United States Department of Labor
Employees' Compensation Appeals Board

T.L., Appellant	)	
and	)	**Docket No. 06-227**
	)	**Issued: August 24, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Jeffrey Zeelander, Esq., for the appellant
Office of 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 November 8, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated November 7, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant sustained more than a three percent impairment of his left upper extremity for which he received a schedule award.

FACTUAL HISTORY

On May 24, 1997 appellant, then a 44-year-old group leader of custodial maintenance, sustained an injury to his left shoulder when he lifted a broken skid in the performance of duty.

He stopped work and returned in a limited-duty capacity on July 28, 1997.[1] On July 16, 1997 the Office accepted appellant's claim for sprain and strain of the left shoulder and arm, left rotator cuff tendinitis and a cervical strain. He received appropriate compensation benefits. By letter dated September 8, 2003, appellant's representative requested authorization for an impairment rating evaluation with Dr. George Rodriguez, Board-certified in physical medicine and rehabilitation.

By letter dated September 18, 2003, the Office authorized an impairment rating with Dr. Rodriguez and indicated that the American Medical Association, *Guides to the Evaluation of Permanent Impairment.* (5th ed. 2001) (A.M.A., *Guides*) were to be utilized.

In an October 28, 2003 report, Dr. Rodriguez utilized the A.M.A., *Guides*, noted appellant's history of injury and treatment and conducted a physical examination. He determined that appellant had full range of motion of the neck and shoulders. Dr. Rodriguez also conducted a neurological examination and indicated that appellant had normal strength in all muscles with the exception of grip. He provided findings related to appellant's grip strength for the C6 nerve root. Dr. Rodriguez utilized a manometer and noted that appellant's grip was 150 millimeters on the right and 170 millimeters on the left. Regarding sensory impairment, he referred to Table 16-10 at page 482 and Table 16-13 at page 489 and advised that, for the C5 and C6 nerve roots, appellant had a Grade "4+" with a 10 percent sensory deficit. Dr. Rodriguez noted that the C5 root had a 5 percent maximum deficit and an 8 percent maximum deficit for the C6 root, with a 1 percent resultant deficit for each nerve root. He added the resulting deficits for each nerve root and explained that they equaled two percent. Regarding appellant's motor impairment, Dr. Rodriguez explained that the C6 nerve root warranted a Grade 4 which was equal to a 25 percent sensory deficit or a 35 percent maximum deficit, which resulted in a 9 percent motor impairment. He combined the 9 percent motor impairment with the 2 percent sensory impairment for 11 percent impairment to the left arm.

In a January 21, 2004 report, Dr. Frederick S. Lieberman, a Board-certified orthopedic surgeon, noted that appellant had an "essentially normal examination." He opined that appellant was capable of gainful employment with the exception that he not do any heavy lifting, pushing or pulling and was capable of changing positions at will.

In a March 5, 2004 letter, the Office advised appellant's representative that appellant did not appear to be at maximum medical improvement. The Office requested that Dr. Rodriguez comment on whether he had reached maximum medical improvement.

By letter dated March 7, 2004, appellant's representative repeated his request for a schedule award.[2] On July 29, 2004 appellant completed a Form CA-7 for compensation for a schedule award.

[1] The record reflects that appellant subsequently sustained a fractured right arm on October 25, 1997 due to a nonwork-related motor cycle accident. Appellant also has a left knee condition and bilateral carpal tunnel syndrome which were not work-related.

[2] In letters dated June 7, July 1, 22, October 15 and November 16, 2004, appellant's representative indicated that the Office's request for clarification was addressed and requested a schedule award.

In a November 15, 2004 report, an Office medical adviser noted appellant's history of injury and treatment. He indicated that no motor loss was noted and explained that appellant should not receive an award for motor loss. The Office medical adviser referred to page 482, Table 16-10 of the A.M.A., *Guides* and determined that appellant was entitled to a Grade 4 or 25 percent deficit. He referred to Table 16-13 at page 489 of the A.M.A., *Guides* and determined for the C5 and C6 roots, a maximum impairment for sensory loss was 5 percent for each nerve root. The Office medical adviser multiplied each root by the 25 percent deficit and arrived at 1.25 percent for each nerve root. He added the values for sensory loss and arrived at 2.5 percent, which he rounded up to find a 3 percent impairment to the left upper extremity. The Office medical adviser indicated that appellant reached maximum medical improvement on October 28, 2003.

By decision dated December 7, 2004, the Office awarded appellant compensation for 9.36 weeks from October 28, 2003 to January 1, 2004, based upon a three percent impairment of the left upper extremity.

By letter dated December 9, 2004, appellant's representative requested a hearing, contending that the Office medical adviser's report was illegible.

By decision dated September 9, 2005, the Office hearing representative remanded the case for additional development. He determined that the Office medical adviser did not explain his conclusion for not including motor loss in his rating. The hearing representative also indicated that the Office medical adviser did not explain why he utilized a 25 percent sensory deficit, when Dr. Rodriguez used 10 percent. He also noted that the Office medical adviser listed a five percent maximum upper extremity impairment for sensory deficit involving the C6 nerve root and explained that the A.M.A., *Guides* provided for a maximum of eight percent.

