United States Department of Labor
Employees' Compensation Appeals Board

DONELL A. ROTHWELL, Appellant	)	
and	)	**Docket No. 05-1513**
	)	**Issued: September 30, 2005**
DEPARTMENT OF THE NAVY, NAVAL RESEARCH LABORATORY, Washington, DC, Employer	)	

Appearances:
Donell A. Rothwell, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 11, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated February 22, 2005, granting a schedule award, and a May 24, 2005 decision, which affirmed the February 22, 2005 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than a nine percent permanent impairment of the right upper extremity.

FACTUAL HISTORY

On May 21, 2001 appellant, then a 49-year-old rigger, filed a traumatic injury claim alleging that on May 17, 2001 he sustained a right rotator cuff tear when he lifted a file cabinet and felt something snap in his shoulder. The Office accepted his claim for a right rotator cuff tear.

In a disability certificate dated June 4, 2001, Dr. Charles H. Emich, an attending Board-certified orthopedic surgeon, diagnosed a right rotator cuff tear.[1] On August 16, 2001 appellant underwent acromioplasty of the right shoulder performed by Dr. Emich.

In an August 22, 2002 report, Dr. Robert A. Smith, a Board-certified orthopedic surgeon, and an Office referral physician, provided a history of appellant's condition and findings on physical examination. He stated:

> "On examination of the shoulder there is a well-healed surgical incision consistent with his prior acromioplasty.
>
> "Range of motion of the shoulder is restricted to abduction and flexion of 140 degrees each, internal and external rotation, 50 degrees each and adduction and extension of 40 degrees, each.
>
> "Motor strength, however, is graded 5/5 in the supraspinatus….
>
> "[Appellant] has resolved impingement syndrome from the [work] injury of May 17, 2001. He is status post open acromioplasty. There appears to be some permanent restriction of motion of the shoulder secondary to his work injury and subsequent surgery. However, [appellant] states [that] he has been back at work now for several months and is working full duty as a truck driver and deliverer. Based on his examination today, I do not think that [appellant] requires any work restrictions.
>
> "With regard to the May 17, 2001 accident and subsequent surgery, [appellant] has reached maximum medical improvement….
>
> "There is no evidence of weakness, atrophy, deformity or crepitation in the shoulder so the objective residuals [that] [appellant] suffers from the work-related injury on May 17, 2001 [are] restricted to loss of [range] of motion and this is permanent."

In a February 20, 2004 report, Dr. Talaat F. Maximous, an attending Board-certified orthopedic surgeon and an associate of Dr. Emich, noted that appellant had 110 degrees of flexion in his right shoulder, extension to 60 degrees and abduction to 110 degrees. He stated:

> "With the diagnosis of post[-]traumatic arthritis and enclosing pain and limitation, using the [American Medical Association], *Guides to the Evaluation of Permanent Impairment*, fifth edition, page 476, [F]igure 16-40, limitation of the extension to 60 degrees gives him 12 percent and limitation of the flexion to 110 degrees gives him 5 percent. [O]n page 477, [F]igure 16-43, limitation of abduction to 110 degrees gives him 3 percent. This is totaling 20 percent of

[1] In a May 1, 2002 report, Dr. Emich changed his diagnosis to an impingement syndrome of appellant's right shoulder.

partial permanent impairment of the right shoulder in relation to his injury of May 17, 2001."

On March 25, 2004 appellant filed a claim for a schedule award.

In a July 16, 2004 report, Dr. Willie E. Thompson, an Office medical consultant, stated that appellant had a nine percent permanent impairment of the right upper extremity based on the August 22, 2002 report of Dr. Smith and the A.M.A., *Guides*. He stated:

> "Flexion to 140 degrees results in 3 percent impairment while extension to 40 degrees results in 1 percent impairment. Abduction to 40 [sic, 140] degrees results in 2 percent impairment while adduction to 40 degrees results in 0 percent impairment. Internal rotation to 50 degrees results in 2 percent impairment while external rotation to 50 degrees results in 1 percent impairment. This results in a total of 9 percent impairment to the right upper extremity for loss of motion. For specific references please see the 5th edition of the A.M.A., *Guides*, Chapter 16, page 476, 477 and 479, Figure 16-40, 16-43 and 16-46."

