

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

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**P.G., Appellant**

**and**

**U.S. POSTAL SERVICE, RAYMOND ANNEX,  
Pasadena, CA, Employer**

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**Docket No. 10-1724  
Issued: March 16, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 15, 2010 appellant filed a timely appeal from a February 5, 2010 merit decision of the Office of Workers' Compensation Programs granting him a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

**ISSUE**

The issue is whether appellant has more than six percent permanent impairment of the left upper extremity.

**FACTUAL HISTORY**

On April 27, 2007 appellant, then a 55-year-old mail carrier, filed an occupational disease claim alleging that he sustained pain in his neck, left shoulder and lower back due to factors of his federal employment. The Office accepted the claim for a neck sprain, bilateral shoulder and upper arm sprain, thoracic and lumbar back sprain and a closed dislocation of the fourth cervical vertebra.

On November 27, 2008 appellant filed a claim for a schedule award. In an impairment evaluation dated March 10, 2008, Dr. Julio Westerland, a Board-certified orthopedic surgeon, reviewed the history of injury and the results of diagnostic studies. He measured range of motion of the left shoulder as 147 degrees flexion, 50 degrees extension, 136 degrees abduction, 50 degrees adduction and 90 degrees internal and external rotation.<sup>1</sup> Dr. Westerland found tenderness of the left clavical and acromioclavicular joint and left upper trapezius, supraspinatus and deltoid muscles. He diagnosed cervical and lumbar disc protrusions and strain/sprain, left shoulder sprain/strain and left shoulder impingement. Dr. Westerland provided range of motion for the cervical and lumbar spine and opined that appellant had an eight percent whole person impairment of the cervical spine and an eight percent whole person impairment of the lumbar spine. He further found two percent whole person impairment due to loss of range of motion of the left shoulder using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*). Dr. Westerland found an additional three percent whole person impairment using Figure 18-1 on page 574 of the A.M.A., *Guides*. He utilized the Combined Values Chart to conclude that appellant had 20 percent whole person impairment.

On January 1, 2010 an Office medical adviser reviewed Dr. Westerland's March 10, 2008 report. Applying the sixth edition of the A.M.A., *Guides*, he determined that 147 degrees of flexion yielded three percent impairment, 136 degrees abduction yielded no impairment, 50 degrees adduction yielded three percent impairment, and 90 degrees internal and external rotation yielded no impairment.<sup>2</sup> The Office medical adviser found no adjustment for functional history according to Table 15-36 on page 477. He added the loss of range of motion to find six percent impairment of the left upper extremity. The Office medical adviser noted that the Federal Employees' Compensation Act<sup>3</sup> (the Act) did not provide impairments for the spine or whole person. He concluded that appellant reached maximum medical improvement on March 10, 2008.

By decision dated February 5, 2010, the Office granted appellant a schedule award for six percent permanent impairment of the left upper extremity. The period of the award ran for 18.72 weeks from March 10 to July 19, 2008.

On appeal appellant argues that he is entitled to a greater award as his injury has resulted in significant financial hardship. He also requests compensation for his bilateral shoulders, neck, low back, spine and lower extremities. Appellant argues that he had 20 percent impairment of both shoulders and his lower back. He further described his difficulty performing activities due to his injury, his loss of earning capacity and financial stress.

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<sup>1</sup> Range of motion for the right shoulder yielded normal findings.

<sup>2</sup> A.M.A., *Guides* 477, Table 15-36.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

## LEGAL PRECEDENT

The schedule award provision of the Act,<sup>4</sup> and its implementing federal regulations,<sup>5</sup> 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>6</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>7</sup>

## ANALYSIS

The Office accepted that appellant sustained neck sprain, bilateral shoulder and upper arm sprain, thoracic sprain, lumbar sprain and a closed dislocation of the fourth cervical vertebra due to factors of his federal employment. In his March 10, 2008 impairment evaluation, Dr. Westerband found tenderness of the left acromioclavicular and clavical joint, left upper trapezius, supraspinatus and deltoid muscles. He measured range of motion of the bilateral shoulders and cervical and lumbar spine. Dr. Westerband applied the fifth edition of the A.M.A., *Guides* and found that appellant had two percent whole person impairment due to loss of range of motion of the left shoulder. The Act, however, does not provide for impairment of the whole person.<sup>8</sup> Further, subsequent to May 1, 2009, the applicable edition of the A.M.A., *Guides* for determining impairments is the sixth edition. Dr. Westerband based his impairment determination on the fifth edition of the A.M.A., *Guides*. A medical opinion not based on the appropriate edition of the A.M.A., *Guides* has diminished probative value in determining the extent of a claimant's permanent impairment.<sup>9</sup> Regarding Dr. Westerband's determination that appellant had eight percent whole person impairment of the cervical spine and eight percent whole person impairment of the lumbar spine, the Act specifically excludes the back as an organ and, therefore, the back does not come under the provisions for payment of a schedule award.<sup>10</sup>

