United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 10-112**
	)	**Issued: November 22, 2010**
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, Fort Belvoir, VA, Employer	)	

Appearances:
Norman F. Nivens, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 14, 2009 appellant filed a timely appeal from a July 13, 2009 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has more than 37 percent total impairment of the left arm, for which he received schedule awards.[1]

On appeal, appellant's attorney contends that he has 40 percent impairment of the left arm based on the accepted carpal tunnel and shoulder conditions.

[1] The July 13, 2009 decision found 20 percent impairment to the right arm but appellant did not appeal from that determination.

FACTUAL HISTORY

This case has previously been before the Board.[2] In a June 16, 2009 order, the Board set aside a May 17, 2008 Office schedule award decision which found 27 percent impairment of the left arm.[3] The Board noted that appellant had claims before the Office accepted for a left shoulder injury and bilateral carpal tunnel, such that all the medical evidence required for determining the extent of impairment to the left arm was not of record. The Board remanded the case to the Office to combine the case files and issue an appropriate decision on appellant's claim.

On March 22, 2006 the Office granted a schedule award for nine percent impairment of the left arm based on appellant's shoulder injury. The rating was based on loss of shoulder range of motion and rotator cuff weakness.

In a May 10, 2006 report, Dr. Kevin F. Hanley, an attending Board-certified orthopedic surgeon, evaluated appellant's left shoulder. He diagnosed status post rotator cuff tear, left shoulder. Examination of the left arm revealed absence of the distal clavicle due to surgery. Under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Hanley rated 20 percent impairment to the left shoulder. Under Table 16-27, page 506, he noted that the distal clavicle resection was 10 percent impairment. Dr. Hanley also found 11 percent impairment for loss of range of motion: under Figure 16-40, page 476, flexion of 120 degrees was 4 percent impairment and extension of 45 degrees was 0 percent impairment; under Table 16-43, page 477, 110 degrees abduction was 3 percent impairment and 30 degrees adduction was 1 percent impairment; under Figure 16-46, page 479, external rotation of 75 degrees was 0 percent impairment and 40 degrees internal rotation was 3 percent impairment. He combined the 10 percent diagnosed-based impairment with the 11 percent for loss of shoulder motion to total 20 percent left arm impairment.

On December 8, 2007 Dr. Hanley evaluated impairment due to the accepted carpal tunnel condition. Examination of the arms showed diminished sensitivity to light touch and two-point discrimination in the median distribution. Light touch was also distorted. Full range of motion was noted in the wrists with no weakness of the thenar muscles and no triggering of the fingers. Dr. Hanley diagnosed bilateral carpal tunnel syndrome, surgically treated and trigger fingers (middle and ring fingers) left hand, surgically treated and resolved. Under the fifth edition of the A.M.A., *Guides*, he opined that appellant had 20 percent impairment to each arm based on sensory loss. Under Table 16-10, page 482, Dr. Hanley stated that appellant had a Grade 3 sensory deficit or 50 percent. Under Table 16-15, page 492, he noted that the maximum impairment for sensory loss of the median nerve was 39 percent. Dr. Hanley multiplied 39

[2] On June 20, 2004 appellant, a 58-year-old packer, was injured when he tripped on a pallet. The Office accepted left rotator cuff strain/tear, left forearm contusion, left SLAP lesion and approved a January 19, 2005 left shoulder surgery in File No. xxxxxx800. On November 7, 2005 appellant claimed bilateral carpal tunnel syndrome in File No. xxxxxx495. The Office accepted the claim for bilateral carpal tunnel syndrome and left trigger finger. On September 19, 2006 appellant underwent left carpal tunnel release, left middle and ring finger A1 pulley releases with limited fasciectomy left palm. On December 5, 2006 he underwent right carpal tunnel release.

[3] Docket No. 08-2230 (issued June 16, 2009).

percent by 50 percent, to rate 20 percent impairment. He advised that appellant did not have any motor weakness.

In a June 19, 2007 report, Dr. Mark T. Hellner, a Board-certified orthopedic surgeon and Office referral physician, provided a rating for appellant's left shoulder injury. He found total impairment of 21 percent, allowing 5 percent impairment for resection surgery of the distal clavicle, 12 percent for loss of range of shoulder motion and 6 percent for rotator cuff weakness.[4]

In a July 26, 2007 decision, the Office granted appellant a schedule award for an additional 11 percent impairment to the left arm based on his shoulder condition. As appellant previously received an award on March 22, 2006 for 9 percent impairment, the award represented a total 20 percent impairment of the upper extremity.

