

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GEORGE A. SUAREZ and U.S. POSTAL SERVICE,  
POST OFFICE, Fort Worth, TX

*Docket No. 01-1112; Submitted on the Record;  
Issued December 17, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a three percent permanent impairment of the left upper extremity or any ratable impairment of the right upper extremity.

On February 4, 1997 appellant, then a 46-year-old distribution clerk, filed an occupational disease claim asserting that his bilateral impingement syndrome resulted from his federal employment. The Office of Workers' Compensation Programs accepted his claim for bilateral shoulder impingement and approved surgery.

On May 27, 1997 appellant underwent a right shoulder arthroscopy with subacromial decompression.

On May 20, 1998 appellant filed a claim for a schedule award.

On October 8, 1997 Dr. Christopher J. Tucker, an osteopath, reported that appellant had reached maximum medical improvement. He reported a "whole person" impairment and stated that he had listed shoulder range of motion on a work sheet from the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1995). No such work sheet accompanied his report. Dr. Tucker reported that there was no evidence of sensory or motor loss in the right upper extremity and, therefore, no impairment was given for neurologic deficits. He added that no specific disorder of the shoulder applied in appellant's case.

In a report dated December 1, 1998, Dr. Kerry M. Donegan, appellant's attending orthopedic surgeon, noted the following ranges of motion for the right shoulder: 180 degrees forward flexion, 60 degrees external rotation and internal rotation to L2.

On April 27, 1999 appellant underwent a left shoulder arthroscopy with subacromial decompression.

On April 29, 1999 an Office medical adviser reviewed Dr. Donegan's December 1, 1998 findings and determined that they showed no impairment of the right upper extremity based on loss of shoulder motion.

In a decision dated May 10, 1999, the Office denied a schedule award for the right upper extremity on the grounds that medical evidence established no permanent impairment of the right upper extremity.

On July 9, 1999 Dr. Tucker recalculated appellant's right shoulder impairment rating. He stated that there were deficiencies in all planes and that this converted to a six percent upper extremity impairment based on shoulder range of motion. Dr. Tucker stated that no impairment was given for specific disorders of the shoulder. Although Dr. Tucker stated: "Please see the enclosed amended copy of Figure 1 from the A.M.A., *Guides*, 4<sup>th</sup> edition," no such work sheet accompanied his report.

In a decision dated September 14, 1999, the Office conducted a merit review of appellant's claim and denied modification of its prior decision. The Office noted that contact with Dr. Tucker's office failed to result in a copy of his range of motion findings, so there continued to be an absence of medical documentation supporting an impairment to the right upper extremity.

On September 29, 1999 the Office received an October 8, 1997 work sheet from the A.M.A., *Guides* and showing the following ranges of motion for the right shoulder: 150 degrees flexion; 50 degrees extension; 35 degrees adduction; 140 degrees abduction; 50 degrees internal rotation; and 80 degrees external rotation.

In a decision dated October 6, 1999, the Office denied a merit review of appellant's claim because the work sheet was not signed by a qualified physician and was, therefore, invalid.

On November 8, 1999 Dr. Donegan reported that appellant had reached maximum medical improvement with respect to his left shoulder, as per Dr. Tucker. Dr. Donegan noted the following ranges of motion for the left shoulder: 170 degrees forward flexion, 55 degrees external rotation and internal rotation to L2.

On November 19, 1999 Dr. Tucker reported that appellant had a three percent impairment rating for the left upper extremity. He referred to an enclosed work sheet for details on how he calculated this impairment. The work sheet, also dated November 19, 1999, showed the following ranges of motion for the left upper extremity: 160 degrees flexion; 50 degrees extension; 50 degrees adduction; 160 degrees abduction; 70 degrees internal rotation; and 70 degrees external rotation.

On March 15, 2000 an Office medical adviser reviewed Dr. Tucker's November 19, 1999 clinical findings, as shown on the submitted work sheet and determined that they showed a three percent permanent impairment of the left upper extremity based on loss of shoulder motion.

In a decision dated March 17, 2000, the Office determined that appellant was entitled to a schedule award for his left upper extremity, as the medical evidence established a three percent permanent impairment of the left upper extremity.<sup>1</sup>

On March 26, 2000 the Office issued a schedule award for a three percent permanent impairment of appellant's left upper extremity.

