

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROLAND C. RADLOFF and U.S. POSTAL SERVICE,
POST OFFICE, Madison, WI

*Docket No. 02-1020; Submitted on the Record;
Issued October 1, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has more than an eight percent permanent impairment of the right upper extremity for which he has received a schedule award.

On November 1, 1998 appellant, then a 59-year-old carrier, filed a claim alleging that he developed a right shoulder injury due to performing repetitive activities at work. The Office of Workers' Compensation Programs accepted the claim for an aggravation of right rotator cuff tear.¹ Appellant did not stop work. Appropriate benefits were paid.

In support of his claim, appellant submitted several reports from Dr. Gerard G. Adler, a Board-certified orthopedist, dated August 31 to November 23, 1998. Dr. Adler indicated that appellant sustained a rotator cuff tear in approximately 1996 and was experiencing pain and discomfort due to his repetitious work activities. He diagnosed appellant with right rotator cuff tear and right cubital tunnel syndrome. Dr. Adler noted in an operative report dated January 14, 1999 that appellant underwent a rotator cuff repair. He indicated that appellant was progressing well after surgery.

Thereafter, appellant submitted additional reports from Dr. Adler from January 25 to September 25, 1999. Dr. Adler noted that appellant could return to limited duty, four hours per day with restrictions on March 1, 1999. He noted that appellant was progressing well post surgery and was near full active range of motion in March 1999. Dr. Adler noted in August 1999 that appellant was experiencing persistent weakness and fatigue following the right rotator cuff repair and right cubital tunnel syndrome. He recommended that appellant discontinue his work as a rural carrier due to the persistent aggravation of his right shoulder problem.

¹ Apparently appellant sustained a right rotator cuff tear. There is no evidence in the record indicating that this was a work-related injury or that a claim was filed in regard to this injury.

On March 2, 1999 the employing establishment offered appellant a limited-duty position as a file clerk. Appellant accepted this position.

Appellant continued to submit reports from Dr. Gregory D. Anderson, a chiropractor dated August 20, 1999 to March 9, 2000 and Dr. Adler dated September 15 to December 13, 1999. Dr. Anderson diagnosed appellant with a subluxation of the cervical spine as demonstrated by x-rays. He noted that the subluxation of the cervical spine was causally related to appellant's accepted work-related shoulder cuff tear. Dr. Adler's September 15, 1999 report recommended that appellant discontinue his work at the employing establishment because it was aggravating his shoulder injury. His report of December 13, 1999 indicated that he evaluated appellant for an impairment rating in accordance with the Wisconsin Administrative Code. Upon physical findings upon examination, Dr. Adler noted 180 degrees of flexion; abduction to 150 degrees; internal rotation to L1; intermittent discomfort of the right shoulder; and 4+/5 strength in the distribution of the suprascapular nerve. He noted that appellant reached maximum medical improvement and provided a rating of 10 percent permanent disability. Dr. Adler did not refer to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

On December 7, 1999 appellant filed a CA-2a, notice of recurrence of disability alleging that on July 14, 1999 he experienced shoulder discomfort as a result of his repetitious employment duties causally related to the accepted injury of April 1997. The Office accepted appellant's claim for recurrence of disability on March 13, 2000 and paid appropriate compensation.

On May 9, 2000 appellant filed a claim for a schedule award.

The Office referred appellant's case record and Dr. Adler's reports to the Office's medical adviser who determined in accordance with the A.M.A., *Guides*, (4th ed. 1993) that appellant sustained a seven percent permanent impairment of the right upper extremity.

In a decision dated July 16, 2001, the Office granted appellant a schedule award for a seven percent permanent impairment of the right upper extremity.

In a letter dated September 12, 2001, appellant requested reconsideration of the decision dated July 16, 2001 and submitted a report from Dr. Adler dated August 13, 2001. Dr. Adler indicated that on December 13, 1999 he provided a permanent partial disability rating of 10 percent. Upon physical examination he noted the right shoulder has full flexion of 180 degrees; full abduction of 180 degrees; external rotation of 45 degrees on the right; and internal rotation was to L1. He again provided an impairment rating of 10 percent permanent disability and noted he based his calculation on the Wisconsin Administrative Code.

The Office referred appellant's case record and Dr. Adler's reports to the Office's medical adviser who determined in accordance with the A.M.A., *Guides*, (5th ed. 2001) that appellant sustained an additional one percent impairment of the right upper extremity for a total award of eight percent impairment of the right upper extremity.

In a decision dated December 4, 2001, the Office granted appellant a schedule award for an additional one percent impairment of the right upper extremity for a total award of eight percent impairment of the right upper extremity.

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

The schedule award provision 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

On appeal appellant alleges he is entitled to a schedule award of 10 percent impairment of the right upper extremity based on Dr. Adler's report of December 13, 1999.

