

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT S. HOES and U.S. POSTAL SERVICE,  
POST OFFICE, Oakland, CA

*Docket No. 98-972; Submitted on the Record;  
Issued October 6, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has any permanent impairment of his right upper extremity for which he should receive a schedule award.<sup>1</sup>

On September 8, 1994 appellant, then a 44-year-old letter carrier, filed a notice of occupational injury alleging that he injured his right shoulder in the course of his federal employment. On January 5, 1995 the Office of Workers' Compensation Programs accepted the claim for a right rotator cuff tear, impingement. On March 31, 1995 the Office awarded disability compensation and approved surgery on appellant's right rotator cuff. On May 12, 1995 appellant underwent a right shoulder arthroscopy and open subacromial decompression and rotator cuff repair.

On March 26, 1996 Dr. John Debenham, appellant's treating physician and a Board-certified orthopedic surgeon, indicated that appellant had "... mild pain in the right shoulder and minimal weakness, has full range of motion, only mild weakness of external rotation, otherwise good strength." He stated appellant's right shoulder was permanent and stable. Dr. Debenham concluded, "[P]ermanent disability because of pain and slight weakness of approximately 15 percent."

By letter dated October 30, 1996, the Office requested that Dr. Debenham evaluate appellant pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993). The Office also provided a form in which Dr. Debenham could calculate the impairment of appellant's right upper extremity pursuant to the A.M.A., *Guides*.

The Office subsequently referred this case, along with a statement of accepted facts, to Dr. Russell Compton, a Board-certified orthopedic surgeon, for a second opinion examination.

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<sup>1</sup> Appellant filed his appeal on January 20, 1998. The Board notes the Office's April 6, 1998 decision issued after appellant's appeal is null and void; see *Douglas E. Billings*, 41 ECAB 880 (1990).

On March 11, 1997 he reviewed the history of injury and conducted a physical examination. Dr. Compton stated that appellant had reached maximum medical improvement on March 11, 1997. He noted that there was a permanent loss of range of motion in the right shoulder consisting of a 10 degree loss of adduction and a 10 degree loss of internal rotation. Dr. Compton found no weakness or atrophy of the right upper extremity. He also found no sensory deficits in the upper extremity. Dr. Compton further found only minimal intermittent pain which was not localized.

The Office forwarded the case record to its medical adviser. On July 15, 1997 the Office medical adviser reviewed Dr. Compton's report and indicated that pursuant to Figure 41, page 44 and Figure 44, page 45 of the A.M.A., *Guides* Dr. Compton's findings of a 10 degree loss of adduction and a 10 degree loss of internal rotation resulted in no impairment.

By decision dated July 22, 1997, the Office found that appellant was not entitled to a schedule award. The Office found that the weight of the medical evidence rested with the reports of Dr. Compton and the Office medical adviser who applied the A.M.A., *Guides* to the medical evidence and found that appellant did not have a ratable impairment.

On July 29, 1997 appellant requested a written review of the record.

By decision dated December 22, 1997, the Office hearing representative affirmed the Office's July 22, 1997 decision denying appellant's claim for a schedule award. The hearing representative indicated that the weight of the medical evidence rested with the opinions of Dr. Compton and the Office medical adviser who utilized the A.M.A., *Guides* in determining that degree of permanent impairment.

The Board finds that appellant failed to demonstrate an impairment of the right upper extremity for which he should receive a schedule award.

Under section 8107 of the Federal Employees' Compensation Act<sup>2</sup> and section 10.304 of the implementing federal regulations,<sup>3</sup> 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<sup>4</sup> and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>5</sup>

In the present case, the Office determined that appellant was not entitled to a schedule award because he failed to establish any permanent impairment of the right upper extremity. In

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.304.

<sup>4</sup> A.M.A., *Guides* (4th ed. 1993).

<sup>5</sup> *James A. Sellers*, 43 ECAB 924 (1992).

support of his claim for a schedule award, appellant submitted a brief note from Dr. Debenham, his treating physician and a Board-certified orthopedic surgeon. He noted mild pain in the right shoulder, minimal weakness, full range of motion, mild weakness of external rotation and good strength. Dr. Debenham did not describe the specific permanent impairments appellant suffered as a result of his accepted injuries. Without any explanation, he concluded that appellant had a “[P]ermanent disability because of pain and slight weakness of approximately 15 percent.” Because Dr. Debenham failed to provide an explanation of how his assessment of permanent impairment was derived in accordance with the standards adopted by the Office and approved by the Board for evaluating schedule losses, his opinion is entitled to little weight.<sup>6</sup>

In contrast, Dr. Compton provided a report which described the specific impairments appellant suffered as a result of his employment injuries. Following a thorough physical examination, Dr. Compton indicated that there was a permanent loss of range of motion in the right shoulder consisting of a 10 degree loss of adduction and a 10 degree loss of internal rotation. He found no weakness or atrophy, no sensory deficits and only minimal pain.

Following receipt of Dr. Compton’s report, the Office requested that its medical adviser apply the A.M.A., *Guides* to the measurement of impairments provided by Dr. Compton. Dr. Compton provided the only specific measurements of impairment of record. The medical adviser reviewed Dr. Compton’s report on July 15, 1997. He properly found that the only impairments noted by Dr. Compton consisted of a 10 degree loss of adduction and a 10 degree loss of internal rotation. The Office medical adviser found that pursuant to Figure 41, page 44, of the *Guides* appellant’s 10 degree loss of adduction resulted in no impairment. The medical adviser further found that pursuant to Figure 44, page 45 of the A.M.A., *Guides* appellant’s 10 degree loss of internal rotation resulted in no impairment. Consequently, the Office medical adviser determined that appellant had no impairment of the right upper extremity. As the medical adviser provided the only evaluation conforming with the A.M.A., *Guides*, it constitutes the weight of the evidence.<sup>7</sup>

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<sup>6</sup> *Annette M. Dent*, 44 ECAB 403 (1993).

<sup>7</sup> *Lena P. Huntley*, 46 ECAB 643 (1995).

The decisions of the Office of Workers' Compensation Programs dated December 22 and July 22, 1997 are affirmed.

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

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member