United States Department of Labor
Employees' Compensation Appeals Board

J.T., Appellant	)	
	)	**Docket No. 07-1111**
and	)	**Issued: October 4, 2007**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, 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 March 19, 2007 appellant filed a timely appeal from March 29 and October 17, 2006 decisions of the Office of Workers' Compensation Programs adjudicating his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than an 11 percent impairment of his right upper extremity for which he received a schedule award.

FACTUAL HISTORY

On July 9, 2002 appellant, then a 43-year-old painter, sustained injury to his right arm when he fell while exiting a high-reach basket. On September 23, 2002 the Office accepted his claim for a contusion of the right arm. On May 5, 2004 appellant submitted a claim for a schedule award.

In an October 20, 2003 report, Dr. Jatin D. Ganhdi, a Board-certified orthopedic surgeon and Office referral physician, provided findings on physical examination:

> "Examination of the right shoulder shows mild tenderness along the anterior aspect of the shoulder as well as the AC [acromioclavicular] joint area. There is positive impingement test. Movement of the shoulder is slightly limited in internal rotation of the right side which is associated with pain. Examination of the elbow shows free range of movement. There is no effusion. There is positive Tinel's sign at the right ulnar nerve at the elbow…. Examination of the right wrist shows evidence of tenderness ... at the distal radial ulnar joint area with pain on range of movement.... Dorsiflexion and palmar flexion is about 50 degrees. There is pain on ulnar and radial deviation. [Appellant] does have diminished grip strength. He also has paresthesia along the ulnar distribution on the right hand. Neurological examination otherwise was negative."

On January 8, 2004 Dr. Nicholas Diamond, an osteopath, reviewed appellant's medical history and provided findings on physical examination. He found that appellant had a 31 percent permanent impairment of the right upper extremity. This included 20 percent for grip strength deficit, based on Table 16-34 at page 509 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment,*[1] 6 percent for sensory deficit of the right ulnar nerve, based on Table 16-15 at page 492 and Table 16-10 at page 482,[2] 4 percent for Grade 4 motor strength deficit of the right supraspinatus muscle (suprascapular nerve), based on Table 16-11 at page 484 and Table 16-15 at page 492[3] and 3 percent for pain, based on Figure 18-1 at page 574. Dr. Diamond stated:

> "Examination of the right shoulder reveals periscapular tenderness. Range of motion reveals forward elevation and abduction are carried through with pain.
>
> "Examination of the right elbow reveals olecranon tenderness. Range of motion reveals flexion-extension of 145/145 degrees, pronation of 80/80 degrees, supination of 80/80 degrees. Pronation and supination ranges of motion are carried through with pain at the extremes.
>
> "Examination of the right wrist reveals palmar and dorsal tenderness along the ulnar aspect…. Range of motion reveals dorsiflexion of 0-75/75 degrees, palmar flexion of 0-75/75 degrees, radial deviation of 0-20/20 degrees and ulnar deviation of 0-35/35 degrees. All ranges of motion are carried through with pain at the extremes.

[1] A.M.A., *Guides* (5th ed. 2001).

[2] Dr. Diamond did not indicate a grade from Table 16-10. However, it appears that he used Grade 2 because a 7 percent maximum impairment for the ulnar nerve from Table 16-15 multiplied by a Grade 2 maximum of 80 percent from Table 16-10 equals 5.6 percent, rounded to 6 percent.

[3] A Grade 4 motor strength deficit in Table 16-11 provides for a maximum impairment of 25 percent. Multiplying 25 percent by the maximum motor deficit impairment for the suprascapular nerve, 16 percent, equals 4 percent.

"Examination of the right hand reveals dorsal and palmar tenderness noted. Range of motion reveals metacarpal phalangeal extension-flexion of (-) 20-90/90 degrees, proximal interphalangeal joint extension of 0-100/100 degrees and distal interphalangeal joint extension-flexion of 0-35/35 degrees involving the index, middle, ring and little fingers. Thumb range of motion reveals metacarpal phalangeal extension-flexion of 0-55/55 degrees, interphalangeal extension-flexion of (-) 5-65/65 degrees, palmar abduction of 0- 70/70 degrees and radial abduction of 0-80/80 degrees.

"Grip strength testing performed via Jamar Hand Dynamometer at Level III reveals 22 kg [kilograms] of force strength involving the right hand versus 44 kg of force strength involving the left hand.…"

* * *

"Neurological examination: [Appellant] exhibits normal muscle tonus and bulk. Sensory examination is decreased to pinprick and light touch involving the ulnar sensory distribution of the right upper extremity. The deep tendon reflexes are +2 and symmetrical.

"Manual muscle testing reveals the supraspinatus are [G]raded 4/5 involving the right upper extremity…."

* * *

"Subjective Factors: [Appellant] notes pain from his right hand, fourth and fifth fingers which radiates all the way up the arm to the shoulder."

On August 1, 2004 Dr. Arnold Berman, an Office medical adviser, found that appellant had a 7.2 percent impairment of his right upper extremity, rounded to 7 percent, based on the fifth edition of the A.M.A., *Guides.* This included 4.2 percent for sensory deficit of the ulnar nerve, based on Table 16-15 at page 492 and Table 16-10 at page 482 (7 percent maximum for the ulnar nerve multiplied by 60 percent for Grade 3 sensory deficit) and 3 percent for pain, based on Figure 18-1 at page 574. Dr. Berman found that impairment for grip strength deficit was not appropriate, based on section 16.8 at page 508.

