United States Department of Labor
Employees' Compensation Appeals Board

J.K., Appellant	)	
and	)	**Docket No. 06-517**
	)	**Issued: August 2, 2006**
DEPARTMENT OF THE AIR FORCE, KELLY AIR FORCE BASE, San Antonio, TX, Employer	)	

Appearances:
J.K., pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On January 3, 2006 appellant filed a timely appeal from Office of Workers' Compensation Programs' merit decisions dated June 16 and December 8, 2005. Under 20 C.F.R. §§ 501(c) and 501.3, the Board has jurisdiction over the merits of these schedule award decisions.

ISSUE

The issue is whether appellant has more than a 10 percent permanent impairment of his left upper extremity.

FACTUAL HISTORY

Appellant, a 55-year-old electrical equipment repairman, injured his left shoulder on April 10, 2002 while picking up a 20-pound motor. He filed a claim for benefits on April 18, 2002, which the Office accepted for left shoulder tendinitis and left shoulder impingement. The Office also authorized surgery for acromioplasty of the left shoulder and arthroscopic subacromial decompression on February 26, 2003.

On July 31, 2003 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his left upper extremity. In a report dated March 3, 2004, Dr. Bruce N. Edwards, a Board-certified orthopedic surgeon, found that appellant had a 16 percent permanent impairment for loss of use of the left upper extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*). He arrived at this 16 percent rating by combining the following findings: a 2 percent impairment based on 60 degrees of retained internal rotation; a 1 percent impairment based on 45 degrees of retained external rotation; a 2 percent impairment for retained forward elevation to 150 degrees; a 2 percent impairment based on 20 degrees of retained backward elevation; a 2 percent impairment based on 130 degrees of retained abduction; a 1 percent impairment based on 30 degrees of retained adduction; and a 6 percent impairment based on weakness.

In a memorandum/impairment rating dated May 13, 2004, an Office medical adviser reviewed Dr. Edwards' findings and conclusions regarding range of motion and calculated a 10 percent left upper extremity impairment pursuant to the A.M.A., *Guides*. The Office medical adviser adopted Dr. Edwards' findings regarding range of motion pursuant to Figure 16-40 at page 476, Figure 16-43 at page 477 and Figure 16-46 at page 479 and totaled a 10 percent impairment.[1] The Office medical adviser did not accord any additional impairment based on weakness, omitting Dr. Edwards's six percent impairment rating based on that element.

On July 7, 2004 the Office granted appellant a schedule award for a 10 percent permanent impairment of the left upper extremity for the period February 26 to October 1, 2004, for a total of 31.20 weeks of compensation.

By letter dated April 12, 2005, appellant's attorney requested reconsideration. In support of his request, appellant submitted a February 15, 2005 report from Dr. Edwards, who noted pain, soreness, numbness and tenderness in appellant's left shoulder, reiterated the diagnosis of left shoulder impingement syndrome and also diagnosed cervical radiculopathy. However, he did not provide any additional findings or ratings pertaining to appellant's left shoulder impairment.

In an impairment evaluation dated May 23, 2005, an Office medical adviser stated that "the 10 percent award [granted by the Office on July 7, 2004] was based on the acromioplasty operation [pursuant to] Table 16-27 at page 506. He stated that Dr. Edwards' findings regarding range of motion in appellant's left shoulder, including the overall 10 percent impairment rating, had been "appropriate," but found that Dr. Edwards "inappropriately" accorded an additional six percent rating for weakness. The Office medical adviser stated that the principles outlined in the A.M.A., *Guides* at page 508, Chapter 16.8a prohibited any additional award for weakness.

By decision dated June 16, 2005, the Office denied modification of the July 7, 2004 decision.

[1] Although the Office medical adviser calculated a 10 percent impairment for range of motion based on Dr. Edwards' findings, the findings the Office medical adviser stated that he relied on in his report only added up to a 6 percent impairment. Nevertheless, since the Office medical adviser did award the entire 10 percent impairment for loss of range of motion calculated by Dr. Edwards, any error is harmless.

By letter dated August 10, 2005, appellant requested reconsideration. In support of his request, he submitted a February 15, 2005 report from Dr. Edwards, who stated:

> "[Appellant's] shoulder and pain are rated today at 20 to 25 percent for pain and loss of function, 5 percent for loss of range of motion. His motion, strength, and such are improved compared to the last time I saw him, but he is still [weak]. [Appellant] has limited adduction over his head, limited rotation behind his back. This is not based on the A.M.A., *Guides*, but based on my impression of his general function of that arm. In the past it was 16 percent and there is no great difference between down and the last time I rated him. It is my guess today of what his impairment is and the previous one was based on the A.M.A., *Guides*."

