

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

---

**H.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Dallas, TX, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 07-1959  
Issued: August 12, 2008**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director,*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 18, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 5, 2007 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

**ISSUE**

The issue is whether appellant has established that she has more than 24 percent impairment of the right upper extremity, for which she received a schedule award.

**FACTUAL HISTORY**

This case was previously on appeal before the Board. In a decision dated September 24, 1999, the Board found that the Office did not meet its burden of proof to terminate appellant's compensation effective March 3, 1996.<sup>1</sup> The Board reversed the Office's decisions dated February 27, April 23 and August 6, 1996. The facts of the case, as set forth in the prior decision, are incorporated by reference.

---

<sup>1</sup> Docket No. 97-352 (issued September 24, 1999).

The Office continued to develop the claim and on October 10, 2002 appellant received a schedule award of 24 percent to the right upper extremity.

On January 31, 2007 the Office received appellant's claim for an increased schedule award.

By letter dated February 5, 2007, the Office requested that appellant's treating physician, Dr. Samuel Bierner, Board-certified in physical medicine and rehabilitation, provide an impairment rating. The Office advised the physician to utilize the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> ed. 2001) (hereinafter A.M.A., *Guides*) and provide an opinion regarding the extent of any impairment with an explanation of how the calculation was derived.

In an April 10, 2007 report, Dr. Bierner noted using the A.M.A., *Guides* and referred to Figure 16-34,<sup>2</sup> regarding loss of range of motion for the right shoulder. He found flexion of 155 degrees which represented an impairment of two percent, and extension of 50 degrees which did not represent any impairment. For adduction, Dr. Bierner indicated that appellant had 55 degrees or zero percent impairment and 160 degrees of abduction or one percent impairment. He noted that there was no loss of motion to the wrists or elbows in either arm. Dr. Bierner also rated 10 percent impairment for loss of grip strength utilizing Table 16-32.<sup>3</sup> He combined the loss of range of motion with the grip strength loss to find appellant had an impairment of 13 percent to the right arm.<sup>4</sup>

On May 1, 2007 the Office requested that the Office medical adviser review the impairment rating.

In a May 10, 2007 report, the Office medical adviser utilized the A.M.A., *Guides* and noted appellant's history of injury and treatment. He advised that appellant had accepted conditions of right ganglion cyst, bilateral carpal tunnel syndrome, depressive disorder, other afflictions of the right shoulder, and disorder of bursa/tendons in the shoulder region. The Office medical adviser indicated that appellant reached maximum medical improvement on March 27, 2007, the date of Dr. Bierner's evaluation. He noted that grip strength loss could "not be utilized when there was a less than maximal effort provided by the examinee." The Office medical adviser referred to Figures 16-40, 16-43 and 16-46 on pages 476-79. For the right shoulder, flexion of 155 degrees was an impairment of two percent. The Office medical adviser found that appellant had 50 degrees of extension, or zero percent impairment; 160 degrees of abduction; or one percent impairment; 55 degrees of adduction, or zero percent impairment; and 80 degrees of internal and external flexion or zero percent impairment. He added the loss of motion values to total three percent. The Office medical adviser noted that appellant had already received a schedule award for 24 percent impairment to the right upper extremity for loss of shoulder motion and motor and sensory deficits. He determined that appellant had no additional impairment beyond that for which she was previously rated.

---

<sup>2</sup> A.M.A., *Guides* 472.

<sup>3</sup> *Id.* at 509.

<sup>4</sup> Dr. Bierner also noted that appellant had an impairment of 10 percent to the left upper extremity. Matters pertaining to the left arm are not before the Board on this appeal.

By decision dated June 5, 2007, the Office denied appellant's claim for an additional schedule award. It found that the medical evidence did not support any increase in the impairment for which she had previously been rated.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>5</sup> sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>6</sup> The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>7</sup> The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>8</sup>

### **ANALYSIS**

The medical evidence of record does not establish that appellant is entitled to an increased schedule award. She previously received a schedule award for a 24 percent impairment of her right upper extremity for her work-related conditions. Appellant requested an increase in her schedule award on January 31, 2007. By letter dated February 5, 2007, the Office requested that appellant's physician, Dr. Bierner, submit a report addressing her condition and providing an updated impairment rating.

In an April 10, 2007 report, Dr. Bierner utilized the A.M.A., *Guides* and referred to Figure 16-34 and Table 16-32.<sup>9</sup> He found that appellant had 10 percent impairment for grip strength utilizing Table 16-32.<sup>10</sup> However, the Board notes that the A.M.A., *Guides* provide that decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities or absence of parts that prevent effective application of maximum force.<sup>11</sup> Dr. Bierner did not provide any explanation as to why the grip strength rating was appropriate in light of the loss of motion he described as set forth in the A.M.A., *Guides*. Thus, it was improper to rate grip strength in the presence of the loss of motion. Dr. Bierner's finding that appellant had 10 percent impairment due to loss of grip strength cannot be utilized.

The Board also notes that both Dr. Bierner and the Office medical adviser utilized the same values for loss of range of motion and correctly determined that appellant had three percent

---

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Id.* at § 8107.

<sup>7</sup> *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> A.M.A., *Guides* 509.

<sup>10</sup> *Id.* at 472, 509.

<sup>11</sup> *See* A.M.A., *Guides* 508, section 16.8a.

impairment to the right upper extremity. Utilizing Figure 16-40,<sup>12</sup> flexion of 155 degrees represents two percent impairment. Appellant had 50 degrees of extension, or zero percent impairment. Utilizing Figure 16-43<sup>13</sup> for abduction and adduction, 160 degrees of abduction was equal to one percent impairment and 55 degrees of adduction was equal to zero percent impairment. Utilizing Figure 16-46<sup>14</sup> for internal and external rotation of the shoulder, 80 degrees of internal and external flexion represents zero percent impairment. Both Dr. Bierner and the Office medical adviser added the loss of motion values to equal three percent impairment of the right shoulder. As appellant had previously been rated with 24 percent impairment to the right upper extremity, the most recent 3 percent impairment rating for the right upper extremity does not represent any increase in the extent of impairment due to her accepted conditions.

### **CONCLUSION**

The Board finds that appellant has not established that she has more than 24 percent impairment of the right upper extremity, for which she received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 5, 2007 is affirmed.

Issued: August 12, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>12</sup> A.M.A., *Guides* 476.

<sup>13</sup> *Id.* at *Guides* 477.

<sup>14</sup> *Id.* at *Guides* 479.