By decision dated February 22, 2005, the Office granted appellant a schedule award for 28.08 weeks for the period July 16, 2004 to January 28, 2005, based on a nine percent permanent impairment of the right upper extremity.

Appellant requested reconsideration and submitted additional evidence.

An unsigned February 11, 2005 report from the "Committee for Evaluation of Permanent Impairment,"[2] stated:

> "[Appellant] has 110 degrees of flexion, extension to 60 and abduction to 110 degrees. We concur [with] our references [to] the fifth edition for these ratings on page 476 and 477.[3] In addition, [appellant] has clear-cut observable pain behaviors on exam[ination] that authenticate his pain and suffering. He moves in a guarded protected fashion. He holds his shoulder in a protected way. There are frequent shifts to the posture and position during the exam[ination] and there is moaning and facial grimace to the range of motion testing. Thus, according to [T]able 18-5 of the fifth [edition], page 580, there is a global pain behavior score of 5. We then had [appellant] complete [T]able 18-4, page 576 and 577 … and combined those calculations with the global pain behaviors on [T]able 18-6, which is a worksheet for calculating total pain-related impairment…. [Appellant's] total pain-related impairment score is 39.81. When his pain-related impairment score is added to his impairment score of his shoulder on page 604 and 605 … [his] total impairment is 52 percent."

[2] The names of Drs. Hampton J. Jackson and Rida N. Azer are listed but they did not sign the report.

[3] The report references the February 20, 2004 of Dr. Maximous.

By decision dated May 24, 2005, the Office affirmed the February 22, 2005 decision.[4]

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[5] and its implementing regulation[6] sets 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*[7] has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[8]

ANALYSIS

Appellant sustained a right shoulder injury in the performance of duty and subsequently filed a claim for compensation for permanent impairment.

In an August 22, 2002 report, Dr. Smith, provided findings on physical examination but did not provide an impairment rating for appellant.

Dr. Thompson, a district medical consultant, correctly determined that appellant had a nine percent permanent impairment of the right upper extremity based on the August 22, 2002 report of Dr. Smith.[9] He applied the A.M.A., *Guides* to Dr. Smith's report and correctly found that appellant had a three percent impairment for 140 degrees of flexion, based on Figure 16-40 at page 476, one percent for extension of 40 degrees, based on Figure 16-40, two percent for abduction of 140 degrees, based on Figure 16-43 at page 477, two percent for internal rotation of 50 degrees, based on Figure 16-46 at page 479 and one percent for external rotation of 50 degrees, based on Figure 16-46.

Dr. Talaat Maximous stated that appellant had a 20 percent permanent impairment of the right shoulder, which included 12 percent for 60 degrees of extension, based on Figure 16-40 at

[4] Appellant submitted additional evidence subsequent to the May 24, 2005 decision. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board has no jurisdiction to consider this evidence for the first time on appeal.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[8] *See* 20 C.F.R. § 10.404.

[9] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

page 476 of the A.M.A., *Guides*, 5 percent for flexion of 110 degrees, based on Figure 16-40, based on 110 degrees of flexion in his right shoulder, extension of 60 degrees and abduction of 110 degrees, based on Figure 16-43 at page 477. However, Figure 16-40 does not provide for any impairment for 60 degrees of extension. It appears that Dr. Maximous obtained the 12 percent from that portion of Figure 16-40 pertaining to flexion, rather than extension, as 60 degrees of flexion equals a 12 percent impairment. Therefore, his report is not based on correct application of the A.M.A., *Guides* and is of diminished value on the issue of appellant's right upper extremity impairment.

Regarding the unsigned February 11, 2005 report from the "Committee for Evaluation of Permanent Impairment," the Board has consistently held that unsigned medical reports are of no probative value.[10]

The Board finds that there is no probative medical evidence, based on correct application of the A.M.A, *Guides*, which establishes that appellant has more than a nine percent permanent impairment of his right upper extremity.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 24 and February 22, 2005 are affirmed.

Issued: September 30, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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

[10] *See Vicky C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988).