On April 28, 2008 the Office medical adviser reviewed the medical evidence pertaining to the accepted carpal tunnel syndrome. He noted the impairment rating provided by Dr. Hanley and agreed with the determination that appellant had 20 percent left arm impairment based on residual sensory loss affecting the median nerve. The medical adviser noted that appellant had previously been rated 9 percent impairment based on his accepted shoulder condition and that the 20 percent carpal tunnel sensory rating could be combined to total 27 percent left upper extremity impairment.

In a May 14, 2008 decision, the Office granted a schedule award for an additional seven percent impairment of the left arm. As appellant had received schedule awards on March 22, 2006 and July 26, 2007 in the amount of 20 percent, the award represented total impairment to the left arm of 27 percent under both claims.

On July 25, 2008 appellant's attorney requested reconsideration of the schedule award determination, contending that he had greater impairment based on his accepted shoulder condition.

On October 4, 2008 the Office medical adviser reviewed the medical file pertaining to appellant's left shoulder condition; however, on October 17, 2008, the claims examiner requested that the medical adviser review both injury files and address how the carpal tunnel and shoulder conditions each contributed to impairment of the left arm. It was noted that appellant had received schedule awards for 27 percent impairment.

On October 23, 2008 the Office medical adviser reviewed both claim files. He stated that appellant had 21 percent left arm impairment for residual of his left shoulder condition and 20 percent left arm impairment for residual of the accepted carpal tunnel syndrome. The Office medical adviser combined the 21 percent left shoulder impairment with the 20 percent left carpal tunnel impairment and found that appellant had total left arm impairment of 37 percent with a date of maximum improvement of December 8, 2007.

[4] The A.M.A., *Guides* provide that decreased strength cannot be rated in the presence of decreased motion that prevents effective application of maximal force in the region being evaluated.

On November 10, 2008 the Office requested that the Office medical adviser review impairment due to left distal clavicle resection as discussed by Dr. Hellner. It noted that Dr. Hellner found 10 percent impairment due to that procedure but excluded 5 percent of this as being attributable to a preexisting condition. The Office advised that preexisting impairments were to be included in assessing impairment.

In a November 15, 2008 report, the Office medical adviser reviewed both claim files. He advised that appellant had 21 percent left arm impairment based on Dr. Hellner's June 19, 2007 report. In that report, Dr. Hellner opined that appellant had 12 percent impairment for loss of shoulder motion and 6 percent impairment for residual rotator cuff weakness. He stated that appellant had 10 percent impairment for having undergone resection of his distal clavicle, but opined that 50 percent of this was attributable to preexisting degenerative joint disease in his acromioclavicular joint and thus only found 5 percent impairment. The medical adviser noted that the January 19, 2005 operative report stated that appellant underwent a mini-open distal clavicle resection where nine millimeters of the distal clavicle were resected. Based on the operative report, he stated that appellant did not undergo a complete resection of his distal clavicle, but rather a "mini" resection. Based on Table 16-27, page 506, the medical adviser opined that appellant had only 5 percent impairment, not 10 percent impairment which the A.M.A., *Guides* provides for a complete distal clavicle resection. He advised that, while Dr. Hellner had only awarded five percent impairment for having undergone resection of the distal clavicle, the rating was modified to reflect the partial resection. The medical adviser advised that his impairment rating was unchanged. He noted that the 21 percent impairment for the left shoulder condition combined with the 20 percent impairment for carpal tunnel syndrome resulted in a total 37 percent impairment of the left arm.

In a January 6, 2009 decision, the Office modified its July 26, 2007 decision to reflect an additional 10 percent left arm impairment based on the opinion of the Office medical adviser. By decision dated January 7, 2009, it granted a schedule award for an additional 10 percent permanent impairment to the left upper extremity. The award represented total impairment to the left arm of 37 percent under both claims.

Following the Board's June 16, 2009 order, the Office reissued its May 14, 2008 determination in a July 13, 2009 decision, finding 37 percent impairment of the left arm.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[5] and its implementing regulations[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. The Act, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of the Office.[7] For consistent results and to ensure equal justice under the law

[5] 5 U.S.C. §§ 8101-8193.

[6] 20 C.F.R. § 10.404.

[7] *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

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 regulations as the appropriate standard for evaluating schedule losses.[8]

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides* his opinion is of diminished probative value in establishing the degree of permanent impairment and the Office may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.[9]

ANALYSIS

The Office accepted that appellant sustained left rotator cuff strain/tear, left forearm contusion, left SLAP lesion under File No. xxxxxx800. It also accepted that he sustained bilateral carpal tunnel syndrome and left trigger finger under File No. xxxxxx495. Appellant also underwent authorized surgeries.

