United States Department of Labor
Employees' Compensation Appeals Board

F.R., Appellant	)	
and	)	
DEPARTMENT OF JUSTICE, FEDERAL PRISONS SYSTEM, MEDICAL CENTER FOR FEDERAL PRISONERS, Springfield, MO, Employer	)	**Docket No. 07-1038** **Issued: September 10, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 6, 2007 appellant filed a timely appeal from a February 20, 2007 merit decision of a hearing representative of the Office of Workers' Compensation Programs that affirmed the Office's schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant has established that he has more than three percent impairment of the right upper extremity, for which he received a schedule award.

FACTUAL HISTORY

On July 10, 2004 appellant, then a 49-year-old senior correctional officer, filed a traumatic injury claim stating that he sustained injury to his right shoulder on the same day when an inmate assaulted him. He did not initially stop work but was placed on light duty beginning

on July 12, 2004. Appellant stopped work on September 3, 2004 to undergo surgery and returned to work on September 25, 2004. On August 5, 2004 the Office accepted his claim for right rotator cuff strain.

In a July 20, 2004 treatment note, Dr. Mark Chambers, a Board-certified family practitioner, diagnosed rotator cuff injury with possible tear. In a July 29, 2004 magnetic resonance imaging (MRI) scan, Dr. Joseph Mailloux, a Board-certified radiologist, noted "high grade focal tear involving the supraspinatus tendon at the insertion site. Complete tear appears imminent." Dr. Mailloux also noted chondral cystic changes at the greater tuberosity and degenerative changes at the acromioclavicular joint.

On August 19, 2004 the Office authorized a shoulder arthroscopy and repair of tendons. On September 3, 2004 Dr. Jonathan Peter Crites, a Board-certified orthopedic surgeon, performed an arthroscopic subacromial decompression and mini open rotator cuff repair of the right shoulder. He noted preoperative and postoperative diagnoses of "right partial-thickness rotator cuff tear." In a September 13, 2004 report, Dr. Crites noted that appellant had some erythema around the anterior suture but otherwise was recovering well.

Dr. Crites continued submitting reports noting appellant's postoperative status. On June 16, 2005 he noted that appellant had "mild crepitance with passive motion of [his] shoulder, which appears to be from his sutures. He has full range of motion."

On December 8, 2005 appellant requested a schedule award.

In a form report prepared on December 8, 2005, Dr. Crites confirmed that appellant had reached maximum medical improvement as of June 16, 2005. In a March 8, 2006 report, he noted that appellant had full active range of motion of the right shoulder with normal rotator cuff strength and no signs of impingement. Dr. Crites advised that he did not provide impairment ratings and recommended that appellant go to an occupational medicine specialist for a rating.

On June 28, 2006 the Office referred appellant to Dr. Jeffrey Woodward, a Board-certified physiatrist, for an impairment rating.[1] Dr. Woodward examined appellant and prepared a report on July 18, 2006. He noted appellant's complaints of joint pain, stiffness and loss of strength as well as numbness and tingling. With regard to right shoulder range of motion, Dr. Woodward measured the following: 160 degrees of flexion; 50 degrees of extension; 140 degrees of abduction; 40 degrees of adduction; 80 degrees of internal rotation and 70 degrees of external rotation. He noted that appellant exhibited normal shoulder strength. Dr. Woodward diagnosed chronic right shoulder pain with mild active motion restriction and stated that appellant had reached maximum medical improvement by September 5, 2005. He concluded, based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), fifth edition, that appellant had one percent impairment based on loss of flexion, two percent impairment based on loss of abduction and no impairment based on extension, adduction, external rotation or internal rotation. Dr. Woodward determined that appellant's total right upper extremity impairment based on loss of range of motion was three

[1] The record reflects that appellant requested, prior to his second opinion referral, that the Office not refer him to Dr. Woodward.

percent. In a July 26, 2006 report, the Office medical adviser concurred with Dr. Woodward's three percent impairment rating and stated that it comported with the A.M.A., *Guides*.

