United States Department of Labor
Employees' Compensation Appeals Board

R.A., Appellant	)	
	)	**Docket No. 07-503**
and	)	**Issued: September 17, 2007**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Lansing, MI, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 13, 2006 appellant filed a timely appeal of an October 6, 2006 merit decision of the Office of Workers' Compensation Programs, denying his claim for an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

ISSUE

The issue is whether appellant is entitled to an increased schedule award pursuant to 5 U.S.C. § 8107.

FACTUAL HISTORY

On July 18, 2002 appellant, then a 53-year-old letter carrier, sustained injury to his right arm and shoulder, neck and right leg, foot and knee when he slipped on a sidewalk while walking in the rain. On July 23, 2002 he filed a claim alleging that he sustained a recurrence of disability on that date. Appellant also stopped work on that day. He returned to full-time work on August 11, 2002. The Office accepted appellant's claim for right shoulder strain and a right rotator cuff tear. It authorized right shoulder surgery including an open distal clavicle resection

and subacromial decompression which was performed on December 11, 2002 by Dr. Kathleen A. Buran, a Board-certified orthopedic surgeon.

By letter dated May 21, 2004, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Bruce D. Abrams, a Board-certified orthopedic surgeon, for a second opinion medical examination.[1]

In a June 8, 2004 medical report, Dr. Abrams opined that appellant reached maximum medical improvement from the surgery performed in 2002. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A, *Guides*) (5th ed. 2001), he determined that appellant had a seven percent impairment of the right upper extremity which constituted a four percent impairment of the whole person.

On July 8, 2004 an Office medical adviser reviewed appellant's medical records including Dr. Abrams's June 8, 2004 report. The medical adviser determined that appellant reached maximum medical improvement on June 8, 2004. The medical adviser found that appellant sustained a 16 percent impairment of the right upper extremity based on the A.M.A., *Guides*.

On July 8, 2004 the Office claims examiner reviewed the medical adviser's findings and calculated a 17 percent impairment rather than a 16 percent impairment of the right upper extremity.

By decision dated July 14, 2004, the Office granted appellant a schedule award for 17 percent impairment of the right upper extremity.

In a letter dated February 14, 2005, the Office expanded the acceptance of appellant's claim to include unspecified disorder of calcium metabolism in the right shoulder and nontraumatic rupture of tendons of the biceps (long head). It authorized right shoulder arthroscopic surgery which was performed on March 9, 2005.

Dr. Buran's January 16, 2006 treatment note found that appellant had reached maximum medical improvement. By letter dated February 22, 2006, the Office requested that she determine the extent of appellant's permanent impairment based on the A.M.A, *Guides*. However, she did not respond.

By letter dated June 23, 2006, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Billy J. Page, II, an orthopedic osteopath, for a second opinion medical examination.

In a July 12, 2006 report, Dr. Page reviewed a history of appellant's July 18, 2002 employment injury, medical treatment and social background. He also reviewed his medical records. Dr. Page reported appellant's complaints of pain in the right shoulder and bicep tendons with activities. On physical examination, he reported essentially normal findings. Dr. Page's

[1] The record reflects that, effective May 1, 2004, appellant took a voluntary regular retirement from the employing establishment.

range of motion findings included 180 degrees of elevation and 60 degrees of external rotation each for the right and left shoulder. He reported slight internal rotation of the right shoulder. Appellant had a positive impingement sign for the right shoulder and a negative impingement for the left shoulder. On x-ray examination of the right shoulder, Dr. Page found evidence of excision of the lateral clavicle, narrowing of the subacromial space and degenerative changes of the right shoulder. He diagnosed status post excision of the lateral clavicle, repair of rotator cuff and tendonesis of the biceps tendon of the right shoulder. Dr. Page opined that appellant's current condition was likely a result of the accepted employment injury. Appellant did not require any additional surgery or physical therapy. Dr. Page stated that he could perform light-duty work with restrictions. He opined that appellant had reached maximum medical improvement. Dr. Page determined that loss of internal rotation was slight and constituted a one percent impairment based on the A.M.A., *Guides*. Utilizing the A.M.A., *Guides* 506, Table 16-27, he found that appellant's distal clavicle resection constituted a 10 percent impairment. Dr. Page combined the 10 percent impairment for the distal clavicle resection with the 1 percent impairment for internal rotation loss and determined that appellant had a total 11 percent impairment of the right upper extremity based on the A.M.A., *Guides* 604, Combined Values Chart.

