United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 09-1764**
	)	**Issued: April 8, 2010**
DEPARTMENT OF THE NAVY, NAVAL SHIPYARD, Norfolk, VA, 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 June 29, 2009 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated April 17, 2009. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has sustained any permanent impairment to a scheduled member of his body causally related to his accepted right shoulder condition, thereby entitling him to a schedule award under 5 U.S.C. § 8107.

FACTUAL HISTORY

On December 6, 2001 appellant, a 50-year-old equipment mechanic supervisor, injured his right shoulder shoveling snow. He filed a claim for benefits on December 19, 2001. The claim was originally received in the Office as a simple, uncontroverted case which resulted in minimal or no time loss from work. The Office handled the case administratively to allow medical payments up to $1,500.00. On July 31, 2007 the Office accepted a claim for right shoulder strain, rotator cuff.

On October 6, 2007 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his right upper extremity.

In a report dated February 20, 2008, Dr. Raymond Larsen, a specialist in orthopedic surgery, found based on a January 15, 2008 evaluation that appellant had a 20 percent permanent impairment of his right upper extremity for his accepted right shoulder condition pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (the A.M.A., *Guides*). He derived this rating based on the following findings: an 8 percent impairment for 60 degrees, loss of flexion; a 2 percent impairment for 20 degrees, loss of extension;[1] a 1 percent impairment for loss of adduction; a 5 percent impairment for 70 degrees, loss of abduction;[2] and a 2 percent impairment for 50 degrees, loss of internal rotation,[3] for a total 18 percent impairment due to loss of range of motion. Dr. Larsen added a 3.2 percent impairment for weakness of the supraspinatus and infraspinatus muscles, stemming from the suprascapular nerve, for a total combined impairment of 20 percent of the right upper extremity.

In a statement of accepted facts dated March 21, 2008, the Office stated that it had accepted the condition of right shoulder sprain, rotator cuff, as work related.

By letter dated April 7, 2008, the Office asked Dr. Larsen to indicate whether he had performed two measurements of active right shoulder range of motion. In the event Dr. Larsen had not conducted two such measurements, it instructed him to remeasure the right shoulder range of motion in order to determine if the measurements were within 10 percent of each other.

In a July 24, 2008 report, the Office medical adviser found that the final right upper extremity impairment for appellant was 19 percent based upon loss of right shoulder range of motion, an amount which exceeded Dr. Larsen's range of motion calculations by 1 percent. He did not credit Dr. Larsen's additional 3.2 percent impairment for weakness. The Office medical adviser also found that the date of maximum medical improvement was the date Dr. Larsen evaluated appellant, stating:

> "I chose the date of maximum medical improvement as the date of the rating exam[ination] performed by Dr. Larsen because we have used this evaluation to calculate [appellant's] final impairment rating. [Appellant's] condition had stabilized at that time and it was not expected that the claimant's condition would change significantly from that day forward."

In a September 2, 2008 report, Dr. Larsen stated:

> "The records do indicate that [appellant] has degenerative arthritis of his shoulder. Additionally, x-rays reveal an anatomical variant of his acromion which predisposes to the development of shoulder impingement syndrome.… In my opinion, based on review of available information, the cause of his condition is not entirely due to his injury of December 6, 2001. Certainly that incident could

[1] A.M.A., *Guides* 476, Table 16-40.

[2] *Id.* at 477, Table 16-43.

[3] *Id.* at 479, Table 16-46.

cause a shoulder strain, and likely did so. However, the shoulder impingement and rotator cuff tear are likely due to the underlying anatomical abnormality plus years of repetitive activity involving overhead use of upper extremities.

"Review of the available records does not establish that he had a rotator cuff tear at the time of the original injury in 2001. His downward tilting of the acromion does predispose to the development of impingement as noted above. Shoulder impingement usually results from frequent, repetitive activity above shoulder level which causes the rotator cuff to be compressed between the humeral head and acromion. The downward tilt of the acromion narrows the subacromial space making such compression more likely. Tendinitis and partial thickness tears are frequent sequelae of ongoing impingement.

"I do not see anything in the available records that suggests that [appellant] had a rotator cuff tear immediately after the injury of December 2001. Thus, the most likely explanation is that he suffered a shoulder strain at that time. [Appellant's] other problems are not due to that incident, but rather result from repetitive activity superimposed on an anatomical predisposition."