On November 29, 2005 an Office medical adviser rejected Dr. Edwards' finding of an additional 10 to 15 percent impairment based on pain or weakness. He reiterated the prior finding that, pursuant to section 16.8(a) at page 508 of the A.M.A., *Guides*, an impairment for weakness should not be combined with an impairment based on range of motion. In addition, he stated that, pursuant to Table 17-2 at page 526, an award based on range of motion cannot be combined with muscle strength or muscle atrophy.

By decision dated December 8, 2005, the Office denied modification of the July 7, 2004 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[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 loss of use.[3] However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.[4]

ANALYSIS

In this case, the Office medical adviser determined in his May 13, 2004 report that appellant had a 10 percent impairment of his left upper extremity pursuant to the A.M.A., *Guides* based on Dr. Edwards' findings for loss of range of motion in the left shoulder. The 10 percent impairment was an aggregate amount, derived from findings for loss of retained internal rotation, retained external rotation, retained forward elevation, retained backward elevation, retained abduction, and retained adduction which were then combined. The Board concurs with these

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

[3] 5 U.S.C. § 8107(c)(19).

[4] 20 C.F.R. § 10.404.

findings. Pursuant to Figure 16-46[5] retained internal rotation to 60 degrees equals 2 percent impairment and retained external rotation to 45 degrees equals 1 percent impairment. Pursuant to Figure 16-40[6] retained forward elevation to 150 degrees equals 2 percent impairment and retained backward elevation to 20 degrees equals 2 percent impairment. Pursuant to Figure 16-46[7] retained abduction to 130 degrees equals 2 percent impairment and retained adduction to 30 degrees equals a 1 percent impairment. The Board holds that the Office properly found, based on the Office medical adviser's findings, that appellant had a 10 percent impairment based on loss of range of motion based on the A.M.A., *Guides*.

The Office medical adviser, however, rejected Dr. Edwards' finding of an additional six percent impairment based on weakness, finding that pursuant to section 16.8(a) at page 508 of the A.M.A., *Guides*, an impairment for weakness should not be combined with an impairment based on pain. This subsection states, at 16.8(a):

> "In a rare case, 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*, the loss of strength may be rated separately.... If the examiner judges that loss of strength should be rated separately in an extremity that presents other impairments, the impairment due to loss of strength *could be combined* with other impairments, *only if* based on unrelated etiologic or pathomechanical causes. [Emphasis in the original.] 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."

In the instant case, the Office medical adviser properly relied on subsection 16.8(a), as Dr. Edwards' proposed impairment rating based on weakness stemmed from the same affected area as that from which he derived an impairment based on pain. The Board therefore finds that the Office properly found in its July 7, 2004 that appellant had a 10 percent impairment of his left upper extremity.

Following this decision, appellant submitted a February 15, 2005 report from Dr. Edwards, who noted pain, soreness, numbness and tenderness in appellant's left shoulder, reiterated the diagnosis of left shoulder impingement syndrome and also diagnosed cervical radiculopathy. However, he did not provide any additional findings or ratings pertaining to appellant's left shoulder impairment. In addition, the Office medical adviser changed the basis of appellant's 10 percent impairment rating from one based on loss of range of motion to one based on an distal clavicle acromioplasty under Table 16-27 at page 506. The Board finds that, as an impairment rating based on an acromioplasty is equally valid as one based on loss of range of motion, and as the amount of the award was not changed, the Office's finding in this regard was proper. The Board therefore affirms the Office's June 16, 2005 decision, which properly

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

[6] *Id.* at 476.

[7] *Id.* at 479.

found that Dr. Edwards' February 15, 2005 report did not constitute sufficient evidence to modify the July 7, 2004 schedule award.

Appellant subsequently submitted the February 15, 2005 report from Dr. Edwards, who upgraded his overall impairment rating to 20 to 25 percent. However, this report lacks probative value, as he stated that this modified rating was not rendered in conformance with the A.M.A., *Guides*, as was his earlier rating, but rather on his "impression" of the general function of the left arm, and his "guess" of what his impairment rating was at the current time. The Office medical adviser properly rejected Dr. Edwards' finding of an additional 10 to 15 percent impairment based on pain or weakness. He reiterated his prior finding that, pursuant to section 16.8(a) at page 508 of the A.M.A., *Guides*, an impairment for weakness should not be combined with an impairment based on range of motion. In addition, the Office medical adviser stated correctly that, pursuant to Table 17-2 at page 526, an award based on range of motion cannot be combined with muscle strength or muscle atrophy.[8]

As there is no other probative medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found in its December 8, 2005 decision that appellant was not entitled to more than an additional 10 percent permanent impairment to his left upper extremity.

CONCLUSION

The Board finds that appellant has no more than a 10 percent permanent impairment to his left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the December 8 and June 16, 2005 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: August 2, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

[8] *See James R. Taylor*, 56 ECAB ___ (Docket No. 05-135, issued May 13, 2005).