The Board finds that appellant has no more than 37 percent total left upper extremity impairment for which he received scheduled compensation. This is based on the reports of Dr. Hanley. For appellant's carpal tunnel condition, Dr. Hanley noted that, under the fifth edition of the A.M.A., *Guides*, appellant had 20 percent left arm impairment due to residual carpal tunnel syndrome. As noted, he found that appellant had a sensory loss of the median nerve and explained the grading process by which he determined that this resulted in 20 percent impairment under the A.M.A., *Guides*.[10] The Board finds that Dr. Hanley's calculations are proper under the A.M.A., *Guides.* The Office medical adviser reviewed the medical evidence concerning appellant's residual carpal tunnel syndrome and accepted Dr. Hanley's rating. The evidence establishes that appellant has 20 percent left upper extremity impairment due to residuals of carpal tunnel syndrome.

Dr. Hanley also rated 20 percent impairment to the left arm due to appellant's shoulder condition. As explained, he found that shoulder examination revealed the absence of the distal clavicle due to surgery for which he found 10 percent impairment pursuant to the A.M.A., *Guides*.[11] Dr. Hanley also found, as noted, range of motion impairments totaling 11 percent.[12] He properly combined the 10 percent impairment for distal clavicle resection with the 11 percent loss of shoulder motion to total 20 percent left arm impairment based on appellant's shoulder condition. The Board finds that Dr. Hanley's ratings complies with the A.M.A., *Guides* and represent the weight of the medical evidence. The Board also notes that combining 20 percent

[8] *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[9] *Linda Beale*, 57 ECAB 429, 434 (2006).

[10] *See* "Factual History" *infra*; A.M.A., *Guides* 482, 492, Tables 16-10, 16-15 (5th ed. 2001).

[11] *Id*. at 506, Table 16-27.

[12] *Id*. at 476, 477, 479, Figures 16-40, 16-43, Figure 16-46.

impairment for the carpal tunnel syndrome residuals with 20 percent impairment for appellant's left shoulder residuals under the Combined Values Chart totals 36 percent left arm impairment.[13]

The record also contains an impairment rating from Dr. Hellner who rated impairment of the shoulder at 21 percent. Dr. Hellner based this on 12 percent impairment for loss of motion; 6 percent for loss of strength and 5 percent for distal clavicle surgery. Although accepted by the Office medical adviser, this rating does not conform to the A.M.A., *Guides*. For strength deficit based on manual muscle testing under Table 16-35, page 510, Dr. Hellner found appellant had six percent impairment for rotator cuff weakness. Under the A.M.A., *Guides*, however, loss of strength cannot be rated in the presence of loss of range of motion.[14] Additionally at Table 16-35, the cross references under strength deficit state ratings are based on "complete range of motion against gravity." It is not clear how decreased strength may be rated in this situation which also involves decreased range of motion. Dr. Hellner also allowed five percent impairment for the "mini-Mumford" procedure under Table 16-27, page 506. Section 16.7b, page 505 allows for loss of range of motion to be combined with arthroplasty impairment. However, it is not readily apparent that the five percent rating allowed by Dr. Hellner for the partial excision of distal clavicle conforms to Table 16-27, page 506. Table 16-27 does not appear to allow for partial excision of distal clavicle as the level of arthroplasty is listed as total. For these reasons, Dr. Hellner's impairment rating for the shoulder does not comply with the A.M.A., *Guides* and is of diminished probative value.[15]

On appeal appellant contends the Office should have added the different values for the shoulder and carpal tunnel condition to total 40 percent impairment. However, because his carpal tunnel condition and shoulder conditions involve different parts of the same extremity, they are to be combined, not added together.[16] As noted, this results in 36 percent impairment to the left arm. Appellant did not submit evidence to support more than the 37 percent total left arm impairment as awarded.

CONCLUSION

The Board finds that appellant has no more than 37 total percent permanent impairment to the left upper extremity for which he received schedule awards.

[13] *See* A.M.A., *Guides* 604 (Combined Values Chart).

[14] *Id.* at 508.

[15] *See I.F.*, 60 ECAB ___ (Docket No. 08-2321, issued May 21, 2009) (an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of diminished probative value in determining the extent of permanent impairment).

[16] *See* A.M.A., *Guides* 10, section 1.4. *See Cristeen Falls*, 55 ECAB 420, 424 (2004).

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2009 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: November 22, 2010
Washington, DC

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

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

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