On January 1, 2010 an Office medical adviser applied the sixth edition of the A.M.A., *Guides* to Dr. Westerband's clinical findings. He found that range of motion best revealed the extent of the left shoulder impairment. Table 15-5 on page 401 of the sixth edition of the A.M.A., *Guides*, relevant to determining shoulder impairments, provides that a shoulder

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.* at § 10.404(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>8</sup> *Marilyn S. Freeland*, 57 ECAB 607 (2006); *Tania R. Keka*, 55 ECAB 354 (2004).

<sup>9</sup> *Fritz A. Klein*, 53 ECAB 642 (2002).

<sup>10</sup> *D.N.*, 59 ECAB 576 (2008); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

sprain/strain yields from one to two percent shoulder impairment, depending on the class of impairment and grade modifiers. Table 15-5 marks the shoulder impairment diagnosis due to a sprain/strain with an asterisk. The asterisk indicates that, if motion loss is present, the shoulder impairment may alternatively be assessed using loss of range of motion.<sup>11</sup> The impairment due to loss of range of motion stands alone and is not combined with a diagnosis-based impairment.<sup>12</sup> The Office medical adviser utilized Table 15-34 and found that 147 degrees of flexion yielded three percent impairment, 136 degrees abduction yielded no impairment, 50 degrees adduction yielded three percent impairment, and 90 degrees internal and external rotation yielded no impairment.<sup>13</sup> He additionally determined that appellant was not entitled to an adjustment for functional history under Table 15-36. The Board notes, however, that, under Table 15-34, 136 degrees abduction constitutes three percent impairment and 50 degrees extension constitutes no impairment. However, any error is harmless as the total left upper extremity impairment remains six percent. The Office medical adviser noted that he had no impairment of the right upper extremity.<sup>14</sup> He concluded that appellant had six percent permanent impairment of the left upper extremity. There is no evidence in conformance with the A.M.A., *Guides* showing a greater impairment.

On appeal appellant asserts that he experienced a loss of earning capacity and financial hardship as a result of his employment injury. The amount payable pursuant to a schedule award, however, does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other lifestyle activities.<sup>15</sup> Disability for work under section 8105 of the Act is not a factor included in a schedule award impairment rating under section 8107 and a schedule award is not intended to be compensation for wage loss or potential wage loss.

Appellant maintains that he has 20 percent impairment of his left shoulder. Section 8107 provides a compensation schedule for payment of awards for permanent impairment of listed body members. The schedule establishes how many weeks of compensation an employee will receive in the event of total functional loss or dismemberment. Partial loss of function of the bodily member is awarded for a proportionate number of weeks. For complete loss of use of the arm, the maximum number of weeks of compensation is 312 weeks. Since appellant's permanent impairment of the left arm is six percent, he is entitled to six percent of 312 weeks, or 18.72 weeks of compensation. Under the schedule award provisions, he is entitled to no more.

Appellant also requests a compensation for his right shoulder, neck, low back, spine and lower extremities. The Board's jurisdiction, however, is limited to reviewing final decisions of

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<sup>11</sup> A.M.A., *Guides* 403, 405, Table 15-5.

<sup>12</sup> *Id.* at 475, Table 15-34.

<sup>13</sup> *Id.* at 477, Table 15-36.

<sup>14</sup> As previously noted, the range of motion measurements for appellant's right upper extremity yielded no impairment.

<sup>15</sup> *Ruben Franco*, 54 ECAB 496 (2003).

the Office.<sup>16</sup> The Office has not issued a final decision on these issues and thus they are not before the Board at this time.<sup>17</sup>

**CONCLUSION**

The Board finds that appellant has no more than six percent permanent impairment of the left upper extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 5, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>16</sup> 20 C.F.R. § 501.2(c)(1).

<sup>17</sup> Appellant submitted new medical evidence with his appeal. The Board has no jurisdiction to review new evidence on appeal; *see* 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and requested reconsideration under 5 U.S.C. § 8128.