On September 27, 2006 an Office medical adviser reviewed Dr. Page's July 12, 2006 findings and determined that appellant reached maximum medical improvement on July 12, 2006. The medical adviser agreed with the impairment rating provided by Dr. Page for appellant's right upper extremity. The medical adviser found that 70 degrees of internal rotation to the right hip constituted a one percent impairment based on the A.M.A., *Guides* 479, Figure 16-46. The medical adviser determined that a resection of the distal right clavicle constituted a 10 percent impairment based on the A.M.A., *Guides* 506, Table 16-27. Utilizing the Combined Values Chart of the A.M.A., *Guides*, the medical adviser agreed that appellant had a total 11 percent impairment of the right upper extremity.

By decision dated October 6, 2006, the Office denied appellant's claim for an additional schedule award. It found that he did not have more than the 17 percent impairment of the right upper extremity previously awarded.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] set 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 of loss of use.[4] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure

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

[3] 20 C.F.R. § 10.404.

[4] 5 U.S.C. § 8107(c)(19).

equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[5]

ANALYSIS

The Office accepted that appellant sustained right shoulder strain, right rotator cuff tear, unspecified disorder of calcium metabolism of the right shoulder and nontraumatic rupture of tendons of the biceps due to his July 18, 2002 employment injury. On July 14, 2004 appellant received a schedule award for a 17 percent impairment of the right upper extremity. By decision dated October 6, 2006, the Office found that appellant was not entitled to an additional schedule award. The issue is whether the medical evidence establishes that appellant sustained an increased impairment of his right upper extremity.

Dr. Buran, appellant's attending physician, stated in a January 16, 2006 treatment note that appellant had reached maximum medical improvement. However, she did not respond to the Office's February 22, 2006 request for a rating of the extent of appellant's permanent impairment. Her reports are therefore not probative to the issue on appeal.

Appellant was referred to Dr. Page for a second opinion medical examination. The July 12, 2006 report of Dr. Page revealed appellant's complaints of pain in the right shoulder and bicep tendons with activities. On physical examination, he reported essentially normal findings. Dr. Page provided his range of motion findings which included 180 degrees of elevation and 60 degrees of external rotation[6] each for the right and left shoulder. He stated that loss of internal rotation was slight and constituted a one percent impairment. (A.M.A., *Guides*, 479, Figure 16-46). Dr. Page diagnosed status post excision of the lateral clavicle, repair of rotator cuff and tendonesis of the biceps tendon of the right shoulder. He determined that appellant had a 10 percent impairment for a distal clavicle resection (A.M.A., *Guides* 506, Table 16-27). He combined the 10 percent impairment for the distal clavicle resection with the 1 percent impairment for internal rotation and determined that appellant had a total 11 percent impairment of the right upper extremity. (A.M.A., *Guides* 604, Combined Values Chart). The Board finds that Dr. Page properly utilized the A.M.A., *Guides* in determining appellant's impairment of the right shoulder. The Board notes that Dr. Page's 11 percent impairment of the right shoulder is less than the impairment rating for which appellant received a schedule award on July 14, 2004.

The Office medical adviser reviewed Dr. Page's impairment evaluation on September 27, 2006. The medical adviser concurred with Dr. Page's impairment rating, as noted above. Consequently, the weight of the medical evidence establishes that appellant has no more than 17 percent impairment of the right upper extremity, as was previously awarded.

[5] 20 C.F.R. § 10.404.

[6] The Board notes that 180 degrees of elevation (flexion) of the shoulder constitutes a 0 percent impairment based on the A.M.A., *Guides* 476, Figure 16-40. Further, 60 degrees of external rotation of the shoulder constitutes a 0 percent impairment based on the A.M.A., *Guides* 479, Figure 16-46.

CONCLUSION

The Board finds that appellant did not establish entitlement to an additional schedule award in this case.

ORDER

IT IS HEREBY ORDERED THAT the October 6, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2007
Washington, DC

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

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