

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AGUPITO FLETES and U.S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, Grant Pass, OR

*Docket No. 01-1483; Submitted on the Record;
Issued March 1, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether appellant has more than a 15 percent permanent impairment of the right arm.

On July 16, 1997 appellant, then a 39-year-old forestry technician, injured his right shoulder when he slid down an embankment. The Office of Workers' Compensation Programs accepted the claim for a dislocated right shoulder and authorized surgery to repair the injury. Appellant stopped work on July 17, 1997 and returned on July 28, 1997 to a limited-duty position.

In support of his claim, appellant submitted emergency room notes dated July 16, 1997; treatment notes from Dr. David Appleby, a Board-certified orthopedic surgeon, dated July 16 to August 4, 1997; a magnetic resonance imaging (MRI) scan dated July 31, 1997; and a report from Dr. Hal Townsend, a Board-certified orthopedic surgeon, dated August 15, 1997. The emergency room notes indicated that appellant was injured when falling from a steep sloped embankment and injured his shoulder. He was diagnosed with a fracture/dislocation of the right shoulder. The treatment notes from Dr. Appleby dated July 16 August 4, 1997 indicated that appellant was being treated for a right shoulder dislocation. He indicated that a closed reduction of the right shoulder was performed on July 16, 1997. The MRI of the right shoulder revealed moderate tendinitis or undersurface tear of the mid to distal portion of the supraspinatus and infraspinatus tendons. In his report dated August 15, 1997, Dr. Townsend diagnosed appellant with an acute rotator cuff tear.

Thereafter, appellant submitted treatment notes from Dr. Townsend dated August 11, 1997 to April 13, 1998 and two operative reports dated October 17, 1997 and May 19, 1998. The treatment notes from Dr. Townsend dated August 11, 1997 to April 13, 1998 note that appellant sustained a significant rotator cuff injury and was continuing to experience pain and limited range of motion. He noted that appellant was progressing slowly but steadily. The operative report dated October 17, 1997 noted that appellant underwent arthroscopic surgery of the right shoulder. Dr. Townsend noted that a postoperative diagnosis of anterior instability,

rotator cuff tear and bicep tendon rupture. The May 19, 1998 operative note indicated that appellant underwent arthroscopy with debridement and anterior capsular release. Dr. Townsend diagnosed appellant with arthrofibrosis of the right shoulder.

On February 19, 1999 appellant filed a claim for a schedule award. He submitted treatment notes from Dr. Townsend dated May 27 to November 12, 1998. Dr. Townsend's November 12, 1998 report provided the following range of motion figures: forward flexion of 130 degrees; abduction of 90 degrees; external rotation of 40 degrees; and internal rotation of 70 degrees.

Dr. Townsend's reports and the case record were referred to the Office medical adviser who determined in accordance with the American Medical Association, (A.M.A.) *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993) that appellant sustained a nine percent impairment of the right arm. The medical adviser noted that the range of motion figures for extension and adduction were not evident on Dr. Townsend's reports of August 10, 1998, the date of maximum medical improvement, or the November 12, 1998 report and, therefore, were not considered for rating purposes.

In a decision dated September 9, 1999, the Office granted appellant a schedule award for a nine percent permanent impairment of the right arm.

In an October 4, 1999 letter, appellant requested an oral hearing before an Office hearing representative. The hearing was held on April 25, 2000. Appellant testified that since the September 9, 1999 decision he underwent a functional capacity evaluation (FCE) on March 17, 2000 and was evaluated by Dr. Townsend on March 13, 2000. He noted that range of motion figures provided by the FCE and Dr. Townsend support that he has greater than a nine percent permanent impairment of the right arm. Dr. Townsend's March 13, 2000 report provided the following range of motion figures: external rotation of 50 degrees; abduction of 90 degrees; internal rotation of 60 degrees; flexion of 105 degrees; extension of 20 degrees; and adduction of 20 degrees. The FCE provided the following figures: abduction of 80 degrees; flexion of 110 degrees; internal rotation of 10 to 50 degrees; external rotation of 10 degrees; extension of 32 degrees; and adduction of 35 degrees.

Dr. Townsend's report, the FCE and the case record were referred to the Office medical adviser who determined, in a report dated January 31, 2001, that appellant sustained an additional 6 percent permanent impairment for a total of 15 percent impairment of the right arm.

In a decision dated February 14, 2001, the Office affirmed the decision of the Office dated September 9, 1999 but modified the impairment rating to reflect an additional six percent impairment as substantiated by the additional evidence submitted by appellant at the oral hearing.

