

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD B. MYLES and U.S. POSTAL SERVICE,
BLYTHE STATION, Fresno, CA

*Docket No. 02-1663; Submitted on the Record;
Issued January 24, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a 10 percent impairment of the right upper extremity for which he received a schedule award.

On March 21, 2000 appellant, then a 45-year-old mailhandler, filed a traumatic injury claim for compensation, alleging that on that day he had sustained bilateral shoulder pain while in the performance of his federal duties. The Office of Workers' Compensation Programs accepted that appellant sustained employment-related bilateral rotator cuff tears and on August 7, 2001 appellant underwent surgical repair on the right shoulder.¹ Dr. David E. Taylor, appellant's treating Board-certified orthopedic surgeon, provided reports dated January 17 and 20, 2002. In a report dated February 18, 2001, an Office medical adviser reviewed Dr. Taylor's findings. In a decision dated February 25, 2002, appellant was granted a schedule award for a 10 percent impairment of the right arm, for a total of 31.2 weeks of compensation, to run from December 3, 2001 to July 9, 2002.² The instant appeal follows.

The Board finds that the case is not in posture for decision.

Under section 8107 of the Federal Employees' Compensation Act³ and section 10.404 of the implementing federal regulations,⁴ schedule awards are payable for permanent impairment of

¹ On August 7, 2001 appellant underwent diagnostic arthroscopy with resection of torn glenoid labrum and debridement of torn rotator cuff, open subacromial decompression and open distal clavicle resection of the right shoulder.

² The Board notes that, while appellant also has an accepted left shoulder condition, he has yet to undergo surgery on that extremity and, thus, has not reached maximum medical improvement, which is necessary to be entitled to a schedule award.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

specified body members, functions or organs. However, neither the Act nor the regulations specify the manner, in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)⁵ has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶

The relevant medical evidence includes a report dated January 17, 2002, in which Dr. Taylor, appellant's treating Board-certified orthopedic surgeon, advised that maximum medical improvement had been reached on December 3, 2001 with no weakness, atrophy or sensory loss noted on examination of the right upper extremity. He further advised that pain was minimal to slight at rest, progressing to moderate with heavy lifting, pushing and pulling above shoulder level. His impression was status post rotator cuff repair, distal clavicle resection and open subacromial decompression of the right shoulder. In an Office form report dated January 20, 2002, Dr. Taylor provided range of motion measurements for appellant's right shoulder. He indicated that appellant had 180 degrees of forward elevation, 40 degrees of extension, 120 degrees of abduction, 40 degrees of adduction, 80 degrees of internal rotation and 80 degrees of external rotation.

By report dated February 18, 2002, an Office medical adviser advised that she had reviewed Dr. Taylor's January 17, 2002 report and, under Table 16-27 of the A.M.A., *Guides*, appellant was entitled to a 10 percent impairment due to the resection of the distal clavicle with maximum medical improvement reached on December 3, 2001.

Initially, the Board notes that, while the Office medical adviser properly considered appellant's impairment under Table 16-27 of the A.M.A., *Guides*,⁷ section 16.7b of the A.M.A., *Guides* provides that decreased motion impairments are to be derived separately and utilizing the Combined Values Chart, combined with the arthroplasty impairment⁸ to reach total impairment.⁹ Dr. Taylor provided range of motion findings for appellant's right shoulder. These measurements indicated that appellant had normal flexion, abduction and internal rotation and the measurement for external rotation demonstrated no impairment. Appellant's range of motion for extension, however, was 40 degrees, which is a one percent impairment under Table 16-40 of the A.M.A., *Guides*.¹⁰ Appellant's adduction range of motion was 120 degrees, which under Table 16-43 of the A.M.A., *Guides* is a two percent impairment.¹¹ Section 16.4I of the A.M.A.,

⁵ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁶ See 20 C.F.R. § 10.404 (1999).

⁷ A.M.A., *Guides*, *supra* note 5 at 506.

⁸ *Supra* note 1.

⁹ A.M.A., *Guides*, *supra* note 5 at 505.

¹⁰ *Id.* at 476.

¹¹ *Id.* at 477.

Guides provides that abnormal motion values are to be added¹² which in the instant case, would total three percent.

Additionally, the Board notes that Dr. Taylor provided that appellant's pain was minimal to slight at rest progressing to moderate with heavy labor. Regarding pain, section 18.3b of the fifth edition of the A.M.A., *Guides* provides that pain-related impairment should not be used if the condition can be adequately rated under another section of the A.M.A., *Guides*.¹³ Office procedures provide that, if the conventional impairment adequately encompasses the burden produced by pain, the formal impairment rating is determined by the appropriate section of the A.M.A., *Guides*. However, an impairment rating can be increased by up to three percent if the pain has increased the burden of the employee's condition slightly. If the pain-related impairment appears to increase the burden substantially, the impairment rating can be increased by three percent.¹⁴ It does not appear that the Office made a determination regarding whether appellant is entitled to an award due to pain. The case will, therefore, be remanded to the Office for review of appellant's entitlement to a schedule award.

The decision of the Office of Workers' Compensation Programs dated February 25, 2002 is hereby vacated. The case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, DC
January 24, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹² *Id.* at 474.

¹³ *Id.* at 571.

¹⁴ FECA Bulletin No. 01-05 (issued January 29, 2001).