In a March 16, 2009 letter to Dr. Larsen, the Office noted his opinion that appellant sustained a shoulder strain on December 6, 2001 but did not sustain a rotator cuff tear on that date. It also noted his opinion that appellant had preexisting shoulder conditions which were aggravated by his repetitive work activities over time, but were not caused by the December 6, 2001 work injury. The Office therefore asked Dr. Larsen to state whether he believed the accepted right shoulder strain/sprain had resolved and whether there were no residuals and no permanent partial impairment from the December 6, 2001 work injury. It asked him to indicate his opinion by checking a box "yes" or "no."

On March 23, 2009 Dr. Larsen returned a copy of the March 16, 2009 questionnaire. He checked the box marked "yes" next to the question which asked whether he believed the accepted right shoulder strain/sprain was resolved and whether there were no residuals and no permanent partial impairment stemming from the December 6, 2001 work injury.

By decision dated April 17, 2009, the Office denied appellant's claim for a schedule award. It stated that Dr. Larsen had indicated no current condition, no residuals and no permanent partial impairment in his March 23, 2009 questionnaire response.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[5] However, the Act does not specify the manner in which the percentage of loss of use of a member is to be

[4] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[5] *Id.* at § 8107(c)(19).

determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.[6] The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.

ANALYSIS

The Office accepted the claim for right shoulder strain, rotator cuff. In his February 20, 2008 report, Dr. Larsen rated a 20 permanent impairment for the right upper extremity based on appellant's accepted right shoulder condition. The Office medical adviser initially found on July 24, 2008 that this report was a sufficient basis to grant a schedule award for a 19 percent permanent impairment; he determined a date of maximum medical improvement based on his finding that appellant's condition had stabilized and was unlikely to change. Dr. Larsen, however, stated in his September 2, 2008 supplemental report that based on his review of the medical records the cause of appellant's condition was not entirely due to the December 6, 2001 work injury. He acknowledged that this incident probably resulted in a shoulder strain but stated that appellant's right shoulder impingement and rotator cuff tear were not caused by the December 2001 injury. Dr. Larsen opined that these conditions were more likely due to an underlying anatomical abnormality in addition to years of repetitive activity involving overhead use of his upper extremities. He indicated that there was nothing in the medical records which suggested that appellant had a rotator cuff tear immediately after the injury of December 2001 and opined that the most likely explanation is that he suffered a shoulder strain at that time. Dr. Larsen asserted that appellant's other problems were not due to that incident, but rather resulted from repetitive activity superimposed on an anatomical predisposition.

In a claim for permanent impairment, the employee has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.[7] While the accepted condition in this case is right shoulder strain, rotator cuff, appellant did not provide a medical opinion explaining how his accepted condition caused permanent impairment. Dr. Larsen initially rated a 20 percent impairment of the right upper extremity in his February 20, 2008 report. However, he subsequently noted in his September 2, 2008 report that the only accepted condition was right shoulder strain, which, he indicated in his March 23, 2009 questionnaire response, had resolved. The Board notes that, in determining entitlement to a schedule award, preexisting impairments to the schedule member are to be included in the permanent impairment evaluation.[8] While Dr. Larsen indicated that appellant had an underlying anatomical abnormality in his right upper extremity which resulted in a shoulder strain, he ultimately found that the strain had resolved; therefore, no impairment can be rated for a preexisting right shoulder condition or subsequent tear. He found that appellant's torn right rotator cuff tear was not causally related to the December 2001 work injury and the Office did not accept a condition for a torn rotator cuff. Based on this evidence, the Office properly found that appellant had no ratable permanent impairment of his right upper extremity causally related to his accepted right shoulder condition, pursuant to the A.M.A., *Guides*.

[6] 20 C.F.R. § 10.404.

[7] *Veronica Williams*, 56 ECAB 367, 370 (2005).

[8] *Michael C. Milner*, 53 ECAB 446 (2002).

CONCLUSION

The Board finds that appellant has not sustained any permanent impairment to a scheduled member of his body causally related to his accepted right shoulder condition, thereby entitling him to a schedule award under 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 8, 2010
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