

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD T. JONES and U.S. POSTAL SERVICE,
GEORGE WASHINGTON STATION, San Diego, CA

*Docket No. 03-643; Submitted on the Record;
Issued May 1, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 48 percent permanent impairment of his right upper extremity and 34 percent permanent impairment of his left upper extremity for which he received a schedule award.

Appellant, a 49-year-old clerk, filed a notice of occupational disease on November 2, 1999 alleging that he had developed wrist problems due to factors of his federal employment. The Office of Workers' Compensation Programs accepted his claim for bilateral carpal tunnel syndrome and right shoulder impingement. Appellant underwent a left carpal tunnel release on April 12, 2000 and a right carpal tunnel release on September 14, 2000. He also underwent a right shoulder open subacromial decompression, distal clavicle resection and debridement of the rotator cuff on September 7, 2001.

Appellant's attending physician, Dr. Peter Low, a Board-certified family practitioner, concluded that appellant reached maximum medical improvement on January 21, 2002. He requested a schedule award on April 28, 2002. By decision dated September 20, 2002, the Office granted appellant a schedule award for a 34 percent permanent impairment of his left upper extremity and a 48 percent permanent impairment of his right upper extremity.¹

The Board finds that appellant has no more than a 34 percent permanent impairment of his left upper extremity and a 48 percent permanent impairment of his right upper extremity for which he received a schedule award.

¹ Following the Office's September 20, 2002 decision, appellant submitted additional evidence in the record and alleged that he had developed an additional wrist condition. As the Office did not review this evidence in reaching a final decision and did not issue a final decision on the causal relationship between appellant's current wrist condition and his employment, the Board will not consider the new evidence, nor the additional alleged injury for the first time on appeal. 20 C.F.R. § 501.2(c).

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing regulation³ 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Appellant's attending physician, Dr. Low completed a report on March 11, 2002 noting appellant's history of injury and medical history. He noted that appellant's right shoulder diagnosis following surgery was right shoulder rotator cuff tear and acromioclavicular degenerative arthrosis with massive irreparable rotator cuff tear. Dr. Low stated that appellant had constant pain in his right shoulder and that appellant could not reach overhead or behind due to the pain. He also diagnosed severe bilateral carpal tunnel syndrome treated surgically. Dr. Low found that appellant had constant pain in his left wrist as well as numbness in the thumb, index and middle fingers. He noted that appellant's left wrist pain increased with constant gripping and grabbing and that appellant had to stop this activity.

Dr. Low found that appellant's right shoulder demonstrated moderate tenderness of the infraspinatus, subscapularis and rhomboid muscles. He provided appellant's range of motion as 135 degrees of abduction, 95 degrees of forward flexion, 15 degrees of internal rotation, 60 degrees of external rotation and 30 degrees of extension. Dr. Low noted that appellant had three to four out of five in resisted muscle testing in his abductors, adductors, forward flexors, internal rotators, external rotators and extensors.

In regard to appellant's wrists, Dr. Low found that he had decreased sensation of the median nerve on the left as well as a slightly positive Tinel's sign and a positive Phalen's sign on the left. He provided appellant's grip strength as 58, 51 and 48 pounds on the left for an average of 52.3 pounds and 27, 27 and 25 pounds on the right for an average of 26.3 pounds. Dr. Low found that appellant had three to four out of five on resisted muscle testing in both wrists in the dorsiflexors, palmar flexors, ulnar deviators and radial deviators.

Dr. Low concluded that appellant had decreased range of motion of the right shoulder, decreased strength in the right shoulder, mild muscle atrophy of the right upper arm, decreased sensation in the left median nerve distribution, decreased strength in the wrists bilaterally and decreased grip strength bilaterally, greater in the right dominant hand. He did not correlate his findings to the A.M.A., *Guides*.

