

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

D.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Shreveport, LA, Employer**

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**Docket No. 07-740
Issued: June 15, 2007**

Appearances:
Appellant, pro se
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 April 17, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated December 22, 2006. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On January 14, 2005 appellant, a 51-year-old mail clerk, experienced severe pain in her right shoulder while pulling mail tubs. She filed a claim for benefits, which the Office accepted for tendinitis of the right shoulder and sprain/strain of the right rotator cuff. On March 30, 2006 appellant underwent arthroscopic surgery for subacromial decompression and rotator cuff repair of the right shoulder.

On August 5, 2006 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right shoulder.

By decision dated October 27, 2006, the Office denied appellant's claim for a schedule award. It found that she failed to submit medical evidence establishing that she sustained any permanent impairment causally related to her accepted right shoulder condition.

On November 13, 2006 appellant requested reconsideration. In a November 2, 2006 report, Dr. Phillip Osborne found that appellant had a nine percent permanent impairment of the right upper extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*). He stated:

“[L]ooking at Figure 16-40, the flexion and extension of the shoulder shows that she has flexion of 100 degrees which would give a five percent impairment. Impairment extension is normal. Abduction is 90 degrees, so from Figure 16-43 you get a four percent impairment. Both internal and external rotation are at 80 degrees and this would be a zero percent impairment for each. Finally, the impairments are added together since it is the same joint, which gives you nine percent impairment for range of motion loss.

“Then we look at strength loss. The nerve that supplies would be the axillary nerve. I would use a grade ratio of 25 percent giving her 9 percent deficit for strength. I could not identify a sensory deficit, but you can combine strength and range of motion loss. Therefore, I would combine the 9 percent range of motion loss with the 9 percent for the strength loss for a 17 percent impairment of the right upper extremity.”

In a report dated December 14, 2006, an Office medical adviser reviewed Dr. Osborne's findings regarding loss of range of motion in the right shoulder. He determined that appellant had a nine percent impairment for loss of use of the right upper extremity pursuant to the A.M.A., *Guides*. The Office medical adviser derived a five percent impairment based on loss of flexion pursuant to Figure 16-40 at page 476 and a four percent impairment based on loss of abduction pursuant to Figure 16-43 at page 477. He discounted Dr. Osborne's nine percent impairment based on strength loss. The Office medical adviser noted that, under the A.M.A., *Guides*, subsection 16.8a, page 508, decreased strength is not to be rated in the presence of decreased motion.

On December 22, 2006 the Office granted appellant a schedule award for a nine percent permanent impairment of the right upper extremity for the period November 2, 2006 to May 17, 2007, for a total of 28.08 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.³

ANALYSIS

The Office medical adviser determined that appellant had a nine percent permanent impairment of the right upper extremity by adopting Dr. Osborne's findings regarding decreased range of motion. The finding of nine percent impairment of the right upper extremity was based on loss of range of motion pursuant to Figures 16-40 and 16-43. Figure 16-40⁴ measures upper extremity motion impairments due to lack of flexion and extension of the shoulder. Appellant's retained flexion of 100 degrees is rated as five percent impairment pursuant to this figure. Figure 16-43⁵ measures upper extremity motion impairment due to lack of abduction and adduction of the shoulder. Appellant's retained abduction of 90 degrees represents a four percent impairment pursuant to this figure. Therefore, she has a total of nine percent right upper extremity impairment for loss of range of motion of the shoulder.

The Board notes that, under the protocols of Chapter 16 of the A.M.A., *Guides*, decreased strength cannot be rated in the presence of decreased motion.⁶

There is no other probative medical evidence establishing that appellant has greater permanent impairment. She has no more than a nine percent permanent impairment to her right upper extremity.

CONCLUSION

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

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 5 U.S.C. § 8107(c)(19).

³ 20 C.F.R. § 10.404.

⁴ A.M.A., *Guides* 476.

⁵ *Id.* at 477.

⁶ *See id.* at 508, Figure 16.8a. Decreased Strength is not to be rated in the presence of decreased motion. *See also James R. Taylor*, 56 ECAB ___ (Docket No. 05-135, issued May 13, 2005).

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 15, 2007
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