In a decision dated June 20, 2000, the Office reviewed the merits of appellant's claim and denied modification of its May 10, 1999 decision.

Appellant requested reconsideration and submitted additional evidence. In a June 12, 2000 report, Dr. Tucker advised that he had previously done an impairment rating on the right shoulder on October 8, 1997, assigning a six percent impairment rating. He added that he did an impairment rating on the left shoulder on November 19, 1999, assigning a three percent impairment rating.

In a decision dated January 2, 2001, the Office reviewed the merits of appellant's claim and denied modification of its prior decision.

The Board finds that the medical evidence fails to establish that appellant has more than a three percent permanent impairment of the left upper extremity.

The schedule award provisions of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> 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 regulation as the appropriate standard for evaluating schedule losses.

On November 19, 1999 Dr. Tucker evaluated appellant's left shoulder and completed a work sheet from the A.M.A., *Guides* showing applicable ranges of motion. According to Figure 38, page 43, of the A.M.A., *Guides*, 160 degrees of flexion represents a 1 percent impairment of the upper extremity and 50 degrees of extension represents no impairment. According to Figure 41, page 44, 160 degrees of abduction represents a 1 percent impairment of the upper extremity and 50 degrees of adduction represents no impairment of the upper extremity. Finally, according to Figure 44, page 45, 70 degrees of internal rotation represents a 1 percent impairment of the upper extremity and 70 degrees of external rotation represents no impairment of the upper extremity.

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<sup>1</sup> The Office reversed its May 10, 1999 decision on the mistaken belief that it denied a schedule award for the left upper extremity. On June 20, 2000 the Office corrected the mistake and determined that the May 10, 1999 decision should not be reversed.

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

Because the relative value of each shoulder functional unit has been taken into consideration in the impairment charts, the impairment values for loss of each shoulder motion are added to determine the impairment of the upper extremity.<sup>4</sup> Accordingly, the November 19, 1999 clinical findings reported by Dr. Tucker establish that appellant has a three percent permanent impairment of the left upper extremity, for which he received a schedule award. The Board will affirm the Office's March 26, 2000 schedule award.

The Board further finds that the issue of whether appellant has a ratable impairment of his right upper extremity.

The Office originally denied a schedule award for the right upper extremity because Dr. Tucker failed to attach a work sheet with his clinical findings. Without the clinical findings, the Office was not able to calculate an impairment of the right upper extremity according to the standards set forth in the A.M.A., *Guides*. When the Office received an October 8, 1997 work sheet on September 29, 1999, it refused to accept it as valid medical evidence because it had no physician's signature.

The Board has carefully reviewed the matter and concludes that the October 8, 1997 work sheet received by the Office on September 29, 1999 contains the clinical findings that Dr. Tucker meant to attach to his October 8, 1997 report. The handwriting appears to be the same as that shown on Dr. Tucker's November 19, 1999 work sheet, which was also unsigned but which, because it accompanied Dr. Tucker's November 19, 1999 report, the Office accepted as valid.

The clinical findings reported on October 8, 1997 are supportive of permanent impairment to appellant's right upper extremity. According to Figure 38, page 43, of the A.M.A., *Guides*, 150 degrees of flexion represents a 2 percent impairment of the upper extremity and 50 degrees of extension represents no impairment. According to Figure 41, page 44, 140 degrees of abduction represents a 2 percent impairment of the upper extremity and 35 degrees of adduction represents no impairment of the upper extremity.<sup>5</sup> Finally, according to Figure 44, page 45, 50 degrees of internal rotation represents a 2 percent impairment of the upper extremity and 80 degrees of external rotation represents no impairment of the upper extremity.

The October 8, 1997 clinical findings reported by Dr. Tucker establish that appellant has a 6 percent permanent impairment of the right upper extremity. The Board will set aside the Office's January 2, 2001 decision and remand the case to the Office for the issuance of a schedule award reflecting Dr. Tucker's October 8, 1997 clinical findings for the right upper extremity.

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<sup>4</sup> A.M.A., *Guides* 45.

<sup>5</sup> Measures must be rounded to the nearest 10 degrees. A.M.A., *Guides* 43.

The March 26, 2000 decision of the Office of Workers' Compensation Programs is affirmed. The Office's January 2, 2001 decision is set aside and remanded for further action consistent with this opinion.

Dated, Washington, DC  
December 17, 2001

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member