

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICK C. MORTON and U.S. POSTAL SERVICE,
POST OFFICE, Stamford, Conn.

*Docket No. 96-1551; Submitted on the Record;
Issued May 13, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than one percent permanent impairment of his right upper extremity for which he received a schedule award.

The Board has duly reviewed the case on appeal and finds it is not in posture for a decision.

Appellant filed a claim alleged that he developed right shoulder pain and loss of sensation due to carrying his mailbag. The Office of Workers' Compensation Programs accepted appellant's claim for neck strain and right shoulder strain on May 4, 1994. The Office authorized surgeries on June 21 and August 23, 1994. Appellant filed a claim for a schedule award on October 9, 1995 and by decision dated January 29, 1996, the Office granted appellant a schedule award for one percent permanent impairment of his right upper extremity.

Section 8107 of the Federal Employees' Compensation Act¹ provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function. Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guide to the Evaluation of Permanent Impairment*² as a standard for evaluating schedule losses and the Board has concurred in such adoption.³

¹ 5 U.S.C. §§ 8101-8193, 8107.

² A.M.A., *Guides* (4th ed. 1993).

³ A. George Lampo, 45 ECAB 441, 443 (1994).

On June 22, 1994 appellant's attending physician, Dr. James W. Depuy, a Board-certified orthopedic surgeon, performed a diagnostic and surgical arthroscopy with labral debridement. He found that appellant's labrum was torn and frayed and performed debridement. Dr. Depuy noted that appellant did have some instability anteriorly. Following surgery, Dr. Depuy determined that the instability required additional surgical correction. On September 14, 1994 he performed a Neer capsular shift.

In a note dated April 7, 1995, Dr. Depuy determined that appellant had reached maximum medical improvement. Dr. Depuy stated, "His right shoulder lacks 10 degrees internal rotation, 25 to 30 degrees external rotation." Dr. Depuy found good forward flexion and full abduction, no pain or instability. He noted that appellant had a scar on his right shoulder which was unsightly. Dr. Depuy found that appellant had 10 percent permanent impairment of his right upper extremity.

The Office medical adviser reviewed this report and properly concluded that that A.M.A., *Guides* provide for 1 percent permanent impairment due to 10 degrees lack of internal rotation.⁴ He also properly found that a loss of 30 degrees of external rotation is not ratable in accordance with the A.M.A., *Guides*.⁵ The Office medical adviser properly noted that appellant did not have pain, weakness or other loss of range of motion and that he was not entitled to a schedule award due to disfigurement of his right shoulder.⁶

However, the A.M.A., *Guides* provide that an arthroplasty to the shoulder is a 24 percent impairment of that joint and that such impairment must be combined with any loss of range of motion of the joint.⁷ The record indicates that appellant underwent several surgeries of his right shoulder. The Office medical adviser did not consider whether such surgeries constituted arthroplasty pursuant to this provision of the A.M.A., *Guides* in calculating appellant's impairment rating, the case must be remanded for such consideration.

⁴ A.M.A., *Guides*, 45, figure 44.

⁵ *Id.*

⁶ *Harold B. Wright*, 48 ECAB ____ (Docket No. 95-654, issued January 8, 1997).

⁷ A.M.A., *Guides*, 61, Table 27; *Id.* at 62.

The decision of the Office of Workers' Compensation Programs dated January 29, 1996 is hereby set aside and remanded for further development with this opinion of the Board.

Dated, Washington, D.C.
May 13, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member