On October 31, 2006 the Office granted appellant a schedule award for three percent impairment to the right upper extremity.

On November 3, 2006 appellant requested a review of the written record. He stated that he had requested not to be assigned to Dr. Woodward for an impairment rating because he had been examined by Dr. Woodward for a different claim and did not believe that he received a fair evaluation.

By decision dated February 20, 2007, the hearing representative affirmed the schedule award for three percent impairment to the right upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing 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 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.[4]

ANALYSIS

The Office accepted that appellant sustained a right rotator cuff strain and later authorized a right shoulder arthroscopy and rotator cuff tear repair. Appellant requested a schedule award for permanent partial impairment to his right arm. Because appellant's treating physician advised that he does not provide impairment ratings, the Office referred appellant to Dr. Woodward for a second opinion and impairment rating.

Dr. Woodward performed a physical examination and reviewed the medical evidence of record. He measured appellant's shoulder range of motion and concluded in his July 18, 2006 report that appellant exhibited 160 degrees of flexion, 50 degrees of extension, 140 degrees of abduction, 40 degrees of adduction, 80 degrees of internal rotation and 70 degrees of external rotation. Applying the A.M.A., *Guides*, Dr. Woodward concluded that appellant had one percent impairment based on loss of flexion and two percent impairment based on loss of abduction. Although Dr. Woodward did not specify precisely which sections of the A.M.A., *Guides* he

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] *See id.*

referred to, his conclusions comport with Figures 16-40,[5] 16-43[6] and 16-46,[7] which measure right arm impairment based on loss of range of motion of the shoulder. Pursuant to Figure 16-40, which measures loss of range of motion based on flexion and extension, appellant's 160 degrees of flexion corresponds with one percent impairment and 50 degrees of extension corresponds with zero percent impairment.[8] According to Figure 16-43, which measures loss of range of motion based on abduction and adduction, appellant's 140 degrees of abduction corresponds to two percent impairment and 40 degrees of adduction corresponds to zero percent impairment.[9] Pursuant to Figure 16-46, which measures loss of range of motion based on internal rotation and external rotation, appellant's 80 degrees of internal rotation and 70 degrees of external rotation both correspond to zero percent impairment. Accordingly, the Board finds that Dr. Woodward's measurements and calculations were properly under the A.M.A., *Guides*. Dr. Woodard found no other basis on which to attribute permanent impairment.

The Office medical adviser reviewed Dr. Woodward's impairment rating on July 26, 2006 and agreed that it comported with the A.M.A., *Guides*. Consequently, the weight of the medical evidence establishes that, pursuant to the A.M.A., *Guides*, appellant has no more than three percent impairment for the right upper extremity.

On appeal, appellant argued that he did not receive a fair evaluation from Dr. Woodward. The record reflects that appellant did request that the Office not refer him to Dr. Woodward. However, appellant has not shown how Dr. Woodard's examination and findings were incomplete or that the physician was biased. He did not explain why he felt that Dr. Woodward would not give him a fair evaluation, other than to state that he had previously been referred to Dr. Woodward for an examination under a different claim and that the doctor "basically works for" the Office. This argument, without more, does not establish that Dr. Woodward is biased.[10] As noted, Dr. Woodward provided a report based on a physical examination and review of the evidence, with which an Office medical adviser concurred. No other medical report of record supports any greater degree of permanent impairment.

CONCLUSION

The Board finds that appellant did not establish that he was entitled to a schedule award for greater than three percent impairment of the right upper extremity.

[5] A.M.A., *Guides* 476, Figure 16-40.

[6] *Id.* at 477, Figure 16-43.

[7] *Id.* at 479, Figure 16-46.

[8] *Id.* at 476, Figure 16-40.

[9] *Id.* at 477, Figure 16-43.

[10] *See Roger S. Wilcox*, 45 ECAB 265 (1993) (mere allegations are insufficient to establish bias against a physician).

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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