

**United States Department of Labor
Employees' Compensation Appeals Board**

J.J., Appellant)
and) Docket No. 08-1104
U.S. POSTAL SERVICE, POST OFFICE,) Issued: November 7, 2008
Nashville, TN, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 4, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative's decision dated January 3, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant has more than a 20 percent permanent impairment of his right upper extremity, for which he received a schedule award.

FACTUAL HISTORY

On December 27, 2005 appellant, then a 58-year-old letter carrier, sustained pain in the right shoulder and back as he closed the door of his vehicle in the performance of duty.¹ He stopped work on December 28, 2005 and returned on January 3, 2006. The Office accepted the claim for sprain/strain of the right rotator cuff. Appellant underwent an authorized right shoulder arthroscopy, subacromial decompression and arthroscopic resection of the distal right clavicle on February 23, 2006. He returned to regular duty on April 20, 2006 and received appropriate compensation benefits.

In a May 3, 2006 report, Dr. Thomas L. Gautsch, a Board-certified orthopedic surgeon, advised that appellant could perform his usual job and had reached maximum medical improvement.

On December 29, 2006 appellant filed a Form CA-7 claim for a schedule award. In a June 23, 2006 report, Dr. Walter Wheelhouse, a Board-certified orthopedic surgeon, reviewed appellant's history and provided findings on examination. For right shoulder range of motion, he indicated that appellant had 110 degrees of flexion, 50 degrees of extension, 90 degrees of abduction, 40 degrees adduction, 50 degrees internal rotation and 70 degrees external rotation. Dr. Wheelhouse noted that there was no evidence of symptom magnification and a positive impingement sign for the right shoulder. He referred to Table 16-27 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) and opined that appellant had impairment of 10 percent to his right upper extremity for resection arthroplasty to his distal right clavicle.² Dr. Wheelhouse referred to Figures 16-40, 16-43 and 16-46 and determined that appellant had 5 percent impairment for loss of flexion, 4 percent impairment for loss of abduction, 2 percent impairment for loss of internal rotation and opined that this would result in an 11 percent impairment for decreased range of motion.³ He referred to Table 16-35 and advised that appellant had six percent impairment of the right upper extremity due to decreased flexion strength based on a Grade 4/5.⁴ Dr. Wheelhouse noted that six percent impairment of the right upper extremity would equal four percent whole person impairment. He added that 11 percent impairment for decreased range of motion would equate to 7 percent whole person impairment and 10 percent impairment for the resection arthroplasty would equal 6 percent whole person impairment. Dr. Wheelhouse explained that the A.M.A., *Guides* provided an additional impairment for pain and hand dominance and advised that appellant would be entitled to three percent for pain.⁵ He combined the whole person components of the

¹ Appellant has a separate claim for a June 25, 2004 injury, which the Office accepted for bilateral dog bites of the lower extremities, left rotator cuff tear and right tibia neuropathy. In that claim, the Board affirmed the Office's denial of appellant's schedule award claim for scarring or disfigurement to his legs. Docket No. 06-788 (issued September 28, 2006). The claim for the June 25, 2004 injury is not presently before the Board.

² A.M.A., *Guides* 506 (5th ed. 2001) (hereinafter A.M.A., *Guides*).

³ *Id.* at 476, 477, 479.

⁴ *Id.* at 510.

⁵ *Id.* at 435, 584.

various impairment ratings and concluded that appellant had 19 percent whole person impairment. Dr. Wheelhouse found that appellant had reached maximum medical improvement.

In a March 20, 2007 report, an Office medical adviser utilized the A.M.A., *Guides* and referred to Tables 16-40, 16-43 and 16-46.⁶ He noted that appellant's surgical procedures included a right shoulder subacromial decompression, mini open rotator cuff repair and resection arthroplasty of the distal right clavicle (Mumford procedure). The Office medical adviser determined that appellant had 11 percent impairment for loss of range of motion by adding the values of 5 percent for 110 degrees for forward elevation, 4 percent for 90 degrees of forward elevation and 2 percent for 50 degrees of internal rotation. He found 10 percent impairment for the resection arthroplasty surgery. The Office medical adviser noted that Dr. Wheelhouse had found additional impairment for weakness and dominance; however, he referred to section 16.8a of the A.M.A., *Guides* 508, which provides that decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities or absence of parts that prevent effective application of maximum force. He used the Combined Values Chart to combine 11 percent impairment for loss of motion with 10 percent impairment for surgery to total 20 percent impairment to the right upper extremity.⁷ The Office medical adviser advised that appellant reached maximum medical improvement on June 23, 2006.

On April 20, 2007 the Office granted appellant a schedule award for 20 percent permanent impairment of the right lower extremity. The award covered a period of 62.4 weeks from June 23, 2006 to September 2, 2007.

On May 17, 2007 appellant requested a hearing, which was held on October 30, 2007.

