

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VOISY MYNATT and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, Mo.

*Docket No. 97-2326; Oral Argument Held July 15, 1998;
Issued November 13, 1998*

Appearances: *David C. Vaughn, III, Esq.*, for appellant; *Sheldon G. Turley, Jr., Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has more than a 19 percent permanent impairment of the right upper extremity.

The Office of Workers' Compensation Programs accepted that appellant sustained bilateral carpal tunnel syndrome causally related to factors of his federal employment and authorized bilateral carpal tunnel releases.

On April 6, 1995 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7) requesting a schedule award. The Office referred appellant to Dr. Newt Wakeman, a Board-certified orthopedic surgeon, for an evaluation of the extent of any permanent impairment arising from his accepted employment injury in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). Based on the Office medical adviser's review of Dr. Wakeman's report, in a decision dated June 27, 1995, the Office granted appellant a schedule award for a 10 percent impairment of both the right and left upper extremities.

Appellant, through his attorney, requested a hearing before an Office hearing representative. By decision dated December 15, 1995, the Office hearing representative set aside the Office's June 27, 1995 decision and remanded the case for the Office to consider appellant's preexisting right shoulder impairment in the calculation of his schedule award.

In a report dated March 2, 1995, received by the Office on December 22, 1995, Dr. David A. Ball, a Board-certified orthopedic surgeon, discussed appellant's complaints of pain in the median nerve of both hands and noted that he had a positive Tinel's sign and decreased pain sensation in his hands. He opined that appellant had a 40 percent permanent

impairment of the left hand and a 30 percent permanent impairment of the right hand based on page 42 of the A.M.A., *Guides*.

In a report dated January 17, 1996, an Office medical adviser found that as appellant's preexisting right shoulder condition was not employment related he could not receive an additional schedule award for an impairment of his right upper extremity due to his shoulder. He further found that Dr. Ball, in his March 22, 1995 report, misused the A.M.A., *Guides*, and that therefore his report was of no probative value.

By decision dated January 31, 1996, the Office found that appellant was not entitled to an additional schedule award.

Appellant, through his attorney, requested a hearing. In a decision dated April 8, 1996, an Office hearing representative vacated the Office's January 31, 1996 decision after finding that appellant could be entitled to an additional schedule award for his preexisting right shoulder condition even if it was not due to his employment.

By letter dated July 29, 1996, the Office requested that Dr. Wakeman evaluate appellant in accordance with the A.M.A., *Guides* to determine whether he had a permanent impairment caused by residuals of his right shoulder condition.

In a report dated September 3, 1996, Dr. Wakeman obtained the following range of motion findings for appellant's right shoulder: 115 degrees abduction; 130 degrees forward flexion; 90 degrees external rotation; 75 degrees internal rotation; 50 degrees shoulder extension; and 40 degrees adduction. He found that, according to Table 27 on page 61 of the A.M.A., *Guides* appellant had a 10 percent permanent impairment of his upper extremity due to the resection arthroplasty of his distal clavical. He further found that appellant had a three percent impairment due to loss of forward flexion and a three percent impairment due to loss of abduction, which he added to find a total impairment due to loss of range of motion of six percent. Dr. Wakeman combined appellant's 6 percent impairment due to loss of range of motion with his 10 percent impairment due to the arthroplasty and concluded that he had a total shoulder impairment of 15 percent.

In a report dated September 15, 1996, an Office medical adviser reviewed Dr. Wakeman's September 3, 1996 report and opined that Dr. Wakeman properly found that appellant had a 10 percent impairment due to the resection arthroplasty of his distal clavical pursuant to Table 27 on page 61 of the A.M.A., *Guides*. The Office medical adviser found, however, that Table 27 should be used alone to determine the extent of an impairment and not combined with any other impairment findings such as loss of range of motion. He therefore concluded that appellant had a 10 percent permanent impairment of his right upper extremity due to his shoulder condition.

By decision dated September 18, 1996, the Office found that appellant was not entitled to an additional schedule award for the right upper extremity. In the accompanying memorandum to the Director, incorporated by reference, the Office found that appellant had already received a

schedule award for a 10 percent impairment of the right upper extremity and that consequently he had not shown an increase in the extent of his permanent impairment.¹

By letter dated December 17, 1996, appellant, through his attorney, requested reconsideration. Appellant submitted a report from Dr. Ball dated December 17, 1996 in which Dr. Ball indicated that in his March 1995 report his findings were in accordance with the A.M.A., *Guides*.

In a report dated April 2, 1997, an Office medical adviser found that appellant had a 10 percent impairment of his right upper extremity due to his shoulder condition which, when combined with his 10 percent impairment of his right upper extremity due to his carpal tunnel syndrome, equaled a 19 percent total impairment.

By decision dated April 7, 1997, the Office vacated its September 18, 1996 decision. By decision dated May 14, 1997, the Office granted appellant a schedule award for an additional nine percent impairment of the right arm.

