

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALMA R. COOPER and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Carol Stream, IL

*Docket No. 01-143; Submitted on the Record;
Issued August 2, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant's wage-earning capacity is fairly and reasonably represented by the position of modified mailhandler at the employing establishment; and (2) whether appellant received the proper amount of compensation for permanent impairment of her arms.

On October 8, 1997 appellant, then a 41-year-old mailhandler, filed a claim for an injury to her neck, right shoulder and the right side of her back sustained on August 5, 1997 by lifting boxes and bags of mail. Appellant continued to work at limited duty.

On May 12, 1999 appellant filed a claim for disability compensation beginning May 15, 1999. From May 17 to June 18, 1999 appellant underwent a pain management program. She returned to limited-duty work on June 21, 1999, and the Office of Workers' Compensation Programs paid appropriate compensation.

On May 13, 1999 appellant filed a claim for a schedule award. In a report dated July 27, 1999, her attending physician, Dr. Mary T. Norek, stated that examination of appellant's shoulders revealed flexion of 150 degrees on the right and left, extension of 50 degrees on the right and 55 degrees on the left, internal rotation of 70 degrees on the right and 90 degrees on the left, external rotation of 40 degrees on the right and 80 degrees on the left, adduction of 50 degrees on the right and 50 degrees on the left, and abduction of 120 degrees on the right and 170 degrees on the left.

Dr. Norek stated that, using the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had a seven percent permanent impairment of the right shoulder and a two percent permanent impairment of the left shoulder. In response to an Office request for further information, Dr. Norek stated in a November 30, 1999 report that maximum medical improvement occurred upon completion of the pain management program. On April 2, 2000 an Office medical adviser agreed with Dr. Norek's impairment ratings.

On May 30, 2000 appellant accepted a rehabilitation job offer, effective June 3, 2000, as a modified mailhandler. Her duties were rewrapping and repairing damaged mail and small parcels. The physical requirements consisted of working in a chair with a cushion for 6 hours, lifting no more than 2 pounds for 3 hours, pulling and pushing not more than 17 pounds for 3 hours, no kneeling or climbing, and bending, twisting, turning and reaching above the shoulder for 1 hour.

By decision dated August 25, 2000, the Office found that the position of modified mailhandler at the employing establishment fairly and reasonably represented appellant's wage-earning capacity, and that she had no loss of wage-earning capacity since her actual wages met or exceeded the wages of the job she held when injured.

On August 29, 2000 the Office issued appellant a schedule award for a seven percent permanent loss of use of the right arm and a two percent permanent loss of use of the left arm. The period of the award was 28.08 weeks, to be paid from June 19, 1999 to January 1, 2000.

The Board finds that the position of modified mailhandler at the employing establishment fairly and reasonably represents appellant's wage-earning capacity beginning June 3, 2000. The physical requirements of this position, as reflected in the offer accepted by appellant on May 30, 2000, do not exceed the work tolerance limitations set forth on May 5, 2000 by appellant's attending physician, Dr. Norek. The wages appellant is able to earn in this position are those she would have earned if she had not been injured on August 5, 1997, establishing that she has no loss of wage-earning capacity. Appellant had worked in the position of modified mailhandler for almost three months at the time of the Office's August 25, 2000 decision.

The Board finds that appellant received the proper amount of compensation for her permanent impairments of the arms.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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 implementing regulations as the appropriate standard for evaluating schedule losses.

In a July 27, 1999 report, appellant's attending physician, Dr. Norek, reported the ranges of motion of appellant's shoulders, and concluded that application of the fourth edition of the A.M.A., *Guides* showed that appellant had a seven percent permanent impairment of the right shoulder and a two percent permanent impairment of the left shoulder. An Office medical adviser's April 2, 2000 report showed how application of the tables of Chapter 3 of the fourth edition of the A.M.A., *Guides* to the losses of motion reported by Dr. Norek resulted in a seven

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

percent permanent impairment of the right arm and a two percent permanent impairment of the left arm. In a July 7, 1999 report, Dr. Norek noted that appellant's strength was normal on manual muscle testing of the upper extremities. There is no evidence that appellant has more than the seven percent loss of use of her right shoulder and the two percent loss of use of her left shoulder for which she received a schedule award.

On appeal, appellant questions why she received compensation only from June 18, 1999 to January 1, 2000, given that she has a permanent impairment. The Act specifies that the number of weeks of compensation to which an employee is entitled for a lost arm is 312,³ and that compensation for permanent partial loss of use of a member may be for proportionate loss of use of the member. Since appellant has a total of 9 percent loss of use of her arms, she is entitled to 9 percent of 312 weeks, or 28.08 weeks, the amount granted by the Office's schedule award. This compensation is in addition to any compensation appellant has received or may in the future receive for disability for work. There are no provisions in the Act for an award of compensation on the basis of nondisabling pain, suffering, or other physical discomfort or distress.⁴

The decisions of the Office of Workers' Compensation Programs dated August 29 and August 25, 2000 are affirmed.

Dated, Washington, DC
August 2, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

³ 5 U.S.C. § 8107(c)(1).

⁴ *Mark A. Wages*, 39 ECAB 282 (1987).