

**United States Department of Labor
Employees' Compensation Appeals Board**

RONNIE W. MOORE, SR., Appellant)
)
and)
)
DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Fort Wayne, IN, Employer)
)

**Docket No. 05-451
Issued: May 12, 2005**

Appearances:
Ronnie W. Moore, Sr., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 14, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 15, 2004 merit decision denying his claim for an increased schedule award. 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 has more than a 22 percent permanent impairment of his right arm, for which he received schedule awards.

FACTUAL HISTORY

On May 20, 2002 appellant, then a 51-year-old motor vehicle operator, filed a traumatic injury claim alleging that he sustained a right shoulder injury and post-traumatic stress disorder after he was attacked by a patient on March 14, 2002.¹ The Office accepted that he sustained

¹ The Office assigned this claim the case number 92021684.

right rotator cuff tendinitis due to the incident.² It authorized the performance of a Mumford procedure (excision of the distal end of the right clavicle) which was performed on October 10, 2002.

Appellant sustained other employment injuries, which affected his right arm. On August 19, 1993 appellant sustained a right elbow contusion, right ulnar neuropathy, right medial epicondylitis, right shoulder tendinitis and right shoulder Mumford procedure (case number 90381796).³ On May 13, 2002 appellant sustained an exacerbation/aggravation of right chronic ulnar neuropathy (case number 92021423). The files for these injuries were combined in a master file under case number 92021423, but the record on appeal does not appear to contain any documents from this file.⁴ In connection with the August 19, 1993 injury, appellant received schedule awards for a 22 percent permanent impairment of his right arm.⁵

After sustaining his March 14, 2002 injury, appellant alleged that he had increased permanent impairment of his right arm which entitled him to an additional schedule award.

In a report dated September 22, 2003, Dr. Thomas L. Lazoff, an attending physician Board-certified in physical medicine and rehabilitation, detailed his evaluation of the medical condition of appellant's right shoulder. Dr. Lazoff provided range of motion findings for appellant's right arm. In a report October 22, 2003, Dr. Lazoff determined that, under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001), appellant's limited right shoulder motion represented a 12 percent permanent impairment of his right arm.

On November 20, 2003 an Office medical adviser evaluated the evidence of record, including the reports of Dr. Lazoff and determined that appellant had a 21 percent permanent impairment of his right arm. Using the Combined Values Chart of the A.M.A., *Guides*, the Office medical adviser combined a 12 percent impairment due to limited right shoulder motion with a 10 percent impairment due to the Mumford surgical procedure.

In May 2004, the Office referred appellant to Dr. Joan K. Szydal, a physician Board-certified in physical medicine and rehabilitation, for a second opinion evaluation regarding the extent of his right arm impairment.⁶ In reports dated May 24 and June 28, 2004, Dr. Szydal determined that appellant had a four percent permanent impairment of his right arm due to

² The Office also accepted that appellant sustained post-traumatic stress disorder. Appellant's emotional condition is not the subject of the present appeal.

³ This claim was also accepted for a depressive psychosis.

⁴ The record contains medical records, which indicate that appellant continued to have right elbow and ulnar nerve problems, but it does not appear that these documents are from case number 90381796 or 92021423.

⁵ Appellant received a schedule award covering the period November 15, 1995 to February 10, 1996 for a 4 percent permanent impairment of his right arm and a schedule award covering the period October 20, 1999 to November 17, 2000 for an 18 percent permanent impairment of his right arm. The record does not contain copies of these schedule awards.

⁶ It is unclear from the record why the Office chose to refer appellant for a second opinion evaluation.

limited right shoulder motion as measured on January 8, 2003.⁷ On August 10, 2004 an Office medical adviser indicated that he agreed with Dr. Szynal that appellant had four percent permanent impairment of his right arm due to limited right shoulder motion.

By decision dated September 15, 2004, the Office denied appellant's claim that he had more than a 22 percent permanent impairment of his right arm, as previously awarded. The Office indicated that none of the current medical evidence showed that appellant had more than a 22 percent permanent impairment of his right arm, for which he had received schedule awards.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁸ and its implementing regulation⁹ 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 In determining the amount of a schedule award for a member of the body, all employment-related conditions and preexisting impairments of the member of the body are to be included.¹¹

It is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. The Office has an obligation to see that justice is done.¹²

ANALYSIS

On March 14, 2002 appellant sustained employment-related right rotator cuff tendinitis and on October 10, 2002 he underwent a right Mumford procedure, which was authorized by the Office. Appellant sustained other employment injuries, which affected his right arm, including a August 19, 1993 injury accepted for right elbow contusion, right ulnar neuropathy, right medial epicondylitis, right shoulder tendinitis and right shoulder Mumford procedure and a May 13, 2002 injury accepted for an exacerbation/aggravation of right chronic ulnar neuropathy. In

⁷ Dr. Szynal asserted that appellant's right shoulder motion changed from visit to visit and indicated that the January 8, 2003 findings showed his best results.

⁸ 5 U.S.C. § 8107.

⁹ 20 C.F.R. § 10.404 (1999).

¹⁰ *Id.*

¹¹ See *Dale B. Larson*, 41 ECAB 481, 490 (1990).

¹² *Id.* at 490-91.

connection with the August 19, 1993 injury, appellant received schedule awards for a 22 percent permanent impairment of his right arm.

In determining that appellant's March 14, 2004 injury did not entitle him to more than a 22 percent permanent impairment of his right arm, for which he already received schedule awards, the Office referenced several impairment evaluations and noted that they did not show that appellant had more than a 22 percent impairment. An October 2003 calculation of Dr. Lazoff, an attending physician Board-certified in physical medicine and rehabilitation, found that appellant's limited right shoulder motion entitled him to a schedule award for a 12 percent permanent impairment of his right arm. In November 2003, an Office medical adviser determined that appellant was entitled to a schedule award for a 21 percent permanent impairment of his right arm due limited right shoulder motion and the Mumford procedure performed on his right shoulder. A May 2004 evaluation by Dr. Szynal, a physician Board-certified in physical medicine and rehabilitation, to whom the Office referred appellant, found that appellant had a four percent permanent impairment of his right arm due to limited right shoulder motion. In August 2004, this calculation was agreed to by an Office medical adviser.

The Board finds that the record does not contain a reasoned evaluation of the permanent impairment of appellant's right arm, which addresses all the employment-related conditions of his right arm. None of the evaluations provided any consideration of whether appellant had permanent impairment of the right arm due to impairment caused by an employment-related condition not involving the right shoulder. Consideration should be given to whether appellant's August 19, 1993 or May 13, 2002 employment injuries contributed to the extent of permanent impairment of his right arm.¹³ As noted above, in determining the amount of a schedule award for a member of the body, all employment-related conditions are to be included. As the record does not contain the files for the August 19, 1993 or May 13, 2002 employment injuries, the evaluators of record did not have a complete basis for calculating their impairment ratings.

For these reasons, the case will be remanded to the Office for an evaluation of appellant's right arm impairment, which takes into consideration all of his employment-related injuries. After such development it deems necessary, the Office should issue an appropriate decision addressing appellant's claim that he has more than a 22 percent permanent impairment of his right arm.¹⁴

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant has more than a 22 percent permanent impairment of his right arm, for which he received schedule awards. The case should be remanded to the Office for further development of the medical evidence to be followed by an appropriate decision concerning the extent of appellant's right arm impairment.

¹³ The record contains medical evidence which indicates that appellant continued to have right elbow and ulnar nerve problems.

¹⁴ The Office should attempt to locate the files for the August 19, 1993 and May 13, 2002 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 15, 2004 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: May 12, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member