United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 08-1264**
	)	**Issued: October 9, 2008**
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, SILVERTON RANGER STATION, Satherfield, ID, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 24, 2008 appellant filed a timely appeal of the January 15, 2008 merit decision of the Office of Workers' Compensation Programs finding a seven percent impairment of the left upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUE

The issue is whether appellant has more than a seven percent impairment of the left upper extremity, for which he received a schedule award.

FACTUAL HISTORY

On September 13, 2005 appellant, then a 55-year-old firefighter, dislocated his left shoulder when he slipped on a wet hillside. By letter dated December 5, 2005, the Office accepted his claim for closed genoid fracture of the left shoulder. On March 15, 2006 it authorized left shoulder arthroscopy with debridement of a partial thickness rotator cuff tear and

excision of a macerated labral tear with manipulation of the shoulder which was performed on June 2, 2006.

On October 2, 2007 appellant filed a claim for a schedule award. He submitted a November 20, 2007 medical report of Dr. William M. Shanks, a Board-certified orthopedic surgeon, who reviewed a history of appellant's September 13, 2005 employment injury and medical treatment. Appellant's left shoulder symptoms included catching and grinding with weakness in certain positions and pain. On physical examination, Dr. Shanks reported tenderness to palpation anteriorly and mild tenderness in the posterior capsular area. He reported range of motion measurements, which included 140 degrees of flexion on the left compared to 170 degrees on the right, 30 degrees of extension on the left compared to 60 degrees on the right, 120 degrees of abduction on the left compared to 180 degrees on the right, 40 degrees of adduction on the left compared to 45 degrees on the right, 80 degrees of internal rotation of both shoulders and 60 degrees of external rotation on the left compared to 90 degrees on the right. Dr. Shanks stated that strength testing did not show any weakness below the Grade 5 level, but that the left shoulder strength was weaker than the right side. He related that this weakness was not ratable.

Dr. Shanks stated that appellant had a history of left shoulder dislocation with spontaneous relocation associated with the September 13, 2005 employment injury. He was also status post arthroscopic debridement of the interarticular area and debridement of a labral tear of the left shoulder with manipulation of the shoulder. Dr. Shanks opined that, while appellant probably had some mild continuing instability of the joint, as long as he could get by without recurrent dislocation of the shoulder, further medical treatment was not recommended. If appellant continued to experience recurrent dislocation then he may require additional treatment and surgery. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001), Dr. Shanks found that appellant sustained a seven percent impairment of the left upper extremity causally related to his accepted employment injury. He determined that a three percent impairment for loss of flexion, one percent impairment for loss of extension and three percent impairment for loss of abduction (A.M.A., *Guides* 476, 477, 479, Figures 16-40, 16-43, 16-46), resulted in a seven percent impairment of the left upper extremity.

On December 18, 2007 Dr. L.J. Weaver, an Office medical adviser, reviewed the medical evidence of record and stated that appellant reached maximum medical improvement on November 20, 2007. Dr. Weaver determined that 140 degrees of flexion constituted a 3 percent impairment and 30 degrees of extension constituted a 1 percent impairment (A.M.A., *Guides* 476, Figure 16-40). Dr. Weaver also determined that 120 degrees of abduction represented a 3 percent impairment and 40 degrees of adduction constituted a 0 percent impairment (A.M.A., *Guides* 477, Figure 16-43). Dr. Weaver found that 80 degrees of internal rotation and 60 degrees of external rotation each represented a 0 percent impairment (A.M.A., *Guides* 479, Figure 16-46). Dr. Weaver agreed with Dr. Shanks' opinion that appellant sustained a seven percent impairment of the left upper extremity.

By decision dated January 8, 2008, the Office granted appellant a schedule award for a seven percent impairment of the left upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[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 of loss of use.[3] 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 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.[4]

The standards for evaluation of the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.[5] Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedure for determining impairments of the upper extremities due to pain, discomfort, loss of sensation or loss of strength.[6]

ANALYSIS

The Office accepted that appellant sustained a closed genoid fracture of the left shoulder while working at the employing establishment. Dr. Shanks, a Board-certified orthopedic surgeon, and Dr. Weaver, an Office medical adviser, agreed that appellant has seven percent impairment of the left upper extremity. They determined that 140 degrees of flexion constituted a three percent impairment and 30 degrees of extension constituted a one percent impairment (A.M.A., *Guides* 476, Figure 16-40). Dr. Shanks and Dr. Weaver further determined that 120 degrees of abduction represented a three percent impairment and 40 degrees of adduction constituted a zero percent impairment (A.M.A., *Guides* 477, Figure 16-43). They also determined that 80 degrees of internal rotation and 60 degrees of external rotation each represented a zero percent impairment (A.M.A., *Guides* 479, Figure 16-46). These impairment ratings were added to calculate a seven percent impairment of the left upper extremity. Dr. Shanks found that appellant did not have any ratable impairment for weakness as strength testing did not show any weakness below the Grade 5 level although his left shoulder was weaker than his right shoulder.

[1] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[2] 20 C.F.R. § 10.404.

[3] 5 U.S.C. § 8107(c)(19).

[4] 20 C.F.R. § 10.404.

[5] *See Paul A. Toms*, 28 ECAB 403 (1987).

[6] A.M.A., *Guides*, Chapter 16, *The Upper Extremities*, pp. 433-521 (5th ed. 2001).

Dr. Shanks and Dr. Weaver properly utilized the A.M.A., *Guides* and provided rationale for rating a seven percent impairment of the left upper extremity. The Board finds that the opinions of Dr. Shanks and Dr. Weaver represent the weight of the medical evidence of record. Appellant has no more than a seven percent impairment of the left upper extremity.

CONCLUSION

The Board finds that appellant has failed to establish that he has more than a seven percent impairment of the left upper extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 9, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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