United States Department of Labor
Employees' Compensation Appeals Board

GARY L. McNEIL, Appellant	)	
and	)	**Docket No. 06-38**
	)	**Issued: March 2, 2006**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Philadelphia, PA, 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
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 6, 2005 appellant filed a timely appeal of an October 4, 2005 merit decision of the Office of Workers' Compensation Programs with respect to appellant's entitlement to a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issues of this case.

ISSUE

The issue is whether appellant has more than a four percent permanent impairment to his left arm, for which he received a schedule award on May 25, 2004.

FACTUAL HISTORY

On February 1, 2000 appellant, then a 45 year-old pipefitter, filed a traumatic injury claim (Form CA-1) alleging that he sustained a left arm condition as a result of his federal employment. The Office accepted the claim for a left shoulder sprain, left shoulder impingement syndrome and ulnar nerve entrapment of the left elbow.

In a report dated December 18, 2003, a Dr. George Rodriguez provided a history and results on examination. With respect to the neurological system, Dr. Rodgriguez reported normal sensation to light touch and pinprick, "strength is 5/5 in all muscle groups." He also reported grip strength of 300+ mm [millimeters] Hg [hand grip] on the right and 300 mm Hg on the left. Dr. Rodriguez diagnosed rotator cuff impingement syndrome of the left shoulder, left elbow ulnar neuritis, cervical radiculopathy and moderate ratable pain. With respect to an impairment rating, Dr. Rodriguez identified the ulnar nerve, graded the impairment at 25 percent of a maximum 50 percent for combined motor and sensory impairment, for a 13 percent arm impairment. Dr. Rodriguez identified Table 16-10 and 16-15 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.* He also added an additional two percent impairment for moderate pain, citing Chapter 18, section 3(d) of the A.M.A., *Guides.*

In a report dated May 20, 2004, an Office medical adviser indicated that Dr. Rodriguez' examination did not indicate a motor loss. He opined that appellant had 25 percent deficit of the maximum 7 percent for ulnar sensory loss or pain, resulting in a 2 percent impairment. The medical adviser also added an additional two percent impairment for pain under Chapter 18 of the A.M.A., *Guides*, for a four percent left arm impairment.

By decision dated June 14, 2005, an Office hearing representative remanded the case for clarification from the Office medical adviser. The hearing representative requested that the medical adviser clarify his opinion as to motor weakness based on the report from Dr. Rodriguez.

In a report received by the Office on October 3, 2005, the medical adviser noted that Dr. Rodriguez had reported normal strength on examination and his report did not establish any motor deficit. He again opined that appellant had a four percent left arm report based on Tables 16-10 and 16-15, and Chapter 18.

In a decision dated October 4, 2005, the Office determined that appellant was not entitled to more than a four percent left arm permanent impairment.

LEGAL PRECEDENT

The schedule award provision of the Act[1] and its implementing regulation[2] 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.

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

ANALYSIS

In the present case, appellant's physician, Dr. Rodriguez opined that appellant had a permanent impairment to his left arm based on motor deficit and sensory deficit/pain. Under Table 16-15, the ulnar nerve above the midforearm has a maximum impairment of 7 percent for sensory deficit or pain, 46 percent for motor deficit. For an impairment that involves both motor deficit and sensory deficit/pain, under the A.M.A., *Guides* the proper method is to grade the impairment for sensory deficit or pain according to Table 16-10, and grade the impairment for motor deficit under Table 16-11. The graded percentages of the maximum impairment are then determined for the sensory and motor impairment, and the results combined using the Combined Values Chart.[3]

Dr. Rodriguez did not specifically identify Table 16-11; it appeared that he graded the motor impairment at 25 percent of the maximum. He did not provide any additional explanation with respect to a motor impairment. As noted by the Office medical adviser, the report of Dr. Rodriguez did not clearly describe a motor deficit. He noted that appellant intermittently described some weakness in the left hand, but the physical examination did not document a motor deficit. Dr. Rodriguez reported, for example, that strength was 5/5 in all muscle groups. There is no indication that Dr. Rodriguez found a motor deficit based on loss of grip strength.[4] Since Dr. Rodriguez did not identify the appropriate tables or clearly explain the basis for an impairment rating for loss of strength, the Board finds that his opinion with respect to a motor deficit impairment is of diminished probative value.

The Office medical adviser provided a reasoned medical opinion that appellant had a 25 percent impairment of the maximum 7 percent for sensory deficit or pain from the ulnar nerve, or 2 percent. The weight of the probative medical evidence therefore indicated that appellant had a two percent left arm permanent impairment. The medical adviser then added an additional two percent based on Chapter 18 of the A.M.A., *Guides*.[5] The Board finds that the record does not establish more than a four percent permanent impairment to the left arm, for which appellant received a schedule award on May 25, 2004.

The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the arm, the maximum number of weeks of compensation is 312 weeks. Since appellant had 4 percent impairment, he is entitled to 4 percent of 312 weeks, or 12.48 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee

[3] Table 16-15 includes the combined values; for the ulnar nerve above midforearm, it is 50 percent (46 combined with 7); *see also* the Combined Values Chart, 604.

[4] An impairment based on loss of grip strength is discussed in Chapter 16.8 of the A.M.A., *Guides*. This method is appropriate only in the rare case that other methods do not adequately assess the impairing factor. A.M.A., *Guides* 508.

[5] Neither the Office medical adviser nor Dr. Rodriguez explain why Chapter 18 is appropriate in this case, since it is to be used only for pain-related impairments that cannot properly be rated using other methods. *See Phillip A. Norulak*, 55 ECAB ___ (Docket No. 04-817, issued September 3, 2004). Since any error in this regard is not adverse to appellant, the Board will not further address the issue.

reaches maximum medical improvement from residuals of the employment injury.[6] In this case, the Office medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Rodriguez on December 18, 2003.

CONCLUSION

Appellant did not establish more than a four percent permanent impairment to his left arm, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 4, 2005 is affirmed.

Issued: March 2, 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

[6] *Albert Valverde*, 36 ECAB 233, 237 (1984).