

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HAROLD ARMSTRONG and U.S. POSTAL SERVICE,  
LOGAN POST OFFICE, Philadelphia, PA

*Docket No. 01-663; Submitted on the Record;  
Issued November 28, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 28 percent permanent impairment of the right arm for which he has received a schedule award.

On October 1, 1991 appellant, then a 42-year-old postal worker, injured his right shoulder. The Office of Workers' Compensation Programs accepted the claim for a right rotator cuff tear and authorized surgery to repair the injury. Appellant did not initially stop work but had a recurrence of disability in 1998.<sup>1</sup> Appropriate benefits were paid.

Appellant submitted a May 4, 1998 magnetic resonance imaging (MRI) scan of the right shoulder; treatment notes from Dr. Richard J. Mandel, a Board certified orthopedic surgeon and a September 28, 1998 operative report prepared by Dr. Mandel.

On June 4, 1999 appellant filed a claim for a schedule award. He submitted a June 24, 1999 medical report from Dr. Mandel, who evaluated appellant for permanent impairment in accordance with the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment*, (4<sup>th</sup> ed. 1993). Dr. Mandel determined that appellant had a 29 percent impairment of the right upper extremity based on loss of motion and strength of the right shoulder.

Dr. Mandel's report and the case record were reviewed by an Office medical adviser, who determined that appellant sustained a 22 percent impairment of the right arm.

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<sup>1</sup> Appellant filed a claim for an injury sustained to his left shoulder on October 1, 1991, case number A3-201881. The Office accepted appellant's claim for a left rotator cuff tear and repair and granted a schedule award. Appellant later filed the current claim for an injury to his right arm arising from the same October 1, 1991 incident. The Office initially doubled the files; however, it was determined that the claims would be treated separately so that a proper pay rate could be determined. The claim before the Board pertains to the right arm, case number A3-174118.

In a decision dated August 25, 1999, the Office granted appellant a schedule award for a 22 percent permanent loss of the right arm.

In a letter dated August 27, 1999, appellant requested reconsideration of the decision and submitted a report from Dr. Mandel dated August 18, 1999. He found upon examination that appellant had 150 degrees of flexion, 140 degrees of abduction, 70 degrees of external rotation and 4/5 of cuff strength. In a letter dated September 13, 1999, Dr. Mandel indicated that appellant had a 35 percent impairment of the right shoulder based on the A.M.A., *Guides*.

In a decision dated October 7, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of its prior decision.

In a letter dated October 29, 1999, appellant requested reconsideration and submitted two additional reports from Dr. Mandel.

Dr. Mandel's reports dated August 18 and September 13, 1999 were referred to the Office medical adviser, who determined that the appellant sustained an additional one percent impairment of the right arm.

In a decision dated November 15, 1999, the Office granted appellant a schedule award for an additional one percent permanent of the right arm, for a total award of 23 percent.

In a letter dated December 15, 1999, appellant requested reconsideration and submitted a duplicative report from Dr. Mandel.

In a decision dated January 11, 2000, the Office denied appellant's request on the grounds that the evidence submitted was duplicative and immaterial and thus insufficient to warrant review of the prior decision.

Thereafter, appellant submitted a February 4, 2000 report from Dr. Mandel. His findings on physical examination revealed 120 degrees of flexion and 120 degrees of abduction. Dr. Mandel determined that appellant had a 68 percent impairment of the right shoulder which was based on a 20 percent impairment due to crepitus,<sup>2</sup> a 4 percent impairment due to loss of flexion,<sup>3</sup> a 3 percent impairment due to loss of abduction,<sup>4</sup> a 26 percent deficit due to Grade III pain;<sup>5</sup> and a 15 percent deficit secondary to Grade IV strength.<sup>6</sup>

Dr. Mandel's report dated February 4, 2000 was referred to the Office medical adviser, who determined that appellant sustained an additional five percent impairment of the right arm.

