

**United States Department of Labor
Employees' Compensation Appeals Board**

NICOLAS BANDA, Appellant

and

**DEPARTMENT OF THE ARMY, ARMY AIR
DEPOT, Corpus Christi, TX, Employer**

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**Docket No. 06-259
Issued: May 10, 2006**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 14, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 8, 2005, finding that he had no more than 13 percent permanent impairment of the left upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award.

ISSUE

The issue is whether appellant has more than a 13 percent impairment to the left upper extremity for which he received a schedule award.

FACTUAL HISTORY

On June 17, 2002 appellant, then a 54-year-old aircraft parts repairer, filed a traumatic injury claim stating that on June 14, 2002 he injured his left shoulder while lifting a tail rotor from a table to a wagon. He did not stop work. The claim was accepted for a left shoulder strain.

In a medical report dated July 11, 2002, Dr. Charles W. Breckenridge, an attending Board-certified orthopedic surgeon, stated that appellant had left shoulder rotator cuff tendinitis, possible tear, impingement syndrome, and acromioclavicular joint hypertrophy creating impingement. In a report dated September 17, 2002, Dr. Breckenridge stated that a magnetic resonance imaging (MRI) scan revealed left shoulder rotator cuff tendinitis with acromioclavicular (AC) joint hypertrophy creating impingement, and glenohumeral osteochondral lesion with outlet stenosis. In reports dated October 4 and December 3, 2002 and January 17, 2003, Dr. Breckenridge repeated his earlier diagnoses and noted forward elevation to 160 degrees and external rotation to 55 degrees. On February 28, 2003 Dr. Breckenridge noted forward elevation to 150 degrees, external rotation to 45 degrees, and internal rotation to the L3 level. He noted appellant's complaints of pain with rotator cuff strength testing.

On March 6, 2004 the Office authorized partial removal of the collarbone and shoulder arthroscopy.¹

In a report dated September 20, 2005, Dr. Frank A. Luckay, a Board-certified orthopedic surgeon and an attending physician, examined appellant to rate his shoulder impairment. He stated that appellant had developed an incapacitating neuropathic disease and that he had not undergone surgery. Dr. Luckay found that appellant was at maximum medical improvement on that day secondary to tendinitis, impingement syndrome and AC joint hypertrophy of the left shoulder. He noted normal strength bilaterally. Dr. Luckay also noted range of motion findings based on Figures 16-40, 16-43 and 16-46, pages 476 to 479 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* of left shoulder flexion of 90 degrees for 8 percent impairment, abduction of 80 degrees for 5 percent impairment, and external rotation of 10 degrees for 6 percent impairment which he added for a total of 17 percent impairment of the upper extremity. There was normal internal rotation. Appellant exhibited pain to palpation about the left acromioclavicular joint with no crepitation noted. Sensory examination was normal around the fingers with some tingling. Deep tendon reflexes were zero equally bilaterally with no abnormal reflexes or clonus. The right forearm measured one half inch more in circumference than the left forearm. Dr. Luckay noted that appellant retired in July 2005.

On September 27, 2005 appellant filed a claim for a schedule award. The employing establishment noted that appellant was medically retired on July 7, 2004.²

On October 12, 2005 the Office referred the case to an Office medical adviser. On October 28, 2005 the Office medical adviser reviewed Dr. Luckay's report and determined that appellant had a total 13 percent impairment based on loss of range of motion findings of 90 degrees flexion for 6 percent, Figure 16-40, page 476, 80 degrees abduction for 5 percent, Figure 16-43, page 477, and 10 degrees external rotation for 2 percent Figure 16-43, page 479. He noted that Dr. Luckay misread Figure 16-46, page 479, using the value for loss of internal rotation rather than external rotation.

¹ The record does not indicate that surgery was performed.

² In the October 12, 2005 statement of accepted facts, the Office stated that as of that date appellant was employed as an aircraft parts repairer.

By decision dated November 8, 2005, the Office granted appellant a schedule award for 13 percent impairment of the left upper extremity. The award ran for 40.56 weeks, from September 20, 2005 to June 30, 2006.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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* (5th ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

ANALYSIS

In a report dated September 20, 2005, Dr. Luckay provided physical findings on examination and determined that appellant had 17 percent impairment of the left upper extremity due to decreased flexion and rotation of the shoulder according to the fifth edition of the A.M.A., *Guides*. He provided the following range of motion findings: 90 degrees flexion, 80 degrees internal rotation, and 10 degrees external rotation. In a report dated October 28, 2005, the Office medical adviser reviewed Dr. Luckay's findings and determined that appellant had a total 13 percent impairment of the left upper extremity. Figure 16-40 provides 6 percent impairment for 90 degrees of flexion, Figure 16-43 provides 5 percent impairment for 80 degrees of abduction and Figure 16-43 provides 2 percent impairment for 10 degrees of external rotation, for a total 13 percent impairment of the left upper extremity. The medical adviser properly noted that Dr. Luckay incorrectly calculated appellant's impairment based on loss of external rotation as 6 percent, noting that the A.M.A., *Guides* provide for 2 percent impairment based on 10 degrees of external rotation, Figure 16-46, page 479.

There is no other medical evidence of record, conforming with the A.M.A., *Guides*, that supports greater impairment. The Board finds that the Office properly found that appellant has no more than 13 percent impairment of the left upper extremity for which he received a schedule award.

CONCLUSION

The Board finds that appellant has no more than 13 percent impairment of the left upper extremity for which he received a schedule award.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Willie C. Howard*, 55 ECAB ____ (Docket No. 04-342 & 04-464, issued May 27, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 8, 2005 is affirmed.

Issued: May 10, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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