

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

ROSE M. DORN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Upland, CA, Employer**

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**Docket No. 05-1977
Issued: January 23, 2006**

Appearances:
Rose M. Dorn, 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

JURISDICTION

On September 27, 2005 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs dated July 1, 2005 which granted her a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award.

ISSUE

The issue is whether appellant has more than 12 percent impairment of the right upper extremity for which she received a schedule award. On appeal appellant contends that she is entitled to compensation for lost overtime pay.

FACTUAL HISTORY

On April 24, 2004 appellant, then a 42-year-old distribution clerk, filed a Form CA-1, traumatic injury claim, alleging that on April 23, 2004 she injured her right shoulder tossing mail. She stopped work that day and returned to limited duty on April 25, 2004. On June 23, 2004 the Office accepted that she sustained an employment-related right shoulder strain/sprain.

Appellant came under the care of Dr. James C. Thomas, Jr., Board-certified in orthopedic surgeon, and magnetic resonance imaging (MRI) scans performed on May 13 and July 19, 2004 revealed a full thickness rotator cuff tear on the right. On August 19, 2004 appellant underwent surgical repair of her shoulder, and the Office expanded the accepted conditions to include rotator cuff strain and right shoulder impingement syndrome. Appellant was placed on the periodic rolls, and received compensation through October 16, 2004 when Dr. Thomas advised that she could return to work with restrictions. Appellant thereafter moved to Little Rock, Arkansas where she returned to limited duty with the postal service.

On March 15, 2005 appellant submitted a schedule award claim, with a November 3, 2004 report in which Dr. Thomas diagnosed right rotator cuff repair of full thickness tear and keloid scar. He provided three readings of grip strength measurements showing 60, 60 and 54 pounds on the right and range of motion findings indicating forward flexion of 120 degrees which he rated as a 4 percent impairment, extension of 40 degrees for a 1 percent impairment, abduction of 120 degrees for a 3 percent impairment, adduction of 0 degrees for a 2 percent impairment, external rotation of 80 degrees for 0 impairment, and internal rotation of 60 degrees for a 2 percent impairment, to total a 12 percent impairment for lack of range of motion.¹ He stated that he would give appellant an additional 5 percent impairment “based on this particular weakness” and opined that her loss of grip strength was approximately 25 percent, stating that she was entitled to an additional 10 percent impairment for loss of strength. He concluded that appellant had a 22 percent right upper extremity impairment.

Following referral by the Office, in a March 30, 2005 report, an Office medical adviser stated that maximum medical improvement had been reached on November 3, 2004. He noted that, while Dr. Thomas provided an additional rating for grip strength, under Tables 16-31 and 16-32 of the fifth edition of the A.M.A., *Guides*,² the grip strength measurements provided by Dr. Thomas were normal. He then assessed appellant’s right upper extremity pursuant to the A.M.A., *Guides* and noted that, pursuant to Figures 16-40, 16-43 and 16-46, the range of motion deficits provided by Dr. Thomas entitled appellant to a 12 percent right upper extremity impairment.

By decision dated July 1, 2005, appellant was granted a schedule award for a 12 percent impairment of the right upper extremity, for a total of 37.44 weeks of compensation, to run from November 3, 2004 to July 23, 2005.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees’ Compensation Act³ and section 10.404 of the implementing federal regulations,⁴ schedule awards are payable for permanent impairment of

¹ Dr. Thomas did not mention the American Medical Association, *Guides to the Evaluation of Permanent Impairment* in providing his analysis. His range of motion impairment ratings, however, comport with those found in Figures 16-40, 16-43 and 16-46 of the A.M.A., *Guides*. See note 2 *infra*.