In a decision dated March 24, 2001, the Office granted appellant a schedule award for an additional six percent permanent impairment for a total of 15 percent permanent impairment of the right arm.

The Board finds that appellant has no more than a 15 percent impairment of the right arm.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

On appeal appellant alleges that he is entitled to a schedule award greater than 15 percent.

In a report dated March 13, 2000, Dr. Townsend provided the following range of motion Figures: external rotation of 50 degrees; abduction of 90 degrees; internal rotation of 60 degrees; flexion of 105 degrees; extension of 20 degrees; and adduction of 20 degrees. The A.M.A., *Guides* provide that the rating of loss of external rotation of 50 degrees of the right shoulder to be rated at 1 percent³; the rating for loss of abduction of 90 degrees to be rated at 4 percent;⁴ the rating for loss of internal rotation of 60 degrees to be rated at 2 percent⁵; and the rating for loss of flexion of 105 to be rated at 5 percent;⁶ the rating for extension of 20 degrees to be 2 percent;⁷ and the rating for adduction of 20 percent to be 1 percent.⁸ The A.M.A., *Guides* provide that to determine upper extremity impairment you must add the impairment percent for loss of flexion and extension of the shoulder;⁹ loss of abduction and adduction of the shoulder;¹⁰ and loss of internal and external rotation of the shoulder to find the value for upper extremity impairment.¹¹ In this case, Dr. Townsend's figures generated a 15 percent permanent impairment of the right arm. He and the medical adviser calculated appellant's schedule award based on the A.M.A., *Guides*.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ See page 45, Figure 44 (4th ed. 1993) (A.M.A., *Guides*); see also page 479, Figure 16-46 (5th ed. 2001) (A.M.A., *Guides*).

⁴ See page 44, Figure 41 (4th ed. 1993) (A.M.A., *Guides*); see also page 477, Figure 16-43 (5th ed. 2001) (A.M.A., *Guides*).

⁵ *Supra* note 3.

⁶ See page 43, Figure 38 (4th ed. 1993) (A.M.A., *Guides*); see also page 476, Figure 16-40 (5th ed. 2001) (A.M.A., *Guides*).

⁷ *Id.*

⁸ *Supra* note 4.

⁹ *Supra* note 6.

¹⁰ *Supra* note 4.

¹¹ *Supra* note 3.

Therefore, the medical adviser properly utilized the findings in Dr. Townsend's March 13, 2000 report to determine appellant's loss of range of motion for the right shoulder. Although the FCE performed March 17, 2000 provided findings to determine loss of range of motion for the shoulder, the medical adviser did not use these ranges in his computations as these ranges did not conform to the ranges listed in the A.M.A., *Guides*.¹² The medical adviser noted Dr. Townsend's report indicated the loss of external rotation of 50 degrees of the right shoulder to be rated at 1 percent¹³; the rating for loss of abduction of 90 degrees to be rated at 4 percent;¹⁴ the rating for loss of internal rotation of 60 degrees to be rated at 2 percent;¹⁵ and the rating for loss of flexion of 105 to be rated at 5 percent;¹⁶ the rating for extension of 20 degrees to be 2 percent¹⁷; and the rating for adduction of 20 percent to be 1 percent,¹⁸ thereby appellant's impairment for loss of range of motion of the right shoulder totaled 15 percent.

The Board finds that the medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Townsend's March 13, 2000 report and reached an impairment rating of 15 percent. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than a 15 percent permanent impairment of the right arm. The Office noted that appellant was previously granted a schedule award for a 9 percent impairment for the right arm and, therefore, properly reduced this award of compensation to 6 percent, for a total award of compensation of 15 percent impairment for the right arm.

¹² The A.M.A., *Guides* provided a range of degrees for external rotation from 0 to 90 degrees; however, the FCE provided a figure for external rotation of 10 percent which did not appear in either the 4th or 5th edition of the A.M.A., *Guides*. The Board notes that the most contemporaneous reports pertaining to appellant's ratable impairment are those from Dr. Townsend dated March 17, 2000 and the FCE dated March 13, 2000. His report is the only report conforming to the A.M.A., *Guides*; see also *Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (an attending physician's report is of little probative value where the *Guides* were not properly followed); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

¹³ *Supra* note 3.

¹⁴ *Supra* note 4.

¹⁵ *Supra* note 3.

¹⁶ *Supra* note 6.

¹⁷ *Id.*

¹⁸ *Supra* note 4.

The decision of the Office of Workers' Compensation Programs dated February 14, 2001 is hereby affirmed.

Dated, Washington, DC
March 1, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member