

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOWELL FULSOM and U.S. POSTAL SERVICE,
POST OFFICE, Fresno, CA

*Docket No. 99-301; Submitted on the Record;
Issued April 4, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a six percent permanent impairment of the right arm.

On August 29, 1995 appellant, then a 41-year-old mailhandler, threw a large bundle of mail and developed pain in his right upper arm. In a November 16, 1995 report, Dr. Robert M. Mochizuki, a Board-certified orthopedic surgeon, stated that a magnetic resonance imaging scan of the right shoulder showed a small tear of the anterior attachment of the supraspinatus tendon. He also noted some consistent small tears of the glenoid labrum along the anterior margin which were either due to degenerative changes or prior trauma. Appellant underwent surgery for synovectomy and debridement of the right shoulder. Appellant subsequently filed a claim for a schedule award. In an August 14, 1998 decision, the Office of Workers' Compensation Programs found that appellant had a six percent permanent impairment of the right arm.

The Board finds that the case is not in posture for decision.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ has been

¹ 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

³ 4th ed. (1993).

adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁴

In a March 31, 1998 report, Dr. Mochizuki stated that appellant had ranges of motion in the right shoulder of 160 degrees in forward elevation, 20 degrees in backward elevation, 150 degrees of abduction, 40 degrees of adduction, 60 degrees of internal rotation, 70 degrees of external rotation and 30 degrees of extension. He described appellant's pain as an occasional minimal pain at rest, increasing to occasional slight pain with sustained physical activity. He also noted that appellant's grip strength was weaker on the right than the left but commented that appellant did not appear to be making maximum effort in grasping with his right arm. He concluded that appellant had a five percent permanent impairment of the right arm.

An Office medical adviser reviewed Dr. Mochizuki's report. Based on the A.M.A., *Guides*, she concluded that appellant had a one percent permanent impairment for loss of flexion, two percent permanent impairment for loss of extension, one percent permanent impairment for loss of abduction and two percent permanent impairment for loss of internal rotation, for a total permanent impairment of six percent of the right arm. The Office medical adviser properly determined appellant's permanent impairment based on loss of motion of the right shoulder. However, she did not discuss whether appellant had any additional permanent impairment due to pain in her right shoulder or to loss of strength. Subjective factors such as pain and loss of strength are to be included in determining the extent of appellant's permanent impairment for schedule award purposes.⁵ The case must therefore be remanded so that the Office medical adviser may consider whether appellant has any additional permanent impairment due to pain or loss of strength. After further development as it may find necessary the Office should issue a *de novo* decision.

⁴ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

⁵ *Terry J. Delorme*, 44 ECAB 587 (1993).

The decision of the Office of Workers' Compensation Programs, dated August 14, 1998, is hereby set aside and the case remanded for further development as set forth in this decision.

Dated, Washington, D.C.
April 4, 2000

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member