

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

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N.P., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Austin, TX, Employer

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**Docket No. 09-383  
Issued: November 18, 2009**

*Appearances:*  
*Appellant, pro se*  
*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 November 21, 2008 appellant filed a timely appeal from an August 22, 2008 decision of the Office of Workers' Compensation Programs regarding a schedule award for right upper extremity impairment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has established that she sustained more than a 15 percent impairment of the right upper extremity, for which she received a schedule award.

On appeal, appellant contends that the opinion of Dr. Hicks, an attending Board-certified internist, is sufficient to establish that she sustained a 21 percent impairment of the right upper extremity.

**FACTUAL HISTORY**

The Office accepted that on June 12, 2005 appellant, then a 61-year-old mail processing clerk, sustained a right shoulder sprain/strain due to repetitive right arm motion while pitching

manual mail. She stopped work briefly and returned to a full-time light-duty position effective June 25, 2005.

Dr. Anthony M. Hicks, an attending Board-certified internist, treated appellant for right rotator cuff tears from June 18, 2005 through November 2006.<sup>1</sup> On November 13, 2006 Dr. Scott W. Spann, an attending Board-certified orthopedic surgeon, performed right shoulder arthroscopy to repair glenoid labrum and supraspinatus tendon tears and debride the acromioclavicular joint. Appellant returned to part-time light duty on January 27, 2007 and to full-time modified duty on March 8, 2007.<sup>2</sup>

On October 26, 2007 appellant claimed a schedule award. She submitted a May 14, 2007 report from Dr. Hicks. On examination, Dr. Hicks noted right upper extremity strength limited to 4+/5+ and hypoesthesia to light touch in the right hand and fingers in the C5-6, C6-7 and C7-8 dermatomes. Referring to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*), he noted that, according to Figure 16-1b,<sup>3</sup> appellant had the following percentages of impairment of the right upper extremity due to restricted shoulder motion: four percent for limitation of flexion to 120 degrees; two percent for limitation of extension to 20 degrees, one percent for limitation of adduction to 30 degrees; four percent for abduction limited to 90 degrees; three percent for internal rotation limited to 40 degrees; eight percent for external rotation limited to 40 degrees. Dr. Hicks added these impairments to equal 21 percent. He noted no additional percentages for peripheral nerve impairment or other disorders. Dr. Hicks concluded that appellant sustained a 28 percent permanent impairment of the right upper extremity.

The Office referred the medical record and a statement of accepted facts to an Office medical adviser for review as to the extent of permanent impairment. In a November 26, 2007 report, the Office medical adviser opined that appellant had reached maximum medical

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<sup>1</sup> An August 26, 2005 right shoulder magnetic resonance imaging (MRI) scan showed degenerative changes in the acromioclavicular joint, a full thickness tear of the distal supraspinatus tendon, a possible small tear of the superior labrum and a degenerative bone cyst at the humeral head. A September 1, 2006 right shoulder MRI scan showed significant partial thickness tearing of the supraspinatus tendon, infraspinatus tendinopathy and a superior labral tear with a possible complete disruption of the biceps tendon.

<sup>2</sup> By decision dated August 8, 2007, the Office determined that appellant's actual earnings as a modified mail processing clerk, effective February 13, 2007, properly represented her wage-earning capacity. As these actual earnings met or exceeded her current wages for her date-of-injury position, the Office found that appellant had no loss of wage-earning capacity. This decision is not before the Board on the present appeal.

<sup>3</sup> Figure 16.1b, page 437 of the A.M.A., *Guides* is entitled "Upper Extremity Impairment Evaluation Record -- Part 2 (Wrist, Elbow, Shoulder)."

improvement as of May 14, 2007. He applied Figures 16-37,<sup>4</sup> 16-40<sup>5</sup> and 16-46<sup>6</sup> of the A.M.A., *Guides* to Dr. Hicks' report. The medical adviser found four percent impairment for limited flexion, two percent impairment for limited extension, one percent impairment for limited adduction, four percent impairment for limited abduction and three percent impairment for limited internal rotation. He stated that Dr. Hicks incorrectly noted the impairment for limited external rotation as eight percent, whereas it was only one percent. The medical adviser noted that Dr. Hicks' rating of 28 percent was in error as he provided no additional impairment elements above his calculation of 21 percent. He totaled the impairments for limited range of right shoulder motion to equal 15 percent.

By decision dated August 22, 2008, the Office awarded appellant a schedule award for a 15 percent permanent impairment of the right upper extremity. The period of the award ran from May 14, 2007 to April 5, 2008.