In a report dated December 13, 1999, Dr. Adler found that appellant sustained a 10 percent permanent impairment which was comprised of: 180 degrees of flexion;⁴ abduction to 150 degrees;⁵ internal rotation to L1;⁶ intermittent discomfort of the right shoulder;⁷ and 4+/5 strength in the distribution of the suprascapular nerve.⁸ He noted that appellant reached maximum medical improvement and provided a rating of 10 percent permanent disability. Dr. Adler's report of August 13, 2001 provided similar findings with one additional figure noted for external rotation measured at 45 degrees.⁹ However, Dr. Adler did not make a determination on impairment in accordance with the A.M.A., *Guides*. Although he noted appellant sustained a 10 percent permanent disability of his right shoulder, he did not provide a numerical impairment rating in conformance with the A.M.A., *Guides*. Dr. Adler neither referenced the A.M.A.,

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ 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*).

⁵ 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*).

⁶ 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*).

⁷ See page 48, Table 11; page 54, Table 15 (4th ed. 1993) (A.M.A., *Guides*); see also page 482, Table 16-10, page 485, Table 16-12a (5th ed. 2001) (A.M.A., *Guides*).

⁸ See page 49, Table 12; page 54, Table 15 (4th ed. 1993) (A.M.A., *Guides*); See also page 484, Table 16-11, page 485, Table 16-12a (5th ed. 2001) (A.M.A., *Guides*).

⁹ See page 479, Table 16-46 (5th ed. 2001) (A.M.A., *Guides*).

Guides nor did he cite to tables or charts for an impairment rating determination. Thus it was proper for the Office to refer the matter to its medical adviser.¹⁰

The Board notes that the Office medical adviser calculated appellant's schedule award based on the fourth edition of the A.M.A., *Guides*. The fifth edition of the A.M.A., *Guides*¹¹ became effective February 1, 2001, and thereafter, the Office issued its July 16, 2001 and December 4, 2001 decisions. Upon review of both the 4th and 5th editions of the A.M.A., *Guides* the Board notes that there is no difference in the impairment rating in appellant's case.¹²

The medical adviser utilized the findings in Dr. Adler's report to determine appellant's permanent impairment of the right arm. The medical adviser noted that Dr. Adler's reports indicated 180 degrees of flexion for an impairment rating of 0 percent;¹³ abduction to 150 degrees for an impairment rating of 1 percent;¹⁴ internal rotation to L1 (60 percent) for an impairment of 2 percent;¹⁵ intermittent discomfort of the right shoulder allowing for Grade 3 pain in the distribution of the suprascapular nerve for an impairment rating of 2 percent;¹⁶ and 4+/5 strength in the distribution of the suprascapular nerve for an impairment rating of 2 percent.¹⁷ Dr. Adler's report of August 13, 2001 provided similar findings with one additional figure noted for external rotation measured at 45 degrees for an impairment rating of 1 percent.¹⁸ The A.M.A., *Guides*, 16.1, Principles of Assessment,¹⁹ indicates that appropriate impairment percents are combined with other impairment percents using the Combined Values Chart, page 604 of the A.M.A., *Guides*. In this case, Dr. Adler incorrectly determined appellant's impairment rating of 10 percent rather than using the Combined Values Chart, page 604 of the

¹⁰ It is well settled that when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based on the application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*. Board cases are clear that if an attending physician does not utilize the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment. *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

¹¹ See FECA Bulletin 01-05 (issued January 31, 2001).

¹² *Supra* note 3-11.

¹³ 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*).

¹⁴ 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*).

¹⁵ 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*).

¹⁶ See page 48, Table 11; page 54, Table 15 (4th ed. 1993) (A.M.A., *Guides*); see also page 482, Table 16-10, page 485, Table 16-12a (5th ed. 2001) (A.M.A., *Guides*).

¹⁷ See page 49, Table 12; page 54, Table 15 (4th ed. 1993) (A.M.A., *Guides*); see also page 484, Table 16-11, page 485, Table 16-12a (5th ed. 2001) (A.M.A., *Guides*).

¹⁸ See page 479, Table 16-46 (5th ed. 2001) (A.M.A., *Guides*).

¹⁹ See page 434, 16.1 Principles of Assessment; page 9, 1.4 Philosophy and Use of the Combined Values Chart (5th ed. 2001) (A.M.A., *Guides*).

A.M.A., *Guides*. The medical adviser properly utilized the Combined Values Chart, page 604 of the A.M.A., *Guides* to determine the total impairment of the right upper extremity of eight percent.

The Board finds that Dr. Adler did not properly follow the procedures as set forth in the A.M.A., *Guides* rather he utilized the Wisconsin Administrative Code.²⁰ The medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Adler's report's and reached an impairment rating of eight percent. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than an eight percent permanent impairment of the right upper extremity.

The decision of the Office of Workers' Compensation Programs dated December 4, 2001 is hereby affirmed.

Dated, Washington, DC
October 1, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

²⁰ See *Paul R. Evans, Jr., supra* note 10 (an attending physician's report is of little probative value where the A.M.A., *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).