The Office medical adviser, Dr. Leonard A. Simpson, an orthopedic surgeon, reviewed appellant's medical records on September 1, 2002 and applied the A.M.A., *Guides* regarding

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

carpal tunnel syndrome.⁴ Dr. Simpson noted that a decreased sensation involving the median nerve distribution included both sensory and motor deficit. He found that appellant had Grade 3 impairment due to pain and sensory impairment of 43 percent⁵ of the median nerve which had an impairment value of 39⁶ for a 17 percent impairment of the left upper extremity. In regard to appellant's impairment of the right medial nerve due to pain and sensory impairment, he found that appellant had a Grade 4 impairment or a 13 percent impairment of the median nerve for a 5 percent impairment of the right upper extremity due to wrist pain. Dr. Simpson found that appellant had a 37.5 percent loss of strength⁷ due to the median nerve which has an impairment rating of 10 percent resulting in an impairment rating of 20 percent of both the right and left upper extremity.⁸ He combined appellant's impairment ratings to reach a 34 percent impairment of the left upper extremity.

Dr. Simpson noted that appellant had a 20 percent impairment of the right upper extremity due to loss of strength in the median nerve and a 5 percent impairment of the right upper extremity due to wrist pain for a 24 percent impairment of the right upper extremity due to median nerves pathology. He also calculated appellant's right upper extremity impairment due to his accepted shoulder condition. Dr. Simpson found that appellant had a Grade 2 or 80 percent impairment of the axillary nerve which has an impairment value of 5 percent for a 4 percent impairment due to pain in the right shoulder.⁹ He further found that appellant's loss of range of motion in abduction was 2 percent impairment,¹⁰ loss of forward flexion was 6 percent impairment; loss of extension was 1 percent impairment¹¹ and loss of internal rotation was 5 percent impairment¹² for a total of 14¹³ percent impairment due to loss of range of motion of the right shoulder.

In regard to appellant's loss of shoulder strength, Dr. Simpson found 7 percent due to loss of flexion strength, 2 percent for loss of extension strength, 4 percent for loss of shoulder abduction strength, 2 percent for loss of shoulder adduction strength, 2 percent for loss of

⁴ A.M.A., *Guides* at 495 (fifth edition).

⁵ A.M.A., *Guide* at 482, Table 16-10.

⁶ A.M.A., *Guides* at 492, Table 16-15.

⁷ A.M.A., *Guides* at 484, Table 16-11.

⁸ A.M.A., *Guides* at 492, Table 16-15.

⁹ A.M.A., *Guide* at 482, Table 16-10; 492, Table 16-15.

¹⁰ A.M.A., *Guides* at 477, Figure 16-43.

¹¹ A.M.A., *Guide* at 476, Figure 16-40.

¹² A.M.A., *Guides* at 479, Figure 16-46.

¹³ Dr. Simpson found a 13 percent impairment due to loss of range of motion as he found that appellant had a 5.5 percent impairment due to loss of forward flexion and a 4.5 percent impairment due to loss of internal rotation. The Board has found that the Office should round up to the next whole number in calculating impairment. However, this error is harmless, as the combined values tables provide that when combining either 13 or 14 with 19 the resulting value is 30. A.M.A., *Guides* at 604.

internal rotation strength and 2 percent loss of external rotation strength for a total of a 19 percent impairment due to loss of strength.¹⁴ Dr. Simpson combined the impairment rating for pain, loss of range of motion and loss of strength to reach 32, percent impairment of the right shoulder. The Board notes that combining 19, 14 and 4 reaches a 33 percent impairment of the right shoulder.¹⁵ However, when a 33 percent impairment of the shoulder is combined with a 24 percent impairment to the wrist, appellant has no more than a 48 percent impairment of his right upper extremity.¹⁶

Dr. Simpson properly applied the A.M.A., *Guides* to the findings of appellant's attending physician, Dr. Low, in determining that appellant had 48 percent permanent impairment of his right upper extremity and a 34 percent impairment of his left upper extremity for which he received a schedule award. As there is no other medical evidence correlated with the A.M.A., *Guides*, which establishes that appellant has more than the awarded impairment to his upper extremities, the Office properly granted his schedule award.

The September 20, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 1, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁴ A.M.A., *Guides* at 510, Table 16-35.

¹⁵ A.M.A., *Guides* at 604.

¹⁶ A.M.A., *Guides* at 438. "[M]ultiple regional impairments, such as those of the hand, wrist, elbow and shoulder, are first expressed individually as upper extremity impairments and then *combined* to determine the total upper extremity impairment)." (Emphasis in the original.)