United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 10-1389**
	)	**Issued: January 21, 2011**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION, MEDICAL CENTER, Coatesville, 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:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 12, 2010 appellant filed a timely appeal from an October 16, 2009 merit decision of the Office of Workers' Compensation Programs that affirmed a March 25, 2009 schedule award decision. 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 11 percent impairment of his right upper extremity, for which he received a schedule award.

FACTUAL HISTORY

On March 4, 2006 appellant, then a 49-year-old structural fire fighter, injured his right shoulder while turning a tight valve on a sprinkler system. He stopped work on March 4, 2006.[1]

[1] Appellant returned to limited duty on April 27, 2006, stopped work on May 10, 2006 and returned to limited duty on June 14, 2006. The Office also accepted his recurrences of May 8, 2006 and April 16, 2007.

The Office accepted the claim for right shoulder sprain, partial right rotator cuff tear, cervical sprain and strain and cervical radiculopathy. On May 3, 2007 Dr. Perry J. Argires, a Board-certified neurosurgeon, diagnosed right C6-C7 radiculopathy secondary to foraminal stenosis at C5-C6, C6-C7. He performed right C5, C6, C7 laminectomies, with right C5-C6 and C6-C7 facetectomies and foraminotomies.

On June 27, 2007 Dr. John P. Manta, a Board-certified neurosurgeon, performed debridement of the glenohumeral joint with capsulotomy, debridement of the labrum, rotator cuff, subacromial decompression and manipulation of the right shoulder. On November 1, 2007 and March 26, 2008 he performed right shoulder manipulation in the form of a right rotator cuff repair. He released appellant to return to work on July 7, 2008.

On March 3, 2009 appellant requested a schedule award. In a September 16, 2008 report, Dr. David Weiss, an osteopath, reviewed appellant's history and provided findings on examination. He rated impairment with reference to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001). Dr. Weiss advised that cervical spine range of motion was limited with pain at the extremes. The Spurling maneuver was negative on the left and was positive on the right, producing ipsilateral pain but no radicular component. The right shoulder had well-healed portal arthroscopy scars and focal acromioclavicular joint tenderness. Appellant had tenderness over the long head of the biceps and tenderness over the tip of the acromion. Right shoulder range of motion included forward elevation of 110/180 degrees, abduction of 90/180 degrees, cross over adduction of 55/75 degrees, external rotation of 80/90 degrees and internal rotation of 65/90 degrees. Dr. Weiss reported that appellant had daily neck pain and stiffness that waxed and waned and daily right shoulder pain and stiffness. He listed restrictions in appellant's activities of daily living that included no longer being able to perform his gainful employment as a fire fighter; difficulty with household chores of mowing the lawn, vacuuming, cleaning, laundry and shopping; difficulty with self-care of washing and dressing himself and using the bathroom. Appellant had difficulty with prolonged sitting; sleep; overhead reaching and lifting with the right arm; pulling and pushing; baseball; and prolonged driving and riding in a car. Dr. Weiss advised that appellant's pain level was 7 to 8 out 10 for the cervical spine and right shoulder using the visual analogue scale.

Under Figure 16-40 of the A.M.A., *Guides*, Dr. Weiss noted that, for right shoulder range of motion, appellant had impairment of five percent for flexion[2] four percent for abduction[3] and two percent for internal rotation.[4] He added the range of motion values to total 11 percent impairment. Dr. Weiss referred to Table 16-27 and advised that appellant also had impairment of 10 percent for a right shoulder resection arthroplasty.[5] He referred generally to Figure 18-1 and provided a pain-related impairment of three percent.[6] Dr. Weiss combined these values and

[2] A.M.A., *Guides* 476.

[3] *Id*. at 477.

[4] *Id*. at 479.

[5] *Id*. at 506.

[6] *Id*. at 574.

rated a total 23 percent impairment of the right arm. He stated that appellant reached maximum medical improvement on September 16, 2008.

In a February 25, 2009 report, an Office medical adviser noted appellant's history of injury and treatment and reviewed the September 16, 2008 report of Dr. Weiss. Although he provided a rating for a distal clavicle resection, the surgical record revealed that the arthroscopic procedure on June 27, 2007 did not include a distal clavicle resection. The Office medical adviser noted that surgery consisted of a right shoulder debridement and glenohumeral joint with capsulotomy debridement of the labrum and rotator cuff as well as subacromial decompression and manipulation. For this reason, he found that the 10 percent rating under Table 16- 27 could not be utilized. Additionally, the Office medical adviser explained that the three percent rating of pain could not be utilize as appellant did not meet the criteria under Chapter 18.3b of the A.M.A., *Guides*.[7] Regarding range of motion, the medical adviser referred to Table 16-40 to find that appellant had 110 degrees of forward flexion, which represented five percent impairment.[8] He referred to Table 16-43 and found that 90 degrees of abduction was four percent impairment and 55 degrees of adduction was no impairment.[9] The Office medical adviser referred to Figure 16-46 to find that internal rotation of 65 degrees warranted two percent impairment.[10] He added to the loss of range of motion to conclude that appellant had 11 percent impairment of the right upper extremity.[11]

On March 12, 2009 appellant's representative submitted a February 24, 2009 report from Dr. Manta. He reviewed the report of Dr. Weiss and agreed that appellant sustained 23 percent impairment to the right upper extremity.

