United States Department of Labor
Employees' Compensation Appeals Board

DAVID A. HANEY, Appellant	)	
and	)	**Docket No. 06-182**
	)	**Issued: March 17, 2006**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION 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 November 2, 2005 appellant filed a timely appeal of the September 19, 2005 merit decision of the Office of Workers' Compensation Programs, which affirmed a schedule award for right upper extremity impairment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim for a schedule award.[1]

ISSUE

The issue is whether appellant has greater than five percent impairment of the right upper extremity, for which he received a schedule award.

[1] The record on appeal includes evidence that was submitted after the Office issued the September 19, 2005 decision. The Board may not consider evidence that was not before the Office at the time it rendered its final decision. 20 C.F.R. § 501.2.

FACTUAL HISTORY

Appellant, a 57-year-old retired flat sorter machine operator, has an accepted occupational disease claim for aggravation of preexisting degenerative disc disease, which arose on or about June 6, 2000. He underwent an anterior cervical discectomy and fusion at C5-6, which the Office accepted as employment related.[2] In 2003 the Office expanded the claim to include adjustment reaction and psychogenic pain disorder as accepted conditions. Appellant has received appropriate wage-loss compensation for total disability since his June 13, 2000 work stoppage.[3]

On May 10, 2004 appellant filed a claim for a schedule award. Dr. George L. Rodriguez, a Board-certified physiatrist, examined appellant, reviewed various medical records and provided a July 15, 2004 impairment rating. Dr. Rodriguez considered appellant's orthopedic and psychological conditions. He found 10 percent right upper extremity impairment due to combined motor and sensory deficits involving the C6 spinal nerve. Dr. Rodriguez also found 3 percent impairment for psychogenic pain, for a total right upper extremity impairment of 13 percent. He indicated that appellant reached maximum medical improvement on December 31, 2001.

On January 5, 2005 the Office medical adviser reviewed the case record, including Dr. Rodriguez's July 15, 2004 report. The Office medical adviser found five percent right upper extremity impairment due to sensory deficit involving the C6 nerve and psychogenic pain.

By decision dated February 1, 2005, the Office granted a schedule award for five percent impairment of the right upper extremity. The award covered a period of 15.6 weeks from October 5, 2003 to January 22, 2004. Appellant requested a review of the written record and in a decision dated September 19, 2005 the Office hearing representative affirmed the February 1, 2005 schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[4] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate

[2] Dr. Richard J. Levenberg, a Board-certified orthopedic surgeon, performed the procedure on January 12, 2001.

[3] Effective October 4, 2003, appellant elected to receive a retirement annuity from the Office of Personnel Management in lieu of workers' compensation benefits.

[4] The Act provides that for a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

standard for evaluating schedule losses.[5] Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).[6]

ANALYSIS

Appellant argues that the Office should have based the February 1, 2005 schedule award on Dr. Rodriguez's July 15, 2004 impairment rating of 13 percent rather than the 5 percent rating provided by the Office medical adviser. Dr. Rodriguez calculated appellant's impairment applying Tables 16-10, 16-11 and 16-13, A.M.A., *Guides* 482, 484 and 489. He classified appellant's right upper extremity impairment as Grade 4 (25 percent deficit).[7] Dr. Rodriguez also indicated that appellant's impairment involved the C6 nerve and according to Table 16-13, 40 percent is the maximum upper extremity impairment for combined motor and sensory deficits involving the C6 spinal nerve.[8]

To determine the upper extremity impairment one multiplies the percentage deficit based on the grade classification under Tables 16-10 and 16-11 by the maximum combined motor/sensory deficits under Table 16-13. As indicated, Dr. Rodriguez provided a Grade 4 classification with a 25 percent deficit for the right upper extremity, which when multiplied by the 40 percent combined motor/sensory deficits under Table 16-13 resulted in a right upper extremity impairment of 10 percent (25 percent x 40 percent = 10 percent). Dr. Rodriguez also found 3 percent impairment for psychogenic pain, for a total right upper extremity impairment of 13 percent.[9]

The Office medical adviser disagreed with Dr. Rodriguez's 10 percent impairment rating for combined motor and sensory deficits. He explained that the July 15, 2004 examination findings did not support impairment due to motor deficit. Specifically, he noted that Dr. Rodriguez reported full range of motion in all directions at the shoulder, elbow and wrist. Also, Dr. Rodriguez's neurological evaluation revealed that appellant's sensation was intact to light touch in all dermatomes and nerve distributions. The Office medical adviser further stated that the July 15, 2004 examination revealed normal grip strength. Given appellant's recent physical findings, the Office medical adviser properly found that contrary to Dr. Rodriguez's opinion, there was no impairment for motor deficit.

[5] 20 C.F.R. § 10.404 (1999).

[6] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); FECA Bulletin No. 01-05 (issued January 29, 2001).

[7] With respect to sensory deficits or pain, a Grade 4 classification is characterized by "[d]istorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensation or pain, that is forgotten during activity." This classification represents a 1 to 25 percent deficit. Table 16-10, A.M.A., *Guides* 482. Motor deficits are graded under Table 16-11, A.M.A., *Guides* 484. A Grade 4 classification represents "[c]omplete active range of motion against gravity with some resistance," with a percentage deficit from 1 to 25. *Id.*

[8] Table 16-13, A.M.A., *Guides* 489.

[9] Section 18.3d, A.M.A., *Guides* 573.

The Office medical adviser did, however, find two percent impairment for sensory deficit or pain involving the C6 spinal nerve. He concurred with Dr. Rodriguez's classification of the severity of appellant's sensory deficit at 25 percent. According to Table 16-13, the maximum upper extremity impairment due to sensory deficit or pain involving the C6 spinal nerve is 8 percent.[10] A Grade 4 classification with a 25 percent deficit multiplied by 8 percent impairment for sensory deficit or pain equals 2 percent impairment of the right upper extremity. Additionally, Dr. Rodriguez and the Office medical adviser both found appellant entitled to an additional three percent impairment for psychogenic pain.[11] Taking into account appellant's C6 sensory deficit and the impairment for psychogenic pain, the Office medical adviser concluded that appellant had a total right upper extremity impairment of 5 percent.

Appellant has not submitted any credible medical evidence indicating that he has greater than five percent impairment of the right upper extremity.

CONCLUSION

The Board finds that appellant failed to establish that he has greater than five percent impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 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

[10] Table 16-13, A.M.A., *Guides* 489.

[11] Figure 18-1, A.M.A., *Guides* 574; FECA Bulletin No. 01-05 (issued January 29, 2001).