United States Department of Labor
Employees' Compensation Appeals Board

R.J., Appellant	)	
and	)	**Docket No. 06-1584**
	)	**Issued: December 14, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Shreveport, LA, Employer	)	

Appearances:
Jeffrey P. 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 5, 2006 appellant filed a timely appeal from a February 16, 2006 merit decision of the Office of Workers' Compensation Programs granting a schedule award for upper extremity impairment.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has more than a 27 percent permanent impairment of the right upper extremity, for which he received a schedule award. On appeal appellant contends that an Office medical adviser improperly excluded an impairment rating for loss of strength when calculating the schedule award.

[1] Appellant did not appeal a November 10, 2005 decision reversing the termination of his wage-loss compensation benefits.

FACTUAL HISTORY

The Office accepted that on June 13, 1998 appellant, then a 47-year-old mail handler, sustained a right shoulder strain, tendinitis and impingement syndrome when he unloaded a truck of mail. Appellant stopped work on October 16, 1998, returned to modified duty from December 16 to 18, 1998, stopped work again and did not return. The Office authorized a partial distal clavicectomy, performed on March 17, 1999.[2] Appellant received wage-loss compensation for work absences through September 1, 2004.

On December 2, 1999 the employing establishment offered appellant a modified mail handler position. Appellant submitted December 7, 1999 and November 8, 2000 letters rejecting the job. He contested that the proposed duties were beyond his physical limitations. The Office did not acknowledge appellant's reasons for refusal.

On July 21, 2004 the Office referred appellant to Dr. John P. Sandifer, a Board-certified orthopedic surgeon, for a second opinion examination. A statement of accepted facts and the medical record were provided for his review. Dr. Sandifer submitted an August 10, 2004 report. He opined that appellant had reached maximum medical improvement. On examination of the right shoulder, Dr. Sandifer observed the following ranges of motion: 75 degrees forward elevation; 30 degrees backward elevation; 80 degrees abduction; 25 degrees adduction; 30 degrees internal rotation; 30 degrees external rotation and 35 degrees extension. He also noted a positive impingement sign, decreased grip strength on the right and 4/5 strength in the right deltoid and biceps. Dr. Sandifer related appellant's complaints of pain interfering with activities of daily living. He opined that, according to Figures 16-38, 16-39, 16-40 and section 16.4i of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[3] appellant had a 38 percent impairment of the right upper extremity due to weakness and restricted motion.

By decision dated December 28, 2004, the Office terminated appellant's compensation on the grounds that he refused an offer of suitable work. Following a review of the written record, the Office issued a November 10, 2005 decision reversing the December 28, 2004 decision. The Office found that it failed to notify appellant that his reasons for rejecting the light-duty job were insufficient. The case was remanded to determine appellant's entitlement to wage-loss compensation and a schedule award.

On January 20, 2006 the Office referred the medical evidence and a statement of accepted facts to an Office medical adviser to calculate the percentage of impairment to

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[2] On March 26, 2004 appellant underwent a C5-6 bilateral anterior cervical discectomy, foraminotomy, osteophytectomy and posterior fusion to address a right-sided C6 radiculopathy. There is no evidence of record that this procedure was related to the accepted right shoulder injury and surgery.

[3] Figure 16-38, page 475 of the fifth edition of the A.M.A., *Guides* is entitled "Shoulder Flexion and Extension." Figure 16-39, page 475 of the fifth edition of the A.M.A., *Guides* is entitled "Motion Unit Impairment Curves for Ankylosis (IA percent), Loss of Flexion (IF percent) and Loss of Extension (IE percent) of Shoulder." Figure 16-40, page 476 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack of Flexion and Extension of Shoulder." Section 16.4i, page 474 of the fifth edition of the A.M.A., *Guides* is entitled "Shoulder Motion Impairment."

appellant's right arm. In a January 31, 2006 report, an Office medical adviser reviewed Dr. Sandifer's report and the statement of accepted facts. He determined that appellant reached maximum medical improvement as of August 10, 2004. The medical adviser noted the following percentages of impairment of the right upper extremity according to Figures 16-40, 16-43[4] and 16-46[5] at pages 476 to 479 of the A.M.A., *Guides*: 7 percent for flexion limited to 75 degrees; 1 percent for extension limited to 30 degrees; 5 percent for abduction limited to 80 degrees; 1 percent for adduction limited to 25 degrees; 4 percent for internal rotation limited to 30 degrees; 1 percent for external rotation limited to 30 degrees. The medical adviser totaled these percentages to equal 19 percent. He also opined that, according to Table 16-27, page 506[6] of the A.M.A., *Guides*, appellant had a 10 percent impairment of the right upper extremity for resection arthroplasty of the distal clavicle. Using the Combined Values Chart, the Office medical adviser combined the 19 and 10 percent impairments to total a 27 percent impairment of the right upper extremity. The medical adviser opined that Dr. Sandifer's recommendation of an additional impairment for loss of strength in the presence of decreased motion contravened section 16.8, page 507[7] of the A.M.A., *Guides*. He concurred with the remainder of Dr. Sandifer's impairment rating.

