

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY C. JASINSKI and U.S. POSTAL SERVICE,
POST OFFICE, Danbury, CT

*Docket No. 98-536; Submitted on the Record;
Issued September 20, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

On February 7, 1994 appellant, then a 61-year-old postal clerk, filed a claim for traumatic injury alleging that on February 2, 1994 she injured her shoulder and strained her arm when the contents of the mail tray shifted while she was pulling it off the postcon. On June 28, 1994 the Office of Workers' Compensation Programs accepted appellant's claim for right rotator cuff tear and subsequently approved appellant's September 21, 1994 anterior acromioplasty surgery with right rotator cuff repair. Appellant retired from the employing establishment effective September 1, 1996.

In a September 25, 1995 attending physician's supplemental report (Form CA-20a), Dr. Craig R. Foster, an attending Board-certified orthopedic surgeon, assessed appellant's right shoulder disability at 10 percent due to an 8 percent loss of range of motion and 2 percent tear weakness.

In a letter dated October 24, 1995, the Office requested that Dr. Foster provide a permanent partial impairment rating of appellant's right shoulder, utilizing the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In a report dated January 25, 1996, Dr. Foster opined that appellant had "lost about 10 degrees in all directions." He also indicated that she was unable to do repetitive lifting or reaching. In an undated attending physician's report (Form CA-20), Dr. Foster opined that she had a 10 percent impairment of her right shoulder and referred to an attached letter.

Dr. Foster indicated that appellant had a 10 percent impairment of her right shoulder in a Form CA-20a dated March 5, 1996.

In a Form CA-20a dated July 24, 1996, Dr. Foster assessed appellant as having an eight percent loss of motion and two percent tear weakness in her right shoulder.

By letter dated August 20, 1996, the Office requested that Dr. Foster provide a permanent partial impairment rating of appellant's right shoulder, utilizing the fourth edition of the A.M.A., *Guides*.

Appellant filed a claim for a schedule award in an undated letter received by the Office on September 13, 1996.

In a report dated September 27, 1996, Dr. Foster opined that appellant lacked "ten degrees in all directions from active range of motion, including forward flexion, abduction, external rotation, internal rotation."

By report dated October 14, 1997, the Office medical adviser reviewed the figures provided by Dr. Foster and determined that appellant had a one percent permanent impairment of her right shoulder. In reaching this determination, the Office medical adviser noted that "[f]or forward flexion, by page 3/43 Figure 38, I compute -- 10 [degrees] as equaling 170 [degrees]. This corresponds to a 1 [percent] permanent impairment" and that "10 [percent] abduction corresponds to 170 [degrees], (page 3/44 Figure 41), of external rotation corresponds to 80 [degrees], and of internal rotation to 80 [degrees], each corresponding to a 0 [percent] impairment. (page 3/45 Figure 44)."

By decision dated October 28, 1997, the Office granted appellant a schedule award for a one percent permanent impairment of the right upper extremity for the period November 21 to December 12, 1995, for a total of 3.12 weeks of compensation.

The Board finds that appellant has no more than a one percent permanent impairment of the right upper extremity.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² 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 for all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimant's seeking schedule awards. The A.M.A., *Guides* have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.³

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287, 1290 (1989); *Francis John Kilcoyne*, 38 ECAB 168, 170 (1986).

In the present case, Dr. Craig R. Foster, appellant's attending physician and Board-certified orthopedic surgeon, stated in his September 27, 1996 report that appellant had lacked 10 degrees in all directions and indicated that appellant had a 10 percent impairment in Forms CA-20a dated September 25, 1995 and March 5 and July 24, 1996, and an undated Form CA-20. The Office requested appellant to provide an impairment rating based upon an application of the A.M.A., *Guides*, in letters dated October 24, 1995 and August 20, 1996. Dr. Foster did not provide an impairment rating using the A.M.A., *Guides*.

The Board has held that when an attending physician's report gives an estimate of permanent impairment but is not based on a proper application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser if he or she has properly used the A.M.A., *Guides*.⁴ The Board concludes that in the present case the Office medical adviser properly applied the A.M.A., *Guides* to the description of the impairment provided by Dr. Foster. There is no other evidence of record that appellant has greater than a one percent permanent loss of use of her right upper extremity for which she has received a schedule award.

The decision of the Office of Workers' Compensation Programs dated October 28, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 20, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).