United States Department of Labor
Employees' Compensation Appeals Board

K.W., Appellant	)	
and	)	**Docket No. 07-1547**
	)	**Issued: December 19, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Jersey City, 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 May 21, 2007 appellant filed a timely appeal from the December 8, 2006 merit decision of the Office of Workers' Compensation Programs' hearing representative, who affirmed a 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 issue is whether appellant has more than a 13 percent permanent impairment of his left upper extremity.

FACTUAL HISTORY

On June 18, 2004 appellant, then a 42-year-old building equipment mechanic sustained an injury in the performance of duty while lifting a motor between floors because the elevator was out of order. The Office accepted his claim for left shoulder bursitis and approved surgery for chronic left shoulder impingement. On March 14, 2005 appellant underwent arthroscopic subacromial decompression, partial distal clavicle excision and debridement of a partial articular

rotator cuff tendon tear. The attending surgeon, Dr. Michael F. Pizzillo, reported that appellant reached maximum medical improvement by July 13, 2005.

Appellant requested a schedule award and submitted the December 14, 2005 report of Dr. David Weiss, an osteopath, who found a 10 percent impairment due to resection arthroplasty, a four percent impairment due to weakness of the supraspinatus during manual muscle testing and a three percent pain-related impairment. Dr. Weiss concluded that appellant had a 17 percent impairment of his left upper extremity.[1]

On May 4, 2006 the Office medical adviser reviewed Dr. Weiss' calculations and determined that appellant had a 13 percent impairment of his left upper extremity. The medical adviser agreed that appellant had a 10 percent impairment due to a partial resection of the distal clavicle. He also agreed that appellant had a three percent pain-related impairment, but the medical adviser noted that appellant's status appeared to have improved since Dr. Weiss' examination. Range of motion became "full and symmetric" by March 21, 2006, according to Dr. Pizzillo and regular physical therapy was expected to have increased appellant's strength. Therefore, the medical adviser rated no impairment due to loss of strength.

On May 18, 2006 the Office issued a schedule award for a 13 percent permanent impairment of the left upper extremity. In a decision dated December 8, 2006, an Office hearing representative affirmed.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[2] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[3]

ANALYSIS

Under Table 16-27, page 506 of the A.M.A., *Guides*, resection arthroplasty of the distal clavicle represents a 10 percent impairment of the upper extremity. This may be combined with motion impairment.[4]

Although Dr. Pizzillo, the attending surgeon, reported "full and symmetric" range of motion, a proper evaluation under the A.M.A., *Guides* requires actual goniometer readings or

[1] Dr. Weiss included no impairment due to loss of motion but reported 170 degrees forward elevation, 170 degrees abduction, 75 degrees adduction, 60 degrees internal rotation and 80 degrees external rotation.

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001).

[4] A.M.A., *Guides* 505.

linear measurements.[5] Dr. Weiss provided specific measurements in five of the six planes of shoulder motion,[6] which permits an application of tables in the A.M.A., *Guides*.

Under Table 16-40, page 476, 170 degrees flexion represents a one percent impairment of the upper extremity. Under Table 16-43, page 477, 170 degrees abduction and 75 degrees adduction represent no impairment. Under Table 16-46, page 479, 80 degrees external rotation represents no impairment, but 60 degrees internal rotation represents a two percent impairment. The impairment values contributed by each unit of motion are added to determine the impairment of the upper extremity due to abnormal shoulder motion.[7] Therefore, appellant's motion impairment is three percent. His 10 percent impairment due to resection arthroplasty combines with his three percent impairment due to abnormal shoulder motion for a 13 percent total impairment of the left upper extremity,[8] which is the percentage the Office awarded.

Dr. Weiss included a four percent impairment due to weakness of the supraspinatus musculature on manual muscle testing, but the A.M.A., *Guides* does not assign a large role to such measurements because they are functional tests influenced by subjective factors that are difficult to control, and the A.M.A., *Guides* is based for the most part on anatomic impairment.[9] Accordingly, loss of strength may be rated separately in rare cases, if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the A.M.A., *Guides*. Even then, impairment due to loss of strength could be combined with other impairments only if it is based on unrelated etiologic or pathomechanical causes. Otherwise, impairment ratings based on objective anatomic findings take precedence. Moreover, decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities or absence of parts that prevent effective application of maximal force in the region being evaluated.[10]

Dr. Weiss did not justify an impairment rating based on manual muscle testing. He did not explain how appellant's impairment was the rare case and he did not explain how appellant's loss of strength was based on etiologic or pathomechanical causes that were unrelated to other impairments. To support such a rating, Dr. Weiss would also have to show that the presence of decreased motion and the excision of the distal clavicle did not prevent the effective application of maximal force in the shoulder.

Dr. Weiss also did not justify a pain-related impairment. He included a three percent pain-related impairment based on Chapter 18 of the A.M.A., *Guides*. The A.M.A., *Guides* warns that examiners should not use Chapter 18 to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in

[5] *Id*. at 451, 453.

[6] He made no mention of backward extension.

[7] A.M.A., *Guides* 479.

[8] *Id*. at 604 (Combined Values Chart).

[9] *Id*. at 507.

[10] *Id*. at 508.

other chapters.[11] Moreover, as the A.M.A., *Guides* explains: "The impairment ratings in the body organ system chapters make allowance for any accompanying pain."[12] So the presence of pain alone does not justify a pain-related impairment. Dr. Weiss did not adequately explain why appellant's condition could not be rated in other chapters of the A.M.A., *Guides* or how his condition falls within one of the several situations identified under Chapter 18.3a.[13]

Dr. Weiss' report supports no more than a 13 percent permanent impairment of the left upper extremity, the percentage the Office awarded. On this basis, then, the Board will affirm the hearing representative's December 8, 2006 decision, as modified.

CONCLUSION

The Board finds that appellant has no more than a 13 percent permanent impairment of his left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2006 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

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

[11] *Id*. at 571.

[12] *Id*. at 20.

[13] *Id*. at 570-71.