The Board finds that appellant has a 24 percent permanent impairment of the right upper extremity.

Under section 8107 of the Federal Employees' Compensation Act,² and section 10.304 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

Appellant's attending physician, Dr. Ball, did not submit a report in conformance with the A.M.A., *Guides*. The Office therefore properly referred appellant to Dr. Wakeman for a second opinion evaluation. Based on the Office medical adviser's review of Dr. Wakeman's June 6, 1995 report, the Office granted appellant a schedule award for a 10 percent impairment of both the right and left upper extremity due to his carpal tunnel syndrome.

After further proceedings, the Office properly found that any residuals of appellant's preexisting right shoulder condition should be including in determining the total impairment of

¹ By decision dated October 17, 1996, the Office issued a wage-earning capacity determination, finding that appellant had no loss of wage-earning capacity. Appellant is appealing only the Office's schedule award determination.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

⁴ *James J. Hjort*, 45 ECAB 595 (1994).

his right upper extremity.⁵ The Office referred appellant to Dr. Wakeman to evaluate the percentage of impairment of his right upper extremity due to his preexisting right shoulder condition.

In a report dated September 3, 1996, Dr. Wakeman found that, according to Table 27 on page 61 of the A.M.A., *Guides*, appellant had a 10 percent permanent impairment of his upper extremity due to the resection arthroplasty of his distal clavical. He obtained range of motion findings for appellant's right shoulder and found the following: 115 degrees abduction constituted a three percent impairment;⁶ 130 degrees forward flexion constituted a three percent impairment;⁷ 90 degrees external rotation constituted a 0 percent impairment;⁸ 75 degrees internal rotation constituted a 0 percent impairment;⁹ 50 degrees shoulder extension constituted a 0 percent impairment;¹⁰ and 40 degrees adduction constituted a 0 percent impairment.¹¹ He added the range of motion impairment findings and found that the total impairment due to loss of range of motion was six percent.¹² Dr. Wakeman then properly combined appellant's 6 percent impairment due to loss of range of motion with his 10 percent impairment due to the arthroplasty and concluded that he had a total shoulder impairment of 15 percent.¹³

The Office medical adviser reviewed Dr. Wakeman's report and found that Table 27 on page 61 entitled, "Impairment of the Upper Extremity After Arthroplasty of Specific Bone Joints" should not be added or combined with range of motion findings but instead should be used as the sole measure of impairment. The Office medical adviser thus found that appellant's only shoulder impairment was due to his arthroplasty which constituted a 10 percent impairment. However, it appears from the A.M.A., *Guides* and the Office's guidelines that Table 27 does not provide an

⁵ Preexisting impairments of a scheduled member of the body that sustained an employment-related permanent impairment are also to be included in determining the amount of a schedule award. *Walter R. Malena*, 46 ECAB 983 (1995).

⁶ A.M.A., *Guides* 44, figure 41.

⁷ *Id.* 43, figure 38.

⁸ *Id.* 45, figure 44.

⁹ *Id.*

¹⁰ *Id.* 43, figure 38.

¹¹ *Id.* 44, figure 41.

¹² *Id.* 45.

¹³ *Id.* 62.

exclusive means of rating an impairment.¹⁴ The A.M.A., *Guides* in reference to Table 27 states, “In the presence of decreased motion, motion impairments are derived separately [] and *combined* with arthroplasty impairments using the Combined Values Chart.”¹⁵ [Emphasis in the original.]

The Board therefore finds that Dr. Wakeman properly applied the A.M.A., *Guides* in finding that appellant had a 15 percent impairment of his right upper extremity due to his right shoulder condition. When appellant’s 15 percent impairment of the shoulder is combined with his 10 percent impairment of the right upper extremity due to his carpal tunnel syndrome, the total right upper extremity impairment is 25 percent. Appellant, therefore, is entitled to a schedule award for an additional 14 percent impairment of his right upper extremity.

The decisions of the Office of Workers’ Compensation Programs dated May 14 and April 7, 1997 are modified to reflect appellant’s entitlement to an award for an additional 14 percent impairment of his right upper extremity and are affirmed as modified.

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

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹⁴ The Office, in FECA Bulletin No. 95-17, issued March 23, 1995, stated that certain tables in Chapter 3 of the A.M.A., *Guides* are not to be used with other tables in the chapter because to do so would result in “overlapping applications, leading to percentages which greatly overstated the impairment.” However, Table 27 is not one of the listed tables contained in the bulletin. FECA Bulletin No. 96-17, issued September 20, 1996, which is the applicable bulletin in the instant case, references the tables listed in FECA Bulletin No. 95-17 without changes. Further the Office’s Procedure Manual has implemented FECA Bulletin No. 95-17. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exh. 4 at 4 (October 1995).

¹⁵ *Id.* 62.