On February 15, 2005 the Office granted appellant a schedule award for seven percent impairment of his right upper extremity. The period ran for 21.84 weeks[4] from January 8 to June 8, 2004.

Appellant requested a hearing. By decision dated October 26, 2005, an Office hearing representative remanded the case for further development of the medical evidence.

[4] The Federal Employees' Compensation Act provides for 312 weeks of compensation for 100 percent loss or loss of use, of an upper extremity. 5 U.S.C. § 8107(c)(1). Multiplying 312 weeks by seven percent equals 21.84 weeks of compensation.

In a November 28, 2005 report, Dr. Berman stated that he had reviewed the medical evidence and found that appellant was entitled to an additional four percent impairment for right wrist range of motion deficit based on Dr. Gandhi's report. Dr. Gandhi reported that appellant had dorsiflexion and flexion of 50 degrees in his right wrist which constituted a four percent impairment for loss of range of motion, based on Figure 16-28 at page 467 of the A.M.A., *Guides*, (two percent each for 50 degrees of dorsiflexion and extension). Dr. Berman noted that Dr. Diamond found a four percent impairment for a Grade 4 strength deficit of the supraspinatus muscle but there was no evidence of any deficit or injury to the suprascapular nerve which services the supraspinatus muscle. Dr. Diamond's report provided no basis for injury of the suprascapular nerve and his examination of the right shoulder revealed no weakness. Dr. Gandhi also did not find any shoulder weakness. Dr. Berman indicated that the right capsular tenderness and pain with forward flexion and abduction of the right shoulder noted by Dr. Diamond were subjective complaints without any findings that would indicate an abnormality in the suprascapular nerve. He noted that Dr. Gandhi did not find any right shoulder limited range of motion except a slightly limited internal rotation associated with pain. Appellant had no sensory loss of the supraspinatus muscle and range of motion was essentially normal. Dr. Berman found, based on the reports of Dr. Gandhi and Dr. Berman, that there was no basis for impairment based on right upper extremity weakness. Dr. Berman concluded that appellant was entitled to no more than an additional four percent impairment based on loss of range of motion of the right wrist.

By decision dated March 29, 2006, the Office granted appellant an additional schedule award for 12.48 weeks based on a four percent additional impairment. The Office also expanded his claim to accept the conditions of triangular fibrocartilagenous complex rupture of the right wrist, a triquetrum unit ligament rupture, right ulnar neuropathy of the right elbow, rotator cuff syndrome of the right shoulder, a cervical sprain and cervical disc herniations at C4-5 and C6-7.

On April 15, 2006 appellant requested an oral hearing that was held on August 16, 2006.

By decision dated October 17, 2006, the Office affirmed the March 29, 2006 decision.

LEGAL PRECEDENT

The schedule award provision of the Act[5] and its implementing regulation[6] 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 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.[7]

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] A.M.A., *Guides* (5th ed. 2001).

ANALYSIS

Appellant has received two schedule awards totaling an 11 percent impairment of his right upper extremity. This included four percent for sensory deficit of the ulnar nerve, three percent for pain, based on Chapter 18 of the A.M.A., *Guides* and four percent for loss of range of motion of the wrist.

Dr. Diamond found that appellant had 31 percent impairment of his right upper extremity which included a 20 percent impairment for grip strength deficit. The A.M.A., *Guides* states in section 16.8 at page 508:

> "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 the other impairments, *only* if based on unrelated etiologic or pathomechanical causes. *Otherwise, the impairment ratings based on objective anatomic findings take precedence*…." (Emphasis in the original.)

Dr. Diamond did not explain why grip strength deficit was an appropriate rating method to apply in determining appellant's right upper extremity impairment. He did not explain why his loss of strength represented an impairing factor that had not been considered adequately by other methods in the A.M.A., *Guides.* Dr. Berman properly found that the grip strength rating method is not warranted in appellant's case. Dr. Diamond found that appellant had a four percent impairment for a Grade 4 motor strength deficit of the supraspinatus muscle. However, Dr. Berman provided detailed medical rationale explaining why impairment based on motor strength deficit was not warranted in appellant's case.

Both Dr. Diamond and Dr. Berman found that appellant had a three percent impairment due to pain, based on Figure 18-1 in Chapter 18 at page 574 of the A.M.A., *Guides.* Section 18.3b of Chapter 18 at page 571 provides that "Examiners should not use this chapter to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters of the [A.M.A.,] *Guides*." Dr. Diamond and Dr. Berman did not explain why appellant's pain-related impairment could not be adequately addressed by applying Chapter 16 of the A.M.A., *Guides* which addresses upper extremity impairment, specifically section 16.5, "Impairment of the Upper Extremities Due to Peripheral Nerve Injuries." Table 16-10 explains the correct method for calculating impairment due to sensory deficits or pain resulting from peripheral nerve disorders. Due to these deficiencies in the application of the A.M.A., *Guides*, the case will be remanded for further development.

CONCLUSION

The Board finds that this case is not in posture for a decision. On remand, the Office should further develop the extent of impairment of appellant's right upper extremity based on the fifth edition of the A.M.A., *Guides.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 17 and March 29, 2006 are set aside and the case is remanded for further action consistent with this decision

Issued: October 4, 2007
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