

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACKIE A. TATE and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, Mo.

*Docket No. 97-1077; Submitted on the Record;
Issued January 22, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has more than an 11 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 that appellant has no more than an 11 percent permanent impairment of his right upper extremity for which he received a schedule award.

Appellant filed a claim on October 30, 1992 alleging that he injured his right shoulder in the performance of duty. The Office of Workers' Compensation Programs accepted his claim for right shoulder contusion, impingement and arthroscopy. Appellant filed a claim for compensation requesting a schedule award on July 23, 1996 and by decision dated October 8, 1996, the Office granted appellant a schedule award for an 11 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, *Guides 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).

In support of his claim, appellant submitted a report dated September 22, 1994 from his attending physician, Dr. Dale E. Doerr, a Board-certified orthopedic surgeon. He noted appellant's complaints of pain and difficulty working overhead. Dr. Doerr found extension to 50 degrees, flexion to 150 degrees, internal rotation to 90 degrees, external rotation to 70 degrees, adduction to 45 degrees and abduction to 120 degrees. He further stated that appellant's right arm demonstrated approximately 60 percent of the strength of the deltoid muscle in his left arm. Dr. Doerr concluded that appellant had reached maximum medical improvement and provided the impairment rating of 15 percent with 10 percent due to loss of strength and 5 percent to loss of range of motion.

The District medical director reviewed this report and properly found that Dr. Doerr had not correlated his findings with the A.M.A., *Guides*⁴ and that the Office should refer appellant for additional examination and calculation of his impairment in accordance with the A.M.A., *Guides*.

The Office referral physician, Dr. Donald McPhaul, a physician Board-certified in physical medicine and rehabilitation, examined appellant on September 17, 1996 and noted appellant's complaints regarding pain, loss of strength and loss of range of motion. He found no evidence of atrophy but tenderness to palpation over the anterior aspect of the shoulder. Dr. McPhaul found 150 degrees of flexion, 40 degrees of extension, 140 degrees of abduction and 30 degrees of adduction, 90 degrees of external rotation and 50 degrees of internal rotation. He provided citations to the A.M.A., *Guides* and properly concluded that appellant had an eight percent permanent impairment of his right upper extremity due to loss of range of motion. Dr. McPhaul then calculated appellant's impairment due to pain in accordance with the A.M.A., *Guides* to reach three percent. Combining the two impairment ratings, Dr. McPhaul properly found that appellant had an 11 percent permanent impairment of his right upper extremity.

As there is no medical evidence in the record correlated with the A.M.A., *Guides* which provides a greater impairment rating, the Office properly granted appellant a schedule award for an 11 percent permanent impairment of his right upper extremity.

⁴ The Board notes that Dr. Doerr found only a five percent impairment due to loss of range of motion compared to the eight percent found by Dr. McPhaul.

The decision of the Office of Workers' Compensation Programs dated October 8, 1996 is hereby affirmed.

Dated, Washington, D.C.
January 22, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member