

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY J. DUNFRUND and U. S. POSTAL SERVICE,
POST OFFICE, Paw Paw, Ill.

*Docket No. 97-1329; Submitted on the Record;
Issued January 6, 1999*

DECISION and ORDER

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

The issue is whether appellant has sustained greater than a four percent permanent impairment based on loss of use of the right shoulder.

On April 25, 1994 appellant, a 47-year-old postmaster, filed a claim for compensation alleging that she injured her right shoulder while in the performance of duty.

On August 17, 1994 Dr. Peter J. Meier, Jr., appellant's treating physician and Board-certified in orthopedic surgery, stated that he initially treated appellant on January 12, 1994 for right shoulder pain, but that on June 8, 1994, appellant's pain "was almost totally resolved." The Office of Workers' Compensation Programs accepted the claim for right shoulder tendinitis and impingement syndrome and paid appropriate benefits.

On September 26, 1996 appellant filed a claim for compensation on account of traumatic injury or occupational disease, CA-7, checking "yes" in a box indicating that this was a claim for a schedule award.

In a July 10, 1996 medical report received by the Office on October 8, 1996, Dr. Meier stated that appellant had a six percent impairment of the upper extremity. His range of motion findings were as follows: 170 degrees of flexion, 30 degrees of extension, 50 degrees of adduction, 170 degrees of abduction, 45 degrees of internal rotation and 85 degrees of external rotation. Dr. Meier stated that according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4th ed., 1993),¹ that "these values correlate to a six percent impairment of the upper extremity and four percent impairment of the whole body." In an October 28, 1996 medical report, Dr. Meier repeated his earlier range of motion findings and added: "In factoring in her weakness and pain, we would estimate her impairment rate to be

¹ A.M.A., *Guides* (4th edition).

approximately 13 percent impairment of the upper extremity which correlates to 8 percent impairment of the whole person.”

On December 8, 1996 Dr. Janet Elliot, a specialist in occupational medicine and an Office medical adviser, reviewed Dr. Meier’s medical report and relied on his data to calculate that appellant had a four percent impairment rate for the right shoulder. She found that appellant’s 45 degrees of internal rotation resulted in a 2 percent impairment; that her 85 degrees of external rotation resulted in a 0 percent impairment; that 170 degrees of flexion resulted in a 1 percent impairment; that 30 degrees of extension resulted in a 1 percent impairment; that 170 degrees of abduction resulted in 0 degrees of impairment; and that 50 degrees of adduction resulted in 0 degrees of impairment for a total of 4 percent permanent impairment. Dr. Elliot also determined, based on Dr. Meier’s medical reports, that appellant was not entitled to an additional award based on chronic pain or weakness.

In a decision dated January 27, 1997, the Office awarded appellant a schedule award of four percent based on loss of use of the right upper extremity.

The Board finds that appellant has no more than a four percent permanent impairment of her right shoulder.

The schedule award provisions of the Federal Employees’ Compensation Act provide for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body.² However, the Act does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.³ For consistent results and to ensure equal justice under the law to 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* has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

In this case, appellant’s schedule award was rated at 13 percent by Dr. Meier in his October 28, 1995 medical report. However, he did not specify what percentage losses were associated with specific range of motion findings. Further, his eight percent rating for pain was not supported by his medical reports and thus the Office medical adviser properly determined that no additional award for chronic pain or weakness was authorized. For example, Dr. Meier stated in his January 12, 1994 report that on June 8, 1994 appellant’s pain was almost resolved. Further, in his July 10, 1996 medical report, he did not assess any impairment based on pain. On the other hand, Dr. Elliot, the Office medical adviser, properly relied on the A.M.A., *Guides* in applying Dr. Meier’s data to determine appellant’s right shoulder impairment.⁵ The Board

² 5 U.S.C. § 8107.

³ *Daniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

⁴ *Kenneth E. Leone*, 46 ECAB 133 (1994).

⁵ According to page 15 of the A.M.A., *Guides*, in general, range of motion measurements are rounded to the nearest 10 degrees and are then converted into impairment estimates using appropriate tables. The 45-degree loss of

affirms the Office medical adviser's calculations listed above, as they comport with the figures cited from the fourth edition of the A.M.A., *Guides*. The Board concludes that appellant has no more than a four percent permanent impairment for loss of use of the right shoulder, for which she has received a schedule award, and that appellant has failed to provide probative, supportable medical evidence that she has greater than the four percent impairment already awarded.

Accordingly, the January 27, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
January 6, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

internal rotation is therefore rounded to 50 degrees, yielding a 2 percent impairment rating.