In an August 26, 2005 report, the Office medical adviser responded to the Office's August 5, 2004 request for clarification. Regarding appellant's sensory impairment, the Office medical adviser stated that he included a sensory loss rating in his calculation because of appellant's subjective complaints of pain. He referred to page 3 of Dr. Rodriguez' report and indicated that "sensation is intact to light touch throughout all nerve distributions" which would signify no loss of sensation. The Office medical adviser also noted that Dr. Lieberman indicated that appellant's examination was an "essentially normal sensory examination." The electromyography (EMG) scans and nerve conduction studies performed on March 15, 2001 did not reveal any C6 involvement; however, they revealed right C8 radiculopathy and median nerve entrapment neuropathy which led him to conclude that a sensory award should be made. The Office medical adviser explained that a miscalculation was made in his November 15, 2004 report. He referred to Table 16-13 at page 489 of the A.M.A., *Guides* and explained that the C5 sensory maximum impairment was five percent and that C6 sensory maximum was eight percent. The Office medical adviser also referred to Table 16-10 at page 482 of the A.M.A., *Guides* and explained that, for sensory impairment, a Grade 4 should be used which was equal to a 25 percent deficit. He explained that C5 sensory impairment of 5 percent times 25 percent equaled 1.25 percent. C6 sensory impairment at 8 percent times 25 percent was equal to 2 percent. The Office medical adviser added the 2 percent plus the 1 percent for a total of 3 percent. He noted the miscalculation in his prior report, for which he had attributed 1.25 percent to the C5 nerve

root and 1.25 percent to the C6 nerve root, which resulted in 2.5 percent and which he rounded to 3 percent. The Office medical adviser explained that, despite the error, the 3 percent sensory impairment rating did not change.

By decision dated November 7, 2005, the Office found that appellant was not entitled to more than three percent to the left upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulation[4] 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 appellants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all appellants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[5]

ANALYSIS

In an October 28, 2003 report, Dr. Rodriguez noted using the fifth edition of the A.M.A., *Guides*. Regarding motor impairment, he referenced the C6 nerve root and Tables 16-11[6] and 16-13[7] of the A.M.A., *Guides*. However, the Board notes that his findings for the C6 nerve root are not adequately explained with regard to his motor impairment estimate of nine percent. For example, while Dr. Rodriguez indicated that the C6 nerve root warranted a Grade 4, for a maximum 25 percent motor deficit, he attributed this to weakness in the C6 nerve root. However, he did not explain how he arrived at this value, which would be warranted for complete active range of motion against gravity only, without resistance.[8] This is particularly so in light of Dr. Rodriguez' finding that appellant had full range of motion of the neck and shoulders and diagnostic findings which revealed no C6 involvement. Regarding his sensory impairment, Dr. Rodriguez found two percent impairment and referred to Table 16-10 and Table 16-13.[9] Dr. Rodriguez advised that, under Table 16-13, the C5 root had a five percent maximum deficit and an eight percent maximum deficit for the C6 root.[10] He stated that application of

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] A.M.A., *Guides* (5th ed. 2001).

[6] *Id*. at 484.

[7] *Id.* at 489.

[8] *Id.* at 484.

[9] *Id*. at 482, 489.

[10] *See id*. at 489.

Table 16-10 yielded a one percent resultant deficit for each nerve root. Dr. Rodriguez advised that, for the C5 and C6 nerve roots, appellant had a Grade "4+" with a 10 percent sensory deficit. The Board notes, however, that this finding is not sufficiently explained as Dr. Rodriguez had earlier noted that appellant had sensation which was "intact to light touch throughout all nerve distributions." He did not explain how this would qualify for a Grade "4+" in Table 16-10 in contrast with Grade 5, for 0 percent sensory deficit, where there is no loss of sensibility, abnormal sensation or pain.[11] The physician's report does not sufficiently explain how the grades were determined in Tables 16-10 and 16-11 in calculating appellant sensory and motor loss.

In an August 26, 2005 report, the Office medical adviser utilized the fifth edition of the A.M.A., *Guides.* Regarding appellant's sensory impairment, the medical adviser noted that he was not entitled to any impairment for loss of sensation as Dr. Rodriguez indicated that he had sensation which was "intact to light touch throughout all nerve distributions." However, the medical adviser also indicated that, due to appellant's subjective complaints and an EMG scan and nerve conduction studies performed March 15, 2001, which revealed right C8 radiculopathy and median nerve entrapment neuropathy, sensory impairment was present. He noted a miscalculation in his November 15, 2004 report and referred to Table 16-13[12] to correct his prior calculation and found a maximum of five percent for C5 sensory loss and eight percent C6 sensory for loss to. The Office medical adviser also applied Table 16-10[13] and explained that, for sensory impairment, Grade 4 was equal to 25 percent deficit. He indicated that C5 sensory impairment of 5 percent times 25 percent equaled 1.25 percent. In addition, the Office medical adviser noted that a C6 sensory impairment at 8 percent times 25 percent was equal to 2 percent. He added the 2 percent plus the 1 percent and arrived at a total percentage of 3 percent. The Office medical adviser noted his prior miscalculation had attributed 1.25 percent to the C5 nerve root and 1.25 percent to the C6 nerve root, which resulted in 2.5 percent and which he rounded to 3 percent. He concluded that appellant was entitled to no more than three percent to the left upper extremity.

The Board finds that there is no other medical evidence of record, based upon a correct application of the A.M.A., *Guides*, to establish that appellant has more than a three percent impairment of the left upper extremity for which he received a schedule award. Accordingly, the Board finds that appellant has no more than a three percent impairment of the left upper extremity.

[11] *Id*. at 482.

[12] *Id.* at 489.

[13] *Id*. at 482.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained more than a three percent impairment of his left upper extremity for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 7, 2005 is affirmed.

Issued: August 24, 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