

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

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**P.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Altoona, PA, Employer**

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**Docket No. 08-970  
Issued: November 19, 2008**

*Appearances:*  
*Jeffrey P. Zeelander, Esq., for the appellant*  
*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 February 15, 2008 appellant, through his attorney, filed a timely appeal from a February 5, 2008 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

**ISSUE**

The issue is whether appellant has more than 35 percent impairment of his right upper extremity.

**FACTUAL HISTORY**

This is appellant's third appeal before the Board. On May 24, 2004 appellant, then a 54-year-old letter carrier, sustained injury to his right shoulder while lifting flats. His claim was

accepted for injury to the bursae and tendons of the right shoulder.<sup>1</sup> The Office granted appellant a schedule award on September 27, 2006 for 31 percent impairment of his right arm. In an April 5, 2007 decision, the Board remanded the case to the Office for further development.<sup>2</sup> On remand, the Office further developed the medical evidence and, in a May 17, 2007 decision, granted a schedule award for 35 percent right upper extremity impairment. On January 28, 2008 the Board issued an order remanding the case to the Office for reconstruction.<sup>3</sup> The facts and history of the claim, as set forth in the prior Board decision, are incorporated herein by reference.

The relevant medical evidence includes a September 5, 2006 report from Dr. Michael J. Platto, Board-certified in physical medicine and rehabilitation. Dr. Platto advised that appellant had a 34 percent impairment of the right upper extremity based on loss of shoulder range of motion and for an implant arthroscopic procedure. He provided measurements of appellant's right shoulder motion and stated that 111 degrees of abduction represented three percent impairment and 15 degrees adduction represented two percent impairment under Figure 16-43, page 477.<sup>4</sup> Dr. Platto advised that 82 degrees of flexion represented seven percent impairment and extension of 67 degrees resulted in no impairment under Figure 16-40, page 476. Internal rotation of 64 degrees represented two percent impairment and 82 degrees external rotation did not represent impairment under Figure 16-46, page 479. Dr. Platto totaled the loss of range of motion as 14 percent. He advised that appellant had an additional 20 percent impairment of the right upper extremity for a right shoulder arthroplasty implant under Table 16-27, page 506. Using the Combined Values Chart, Dr. Platto rated appellant's right upper extremity impairment as 34 percent. In an April 23, 2007 report, he corrected his impairment rating, noting that, under Table 16-27, 24 percent impairment was allowed for a shoulder implant arthroplasty. Dr. Platto advised that combining 14 percent for loss of range of motion with 24 percent for the arthroplasty implant, resulted in total impairment of 35 percent.

On June 14, 2007 Dr. Morley Slutsky, an Office medical adviser, concurred in the impairment rating provided by Dr. Platto.

On February 5, 2008 the Office granted appellant a schedule award for 35 percent impairment of the right upper extremity, less the 12 percent previously paid in 2002.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>5</sup> sets for the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and

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<sup>1</sup> The record reflects that appellant sustained a prior right shoulder strain and rotator cuff tear on August 22, 1989, for which he underwent surgery. On November 25, 2002 the Office granted him a schedule award for 12 percent impairment to the right upper extremity.

<sup>2</sup> Docket No. 07-85 (issued April 5, 2007).

<sup>3</sup> Docket No. 07-1883 (issued January 28, 2008).

<sup>4</sup> The Board notes that 15 degrees of adduction represents one percent impairment under Figure 16-43 rather than two percent impairment as found by Dr. Platto.

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted under the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has no more than 35 percent impairment of his right upper extremity, for which he received schedule awards. The most recent evaluation of permanent impairment was obtained from Dr. Platto, an examining physician, who set forth findings on range of motion of appellant's right shoulder and listed the impairment values found under the A.M.A., *Guides* for the associated loss. The Board notes that his impairment rating of 14 percent for loss of motion was erroneous to the extent that he listed two percent impairment under Figure 16-43 for loss of adduction. The record reflects that Dr. Platto obtained three measurements of right shoulder adduction, each to 15 degrees, which he indicated represented two percent impairment. Under Figure 16-43, however, this degree of motion represents only one percent impairment. Therefore, the total loss of range of motion is 13 percent: 7 percent for loss of flexion; 3 percent for loss of abduction; 1 percent for loss of adduction; and 2 percent for loss of internal rotation. The Board notes that when combining 13 percent loss of motion with the 24 percent impairment for the right shoulder implant arthroplasty under the Combined Values Chart, the total is still 35 percent impairment. Therefore, the medical evidence of record reflects that appellant has no more than 35 percent impairment to his right upper extremity. As he previously received a schedule award for 12 percent impairment in 2002, the Office properly deducted this amount from the present award.<sup>9</sup>

### CONCLUSION

The Board finds that appellant has no more than 35 percent impairment to his right upper extremity.

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<sup>6</sup> 5 U.S.C. § 8107.

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

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> *See id.* at § 10.404(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 5, 2008 decision of the Office of Workers' Compensation Programs be affirmed, as modified.

Issued: November 19, 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