### **LEGAL PRECEDENT**

The schedule award provisions of the Federal Employees' Compensation Act<sup>7</sup> provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.<sup>8</sup>

The standards for evaluation the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.<sup>9</sup> Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedures for

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<sup>4</sup> Figure 16-37, page 474 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack of Pronation and Supination." Figure 16-37 illustrates the principles of section 16.4h, "Elbow Motion Impairment," pages 470 to 474.

<sup>5</sup> Figure 16-40, page 476 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack of Flexion and Extension of Shoulder."

<sup>6</sup> Figure 16-46, page 479 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Upper Extremity Impairments Due to Lack of Internal and External Rotation of Shoulder."

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>9</sup> *Tammy L. Meehan*, 53 ECAB 229 (2001).

determining impairments of the upper extremities due to pain, discomfort, loss of sensation or loss of strength.<sup>10</sup>

### ANALYSIS

The Office accepted that appellant sustained a right shoulder sprain necessitating arthroscopy in November 2006. Appellant submitted a May 14, 2007 report from Dr. Hicks, an attending Board-certified internist, which noted limited right shoulder motion, decreased right upper extremity strength and hypoesthesia in the right hand and fingers throughout the C5 to C8 dermatomes. Dr. Hicks opined that these deficits equaled a 28 percent impairment of the right upper extremity according to the A.M.A., *Guides*. An Office medical adviser reviewed Dr. Hicks' findings on November 26, 2007 and found a 15 percent impairment of the right upper extremity based on the A.M.A., *Guides*. On August 22, 2008 the Office awarded appellant a schedule award for a 15 percent permanent impairment of the right upper extremity, based on the Office medical adviser's interpretation of Dr. Hicks' findings.

The Office medical adviser concurred with Dr. Hicks' findings regarding range of motion. He agreed that shoulder flexion limited to 120 degrees equaled four percent upper extremity impairment and extension limited to 20 degrees equaled two percent impairment, as set forth in Figure 16-40. Abduction limited to 90 degrees and adduction limited to 30 degrees equaled four and one percent impairments of the upper extremity, respectively. This agrees with the grading scheme of Figure 16-43. The Office medical adviser found that internal rotation limited to 40 degrees equaled three percent impairment, in accordance with Figure 16-46. Dr. Hicks opined that external rotation limited to 40 degrees equaled an eight percent impairment of the upper extremity. The medical adviser found one percent impairment, asserting that Dr. Hicks misread a diagram in the A.M.A., *Guides*. The Board notes that Figure 16-46, addressing limited internal and external rotation of the shoulder, provides that external rotation limited to 40 degrees is one percent impairment, not eight percent as Dr. Hicks found. Therefore, the Office medical adviser was correct. He totaled the range of motion impairments to equal a 15 percent impairment of the right upper extremity. While Dr. Hicks found 21 percent impairment due to restricted motion, this includes the additional 7 percent for limited external rotation that was accorded in error. Therefore, both Dr. Hicks and the Office medical adviser found a 15 percent impairment of the right upper extremity due to limited range of motion.

Dr. Hicks noted diminished right upper extremity strength limited and hypoesthesia to light touch in the right hand and fingers. However, he did not assess any impairment for neurologic deficits. The Office medical adviser also found no additional impairment due to right arm weakness and hypoesthesia. Although Dr. Hicks found a 28 percent impairment of the right arm, he did not list impairments above the 21 percent he found for limited range of motion. As set forth above, the correct impairment rating for limited motion was 15 percent. As the medical evidence did not indicate any additional impairment, the Office was correct in issuing a schedule award for a 15 percent permanent impairment of the right upper extremity.

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<sup>10</sup> A.M.A., *Guides*, Chapter 16, "The Upper Extremities," pp. 433-521 (5<sup>th</sup> ed. 2001).

The Board notes that, on appeal, appellant asserted that Dr. Hicks' finding of a 28 percent impairment of the right upper extremity should carry the weight of the medical evidence. As set forth above, Dr. Hicks' findings supported a 15 percent impairment rating according to the A.M.A., *Guides*. He did not provide medical evidence supporting a greater percentage of impairment. This agrees with the Office medical adviser's interpretation of Dr. Hicks' report, resulting in the 15 percent impairment rating on which the Office based the August 22, 2008 schedule award.

**CONCLUSION**

The Board finds that appellant has not established that she sustained more than a 15 percent impairment of the right upper extremity, for which she received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 22, 2008 is affirmed.

Issued: November 18, 2009  
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