By decision dated February 16, 2006, the Office granted appellant schedule award for a 27 percent permanent impairment of the right upper extremity.[8]

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act[9] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a mater which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 Office as a standard for

[4] Figure 16-43, page 477 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack of Abduction and Adduction of Shoulder.

[5] Figure 16-46, page 479 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Upper Extremity Impairments Due to Lack of Internal and External Rotation of Shoulder."

[6] Table 16-27, page 506 of the fifth edition of the A.M.A., *Guides* is entitled "Impairment of the Upper Extremity After Arthroplasty of Specific Bones or Joints."

[7] Section 16.8, page 507 of the fifth edition of the A.M.A., *Guides* is entitled "Strength Evaluation."

[8] The period of the award ran from September 2, 2004 to April 14, 2006. The Office noted adjusting the start date of the award from August 10, 2004 as appellant received compensation through September 1, 2004.

[9] 5 U.S.C. §§ 8101-8193.

evaluation of schedule losses and the Board has concurred in such adoption.[10] As of February 1, 2001, schedule awards are calculated according to the fifth edition of the A.M.A., *Guides*, published in 2000.[11]

The standards for evaluation 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.[12] 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.[13]

ANALYSIS

The Office accepted that, on June 13, 1998, appellant sustained a right shoulder strain, tendinitis and impingement syndrome requiring a partial distal clavicectomy. To assess appellant's entitlement to a schedule award, the Office referred appellant for a second opinion examination by Dr. Sandifer, a Board-certified orthopedic surgeon. He submitted an August 10, 2004 report including detailed measurements for ranges of right shoulder motion. He referred generally to Figures 16-38, 16-39, 16-40 and section 16.4i of the A.M.A., *Guides,* concluding that appellant had a 38 percent impairment of the right upper extremity due to weakness and restricted motion. However, the A.M.A., *Guides*, specifically provides that strength deficits measured by manual muscle testing should only rarely be included in the calculation of upper extremity impairment.[14] Dr. Sandifer did not explain why appellant's case fell into the rare category such that he could only use strength testing, in light of the fact that he performed range of motion testing.

[10] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[11] *See* FECA Bulletin 01-05 (issued January 29, 2001) (schedule awards calculated as of February 21, 2001 should be evaluated according to the fifth edition of the A.M.A., *Guides*. Any recalculations of previous awards which result from hearings, reconsideration or appeals should, however, be based on the fifth edition of the A.M.A. *Guides* effective February 1, 2001).

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

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

[14] The A.M.A., *Guides* provides that loss of strength may be rated separately if such a deficit has not been considered adequately by other rating methods. An example of this situation would be loss of strength caused by a severe muscle tear that healed leaving a palpable muscle defect. If the rating physician determines 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 the other impairments, only if based on unrelated etiologic or pathomechanical causes. Otherwise, the impairment ratings based on objective anatomic findings take precedence. The A.M.A., *Guides* further provides that decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities or absence of parts that prevent effective application of maximum force. A.M.A., *Guides* at 508, section 16.8a.

In a January 31, 2006 report, an Office medical adviser applied Figures 16-40, 16-43 and 16-46 of the A.M.A., *Guides* to Dr. Sandifer's range of motion measurements, calculating a 19 percent impairment due to restricted motion. He added a 10 percent impairment for the clavicle resection according to Table 16-27. The medical adviser combined the 19 and 10 percent impairments to equal a 27 percent impairment of the right upper extremity. He explained that Dr. Sandifer's recommendation of an additional impairment for loss of strength contravened section 16.8 of the A.M.A., *Guides*. Based on the Office medical adviser's application of the A.M.A., *Guides* to Dr. Sandifer's findings, the Office issued a schedule award on February 16, 2006 for a 27 percent impairment of the right upper extremity.

The Board finds that the Office medical adviser properly reviewed Dr. Sandifer's findings and accurately applied the appropriate tables and figures of the A.M.A. *Guides* to each measurement and clinical observation. 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 27 percent permanent impairment of the right arm for which he received a schedule award. Accordingly, the Board finds that appellant has no more than a 27 percent permanent impairment of the right upper extremity.

CONCLUSION

The Board finds that appellant has not established that he sustained greater than a 27 percent impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 16, 2006 is affirmed.

Issued: December 14, 2006
Washington, DC

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

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

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