United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 07-341**
	)	**Issued: April 24, 2007**
U.S. POSTAL SERVICE, POST OFFICE, McAllen, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 20, 2006 appellant filed a timely appeal from an October 31, 2006 merit decision of the Office of Workers' Compensation Programs granting him a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

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

FACTUAL HISTORY

On July 26, 2004 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim alleging that he twisted his right knee on that date delivering mail. He did not stop work. The

Office accepted the claim for internal derangement of the right knee and left shoulder strain. On June 1, 2005 appellant underwent arthroscopic surgery on his left shoulder.[1]

On September 23, 2006 appellant filed a claim for a schedule award. He submitted an impairment evaluation dated September 7, 2006 from Dr. L. Stacy Mitchell, a Board-certified orthopedic surgeon, who stated:

> "[Appellant] was taken to the operating room on July 26, 2004 with a diagnosis of left shoulder impingement. [He] was noted to have a partial supraspinatus tendon tear of the rotator cuff unit. [Appellant] underwent left shoulder arthroscopy with a subacromial decompression with limited debridement of the supraspinatus tendon."

Dr. Mitchell found that appellant had full range of motion of the left shoulder with 180 degrees forward flexion, 180 degrees abduction and 190 degrees external rotation. He determined that appellant had no loss of sensation and had "4/5 motor strength of his left shoulder rotator cuff unit mainly in regards to the supraspinatus and infraspinatus muscles." Dr. Mitchell diagnosed status post left shoulder arthroscopic subacromial decompression and status post limited debridement of the supraspinatus tendon. He determined that appellant had reached maximum medical improvement. Citing to Example 16-60 on page 491 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), Dr. Mitchell found that appellant had Grade 4 muscle strength of the supraspinatus and infraspinatus muscles which constituted a 4 percent upper extremity impairment. He asserted that the Office did not utilize upper extremity impairment ratings but instead provided whole person impairment ratings. Dr. Mitchell thus, concluded that appellant had a four percent whole person impairment.

On October 17, 2006 an Office medical adviser reviewed Dr. Mitchell's report. He found that appellant had a 2 percent impairment of the left upper extremity due to a Gade 4 loss of strength in shoulder abduction and a 2 percent impairment of the left upper extremity due to a Gade 4 loss of strength in external rotation according to Table 16-35 on page 510 of the A.M.A., *Guides*. He added the impairments due to loss of strength to find a four percent impairment of the left upper extremity.

In a progress report dated October 5, 2006, received by the Office on October 30, 2006, Dr. Jorge E. Tijmes, a Board-certified orthopedic surgeon, noted that appellant experienced mild tenderness to palpation of the superior aspect of the left shoulder. He measured 110 degrees of shoulder abduction, 130 degrees forward flexion and 0 to 30 degrees internal and external rotation. Dr. Tijmes found that appellant's strength was 4/5 in the left shoulder and 5/5 in the right.

By decision dated October 31, 2006, the Office granted appellant a schedule award for a four percent left upper extremity impairment. The period of the award ran for 12.48 weeks from September 7 to December 3, 2006.

[1] The operative report is not contained in the case record.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing federal regulation,[3] set 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 for all claimants, the Office has adopted the A.M.A. *Guides* as the uniform standard applicable to all claimants.[4]

ANALYSIS

The Office accepted that appellant sustained internal derangement of the right knee and left shoulder strain due to a July 26, 2004 employment injury. He underwent arthroscopic surgery on his left shoulder on June 1, 2005.

Appellant filed a claim for a schedule award on September 23, 2006. He submitted a September 7, 2006 impairment evaluation from Dr. Mitchell, who discussed appellant's history of a subacromial decompression with limited debridement of the supraspinatus tendon. Dr. Mitchell found that appellant had no sensory damage. He determined that appellant had 4/5 motor strength of the rotator cuff on the left side in the supraspinatur and infraspinatus muscles. Dr. Mitchell listed range of motion findings of 180 degrees flexion, 180 abduction and 190 degrees external rotation. The Board notes, however, that the A.M.A., *Guides* requires evaluation of six ranges of shoulder motion: flexion, extension, abduction, adduction, external rotation and internal rotation.[5] Dr. Mitchell listed only three range of motion measurements for appellant's shoulder. Further, his finding of 190 degrees of external rotation appears to be inaccurate. Medical evidence in support of a schedule award must include a detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function.[6] Consequently, Dr. Mitchell's evaluation contains insufficient clinical findings to determine appellant's shoulder impairment.[7] The Office medical adviser based his rating on the clinical findings contained in Dr. Mitchell's report but did not mention the omissions in range of motion measurements. The Board notes that subsequent to the Office medical adviser's report, appellant submitted a report from Dr. Tijmes whose range of

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] 20 C.F.R. § 10.404(a).

[5] A.M.A., *Guides* at 476-477, Figures 16-40, 16-43, 16-46.

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Cases*, Chapter 2.808.6c (August 2002). The description must be sufficiently detailed so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. *Renee M. Straubinger*, 51 ECAB 667 (2000).

[7] *Patricia J. Penney-Guzman*, 55 ECAB 757 (2004).

motion measurements for appellant's shoulder, while also incomplete, show impairment pursuant to the A.M.A., *Guides*.[8]

Additionally, the Office medical adviser found that appellant had a four percent impairment due to loss of strength in external rotation and abduction as shown by manual muscle testing pursuant to Table 16-35 on page 510 of the A.M.A., *Guides*. The A.M.A., *Guides*, however, state that the use of such a table would be appropriate only in a rare case where the loss of strength represents an impairing factor that has not been considered adequately by other methods.[9] The Office medical adviser did not explain why his use of Table 16-35 was appropriate in this case.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[10] The reports of Dr. Mitchell and the Office medical adviser are based on an incomplete description of the impairment. The case, therefore, will be remanded to the Office for further development of the case record to determine the extent of appellant's permanent impairment of the left upper extremity.

CONCLUSION

The Board finds that the case is not in posture for decision.

[8] *See supra* note 5.

[9] *Id*. at 508.

[10] *Claudio Vazquez*, 52 ECAB 496 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 31, 2006 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 24, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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