² A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*⁵ has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁶

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*. However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment.⁷ Nonetheless, section 16.8 of the fifth edition of the A.M.A., *Guides* does not encourage the use of grip strength as an impairment rating because strength measurements are functional tests influenced by subjective factors that are difficult to control, and the A.M.A., *Guides* for the most part is based on anatomic impairment. Thus, the A.M.A., *Guides* does not assign a large role to such measurements. Only in rare cases should grip strength be used, and only when it represents an impairing factor that has not been otherwise considered adequately.⁸

ANALYSIS

The Board finds that appellant has not established that she is entitled to a schedule award greater than the 12 percent permanent impairment of the right upper extremity awarded. The Office medical adviser properly reviewed the November 3, 2004 report of Dr. Thomas, appellant's attending orthopedic surgeon, and used the range of motion measurements Dr. Thomas provided, *i.e.*, 120 degrees of flexion, 40 degrees of extension, 120 degrees of abduction, 0 degrees of adduction, 60 degrees of internal rotation and 80 degrees of external rotation, to evaluate appellant's right upper extremity under the fifth edition of the A.M.A., *Guides*. The Office medical adviser properly found that, under Figure 16-40 shoulder flexion of 120 degrees provided a 4 percent impairment and shoulder extension of 40 degrees a 1 percent impairment,⁹ under Figure 16-43, 120 degrees of abduction and 0 degrees of adduction provided 3 percent and 2 percent impairments respectively,¹⁰ and under Figure 16-46, 60 degrees of internal rotation provided a 2 percent impairment and 80 degrees of external rotation provided

⁵ A.M.A., *Guides*, *supra* note 2.

⁶ See *Joseph Lawrence, Jr.*, *supra* note 2; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁷ *Robert V. Disalvatore*, 54 ECAB 351 (2003).

⁸ A.M.A., *Guides*, *supra* note 2 at 509; see *Mary L. Henninger*, 52 ECAB 408 (2001).

⁹ A.M.A., *Guides*, *supra* note 2 at 476.

¹⁰ *Id.* at 477.

zero impairment,¹¹ for a total right upper extremity impairment of 12 percent.¹² While Dr. Thomas included an additional 10 percent for grip strength, the Office medical adviser noted that the grip strength measurements found by Dr. Thomas averaged 58 pounds or 26.4 kg. which, pursuant to Tables 16-31 and 16-32 of the A.M.A., *Guides* is considered normal.¹³ Furthermore, the A.M.A., *Guides* does not encourage the use of grip strength as an impairment rating,¹⁴ and section 16.8a of the A.M.A., *Guides* provides that maximum strength is usually not regained for at least a year after an injury or surgical procedure and impairment is evaluated when an individual has reached maximum medical improvement. In view of this, strength can only be applied as a measure when a year or more has passed since the time of injury or surgery.¹⁵ In this case, appellant's surgery was performed on August 19, 2004 and Dr. Thomas' impairment rating, was done on November 3, 2004, the date of maximum medical improvement provided by the Office medical adviser. Therefore, as the Office medical adviser provided the only evaluation conforming with the A.M.A., *Guides*, it constituted the weight of the medical evidence in establishing that appellant was entitled to a schedule award for a 12 percent right upper extremity impairment.¹⁶

Regarding appellant's argument that she is entitled to additional compensation because she lost overtime pay, section 8114(e) of the Act provides that, in computing an employee's monthly pay for compensation purposes, account is not taken of overtime pay.¹⁷

CONCLUSION

The Board finds that appellant has not established that she is entitled to greater than a 12 percent impairment of the right upper extremity.

¹¹ *Id.* at 479.

¹² *Id.* at 472.

¹³ *Id.* at 509.

¹⁴ *Supra* note 8.

¹⁵ A.M.A., *Guides*, *supra* note 2 at 508; *Silvester Deluca*, 53 ECAB 500 (2002).

¹⁶ See *Linda R. Sherman*, 56 ECAB ____ (Docket No. 04-1510, issued October 14, 2004).

¹⁷ 5 U.S.C. § 8114(e); see also Federal (FECA) Procedure Manual, Part 2, -- Claims, *Determining Pay Rates*, Chapter 2.900.5(b)(16) (April 2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 1, 2005 be affirmed.

Issued: January 23, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board