agreed with the Office medical adviser's description of the surgical procedure as similar to distal clavicular resection shoulder arthroplasty listed under Table 16-27, which provides a 10 percent impairment rating. The Board finds that this finding was proper and constitutes the weight of medical opinion.

Dr. Fries rejected the three percent impairment which Dr. Weiss and the Office medical adviser had attributed for pain, finding that it was a nonphysiologic manifestation which did not relate to the accepted rotator cuff pathology. He allowed one percent impairment each for loss of flexion, abduction and adduction based on Figure 16-41 at page 477 of the A.M.A., *Guides*; and added a four percent impairment for loss of internal rotation based on Figure 16-46 at page 479 of the A.M.A., *Guides*, for a total seven percent impairment based on loss of range of motion.[6] Dr. Fries then combined the 10 percent impairment partial arthroscopic surgery with the loss of range of motion 7 percent impairment, under the Combined Values Chart, to total 16 percent right upper extremity impairment.

The Board finds that the report of Dr. Fries, the impartial medical specialist, constitutes the weight of medical opinion evidence. As noted, where there are opposing medical reports of virtually equal weight, the opinion of an impartial medical specialist is entitled to special weight if well rationalized and based upon a proper medical and factual background.[7] The Office properly accorded Dr. Fries' March 4, 2004 report the special weight of a referee medical examiner in its April 13, 2004 decision. It properly granted appellant a schedule award for 16 percent right upper extremity impairment. Following this decision, appellant's attorney requested a hearing, but did not submit any additional medical evidence. The Board will affirm the May 19, 2005 decision of the Office hearing representative, as the weight of medical opinion does not establish more than 16 percent right upper extremity impairment.

CONCLUSION

The Board finds that appellant has no more than a 16 percent impairment of the right upper extremity.

[6] These three findings are supported by the figures and tables referenced in subchapter 16.4i, "*Shoulder Motion Impairment*," at pages 474-477 of the A.M.A., *Guides* and are not contested by appellant on appeal.

[7] *See Soloman Polen*, 51 ECAB 341 (2000); *Edward E. Wright*, 43 ECAB 702 (1992).

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 20, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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