

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

M.A., Appellant

and

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

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**Docket No. 08-866
Issued: August 4, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 28, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated October 31, 2007. 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 13 percent permanent impairment to his right upper extremity.

FACTUAL HISTORY

On March 20, 2002 appellant, a 59-year-old letter carrier, slipped on wet grass and fell on his right shoulder. He filed a claim for benefits, which the Office accepted for right shoulder contusion and right rotator cuff tear.

On January 8, 2003 appellant underwent arthroscopic surgery for subacromial decompression and rotator cuff repair of the right shoulder.

On May 5, 2007 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his right shoulder.

In a report dated June 25, 2007, Dr. Gordon M. Mead, a specialist in orthopedic surgery, found that appellant had a 13 percent permanent impairment of the right upper extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (the A.M.A., *Guides*). He derived this rating from appellant's loss of range of motion in the right shoulder, based on his physical examination. Dr. Mead made the following calculations for range of motion in the right shoulder: flexion, 105 degrees; extension, 20 degrees; abduction, 120 degrees; adduction, 20 degrees; external rotation, 10 degrees; and internal rotation, 80 degrees.

In a report dated December 14, 2006, an Office medical adviser reviewed Dr. Mead's findings regarding loss of range of motion in the right shoulder and determined that appellant had a 13 percent impairment for loss of use of the right upper extremity pursuant to the A.M.A., *Guides*. He derived a five percent impairment based on loss of flexion pursuant to Figure 16-40 at page 476; a two percent impairment based on loss of extension pursuant to Figure 16-40 at page 476; a three percent impairment based on loss of abduction pursuant to Figure 16-43 at page 477; a one percent impairment based on loss of adduction pursuant to Figure 16-43 at page 477; and a two percent impairment based on loss of external rotation pursuant to Figure 16-46 at page 479. The Office medical adviser added these figures for a total 13 percent right upper extremity impairment.

On October 31, 2007 the Office granted appellant a schedule award for a 13 percent permanent impairment of the right upper extremity for the period June 25, 2007 to April 3, 2008, for a total of 40.56 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ set forth the number of weeks of compensation to be paid for permanent impairment for 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

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.

ANALYSIS

The Office medical adviser determined that appellant had a 13 percent permanent impairment of the right upper extremity by adopting Dr. Mead's findings and evaluation for decreased range of motion. The finding of 13 percent impairment of the right upper extremity was based on loss of range of motion pursuant to Figures 16-40, 16-43 and 16-46. Figure 16-40⁴ measures upper extremity motion impairments due to lack of flexion and extension of the shoulder. Appellant's retained flexion of 105 degrees is rated as five percent impairment pursuant to this figure and his retained extension of 20 degrees equates to a two percent impairment. Figure 16-43⁵ measures upper extremity motion impairment due to lack of abduction and adduction of the shoulder. Appellant's retained abduction of 120 degrees represents a three percent impairment pursuant to this figure and his retained adduction of 20 degrees produces a one percent impairment. Figure 16-46⁶ measures upper extremity motion impairments due to lack of internal and external rotation of the shoulder. Appellant's retained external rotation of 10 degrees in the right shoulder represents a two percent impairment pursuant to this figure. Therefore, he has a total of 13 percent right upper extremity impairment for loss of range of motion of the shoulder.

There is no other probative medical evidence establishing that appellant has greater permanent impairment. Appellant has no more than a 13 percent permanent impairment to his right upper extremity.

CONCLUSION

The Board finds that appellant has no more than a 13 percent impairment of the right upper extremity.

⁴ A.M.A., *Guides* 476.

⁵ *Id.* at 477.

⁶ *Id.* at 479.

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 4, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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