On March 25, 2009 the Office granted appellant a schedule award for 11 percent impairment of the right arm. The award covered the period from September 16, 2008 to March 14, 2009.

On March 31, 2009 appellant's representative requested a hearing, which was held on July 28, 2009. In support of Dr. Weiss' pain-related impairment, appellant's representative submitted a July 15, 2009 *Quick* DASH questionnaire from Dr. Weiss. The questionnaire noted a score of 77 percent where 1 percent represented no disability and 100 percent represented total disability.

On October 16, 2009 an Office hearing representative affirmed the March 25, 2009 decision.

[7] *Id*. at 570.

[8] *Id*. at 476.

[9] *Id*. at 477.

[10] *Id*. at 479.

[11] *Id*. at 604.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[12] 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.[13] 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.[14] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[15]

ANALYSIS

Appellant's claim was accepted for right shoulder strain and sprain, cervical strain and sprain, partial right rotator cuff tear and cervical radiculopathy. It authorized right C5, C6, C7 laminectomies, right C5-C6 and C6-C7 facetectomies foraminotomies, debridement of the glenohumeral joint with capsulotomy, debridement of labrum, rotator cuff, subacromial decompression and manipulation. Appellant also underwent two right shoulder manipulations to repair the right rotator cuff.

Dr. Weiss found that appellant had 23 percent impairment of the right arm. The Board notes that his rating of 10 percent for a right shoulder resection arthroplasty was excluded by the Office medical adviser due to the nature of the surgery performed. Dr. Weiss cited to Table 16-27 which provides for 10 percent impairment for a distal clavicle resection.[16] The Office medical adviser noted that appellant did not undergo a distal clavicle resection as noted in the surgical report of Dr. Manta. Dr. Weiss did not otherwise explain how appellant's right shoulder surgery would qualify as a distal clavicle resection. He also rated three percent for pain-related impairment pursuant to Figure 18-1, page 574.[17] According to section 18.3(b) of the A.M.A., *Guides,* "examiners should not use this chapter 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 guides."[18] Office procedures provide that Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain (Chapters 13,

[12] 5 U.S.C. §§ 8101-8193.

[13] *Id*. at § 8107.

[14] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[15] A.M.A., *Guides* (5th ed. 2001); 20 C.F.R. § 10.404.

[16] *See supra* note 5.

[17] *See supra* note 6.

[18] Section 18.3b, page 571, A.M.A., *Guides* (5th edition, 2001). *See C.J*., 60 ECAB ___ (Docket No. 08-2429, issued August 3, 2009) (the impairment ratings in the body organ system chapters of the A.M.A., *Guides* make allowance for any accompanying pain).

16 and 17).[19] Although Dr. Weiss also provided a July 15, 2009 *Quick* DASH questionnaire to support the pain impairment, he offered no explanation as to how this aspect of the sixth edition would support a pain rating under Chapter 18 of the fifth edition. He did not address whether the range of motion impairment values of the A.M.A., *Guides* were insufficient to adequately rate appellant's pain. The pain rating was excluded based on insufficient explanation by Dr. Weiss.

Regarding range of motion, Dr. Weiss and the Office medical adviser agreed that appellant had 11 percent impairment. The Board finds that the medical adviser properly correlated the physical findings of the examining physician to rate the impairment to appellant's right shoulder. Applying Figures 16-40, 16-43 and 16-46 of the fifth edition of the A.M.A., *Guides*,[20] five percent impairment was allowed for 110 degrees of flexion, four percent for 90 degrees of abduction and two percent for 65 degrees of internal rotation. Dr. Weiss and the Office medical adviser added the loss of shoulder motion values to total 11 percent impairment of the right arm. The Board finds that the evidence supports that appellant has 11 percent permanent impairment of the right upper extremity.

On appeal, appellant's representative argued that the Office medical adviser did not explain why an additional impairment for pain was not warranted. As noted above, section 18.3(b) of the A.M.A., *Guides*, provides that examiners should not use Chapter 18 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*. Under this Chapter of the fifth edition, it is up to the examining physician to explain why pain could not be adequately rated under the other chapters of the A.M.A., *Guides*. Appellant's representative also argued that a conflict was created between the Office medical adviser and Dr. Weiss. The Board finds, however, that the medical evidence of record does not support a conflict as two components of Dr. Weiss' rating were not adequately addressed, which diminished the probative value of his report.[21]

CONCLUSION

The Board finds that appellant has no more than an 11 percent permanent impairment of his right upper extremity for, which he received a schedule award.

[19] *See* FECA Bulletin 01-05 (issued January 31, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

[20] A.M.A., *Guides* 476, 477, 479.

[21] *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).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 16, 2009 is affirmed.

Issued: January 21, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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