By decision dated January 3, 2008, the Office hearing representative affirmed the April 20, 2007 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act⁸ 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.⁹ 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.¹⁰ The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.¹¹

⁶ See *supra* note 4.

⁷ A.M.A., *Guides* 604.

⁸ 5 U.S.C. §§ 8101-8193.

⁹ 5 U.S.C. § 8107.

¹⁰ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

¹¹ 20 C.F.R. § 10.404.

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.¹² However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment.¹³

ANALYSIS

In the instant case, Dr. Wheelhouse appellant's treating physician and the Office medical adviser were in agreement regarding the extent of appellant's entitlement to a schedule award for loss of range of motion and his arthroscopy. However, they were in disagreement regarding whether appellant was entitled to an additional impairment for loss of strength. Moreover, Dr. Wheelhouse provided a whole person impairment rating. Appellant is entitled to an impairment of 10 percent to his right upper extremity for his distal right clavicle resection arthroplasty surgery. The Board finds that Table 16-27¹⁴ provides that an impairment of 10 percent is warranted as a result of the aforementioned surgery. Appellant's right shoulder impairment due to loss of range of motion was based on Figures 16-40, 16-43 and 16-46. Dr. Wheelhouse found 110 degrees of flexion, 50 degrees of extension, 90 degrees of abduction, 40 degrees adduction, 50 degrees internal rotation and 70 degrees for external rotation.¹⁵ The Board notes that, according to Figure 16-40,¹⁶ 110 degrees of forward flexion is five percent impairment and 90 degrees of forward elevation is four percent impairment according to Figure 16-43.¹⁷ Similarly, 50 degrees of internal rotation is an impairment of two percent according to Figure 16-46.¹⁸ Thus, the Board notes that both physicians properly added the ratings and determined that appellant had 11 percent impairment for loss of range of motion.

The Board notes that appellant is not entitled to the additional rating of six percent impairment for decreased flexion strength and three percent impairment for pain and hand dominance as provided by Dr. Wheelhouse. As to decreased flexion strength under Table 16-35, the A.M.A., *Guides*, provide that decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities or absence of parts that prevent effective application of maximum force. Loss of strength may be rated separately if such a deficit has not been considered adequately by other rating methods. An example of this situation would be loss of

¹² See *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

¹³ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000); see also *Paul A. Toms*, 28 ECAB 403 (1987).

¹⁴ A.M.A., *Guides* 506.

¹⁵ *Supra* note 3.

¹⁶ A.M.A., *Guides* 476.

¹⁷ *Id.* at 477.

¹⁸ *Id.* at 479.

strength caused by a severe muscle tear that healed leaving “a palpable muscle defect.” If the rating physician determines 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.”¹⁹ Dr. Wheelhouse did not provide any basis that would warrant additional impairment under this section of the A.M.A., *Guides*. Regarding right hand dominance, the Board has held that the Act makes no distinction between the right or left hand as to the amount of compensation payable.²⁰ Appellant is not being entitled to an additional impairment for hand dominance.

To the extent that Dr. Wheelhouse referred to Chapter 18 to award an additional impairment due to pain, the Board notes that Chapter 18 is not to be used to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*. Office procedures state that a separate pain calculation under Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain as outlined in Chapter 13, 16 and 17 of the fifth edition of the A.M.A., *Guides*.²¹ Thus, an additional award for pain would not be warranted.

The Board further notes that appellant was not entitled to a schedule award based on whole person impairment. It is well established that schedule awards are not payable for whole person impairment.²² While the A.M.A., *Guides* provide rating systems for both individual body parts and whole person impairment, the Act defines impairment of specific members and functions of the body. Therefore, any whole person impairment rating must be properly converted to a rating of a member, function or organ of the body as listed under the schedule.

The Board finds that, under the Combined Values Chart,²³ the 10 percent impairment for the arthroscopy and the 11 percent impairment for loss of range of motion, total 20 percent impairment to the right upper extremity.

The Board finds that there is no other medical evidence of record, based upon a correct application of the A.M.A., *Guides*, to establish that appellant has more than a 20 percent permanent impairment of the right upper extremity.

¹⁹ See *id.* at 508, section 16.8a.

²⁰ See *Andrew B. Poe*, 27 ECAB 510 (1976); see also *Robed R. Kuehl*, 13 ECAB 77-78 (1961); *Isidoro Riviera*, 12 ECAB 348 (1961).

²¹ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003); A.M.A., *Guides* at section 18.3(b); *T.H.*, 58 ECAB ____ (Docket No. 06-1500, issued January 31, 2007).

²² See *Robert Romano*, 53 ECAB 649 (2002); *John Yera*, 48 ECAB 243 (1996).

²³ *Supra* note 7.

CONCLUSION

The Board finds that appellant does not have more than a 20 percent impairment of his right upper extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated January 3, 2008 is affirmed.

Issued: November 7, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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