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<sup>2</sup> See Table 19, page 59 of the A.M.A., *Guides*.

<sup>3</sup> See Figure 38, page 43 of the A.M.A., *Guides*.

<sup>4</sup> See Figure 41, page 44 of the A.M.A., *Guides*.

<sup>5</sup> See Table 11, page 48 of the A.M.A., *Guides*.

<sup>6</sup> See Table 12, page 49 of the A.M.A., *Guides*.

In a decision dated May 9, 2000, the Office granted appellant a schedule award for an additional five percent permanent impairment of the right arm, for a total award of 28 percent.

The Board finds that appellant has no more than a 28 percent impairment of the right arm extremity.

The schedule award provision of the Federal Employees' Compensation Act<sup>7</sup> and its implementing regulation<sup>8</sup> 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. 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

On appeal appellant alleges he is entitled to an additional three percent impairment of the right arm due to a computational error by the Office medical adviser.

The Office medical adviser used the findings in Dr. Mandel's report to determine permanent impairment of appellant's right arm. The medical adviser noted Dr. Mandel's finding of 120 degrees at flexion which is a 4 percent impairment;<sup>9</sup> and 120 degrees at abduction, which is a 3 percent impairment.<sup>10</sup> The figures Dr. Mandel provided for external rotation and internal rotation were not ratable;<sup>11</sup> the Grade III pain or sensory deficit figure<sup>12</sup> was 3 percent impairment;<sup>13</sup> Grade IV loss of power and motor impairment was 9 percent;<sup>14</sup> and moderate crepitation produced a 20 percent joint impairment,<sup>15</sup> which was multiplied by the impairment value for the shoulder of 60<sup>16</sup> to result in a 12 percent impairment for the right shoulder.

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<sup>7</sup> 5 U.S.C. § 8107.

<sup>8</sup> 20 C.F.R. § 10.404 (1999).

<sup>9</sup> See page 43, Figure 38 of the A.M.A., *Guides*

<sup>10</sup> See page 44, Figure 41 of the A.M.A., *Guides*

<sup>11</sup> See page 45, Figure 44 of the A.M.A., *Guides*.

<sup>12</sup> The Grade III pain or sensory deficit figure of three percent impairment, page 48, Table 11 of the A.M.A., *Guides* and Grade IV loss of power and motor impairment of nine percent, page 49, Table 12 of the A.M.A., *Guides*, were ranges used in the July 19, 1999 impairment calculation and reveal no further impairment.

<sup>13</sup> See page 48, Table 11 of the A.M.A., *Guides*.

<sup>14</sup> See page 49, Table 12 of the A.M.A., *Guides*.

<sup>15</sup> See page 59, Table 19 of the A.M.A., *Guides*.

<sup>16</sup> See page 58, Table 18 of the A.M.A., *Guides*

The A.M.A., *Guides*, 3.1m, Impairments Due to Other Disorders of the Upper Extremity, indicates that appropriate impairment ratings are combined with other percentages, using the Combined Values Chart, page 322 of the A.M.A., *Guides*.

In this case, Dr. Mandel incorrectly added the impairment values to determine his rating of 68 percent rather than using the Combined Values Chart, page 322 of the A.M.A., *Guides*. The medical adviser properly based his total impairment rating of the right arm on the Combined Values Chart. He combined the 7 percent for loss of range of motion with 3 percent for pain, then combined the 9 percent motor impairment rating followed by the 12 percent for crepitation.

The Board finds that Dr. Mandel did not properly follow the procedures set forth in the A.M.A., *Guides*.<sup>17</sup> The medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Mandel's report and reached an impairment rating of 28 percent. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than a 28 percent permanent impairment of the right upper extremity.

The decision of the Office of Workers' Compensation Programs dated May 9, 2000 is hereby affirmed.

Dated, Washington, DC  
November 28, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>17</sup> See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (an attending physician's report is of little probative value where the A.M.A., *Guides* were not properly followed); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).