

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MILTON S. TORRES and U.S. POSTAL SERVICE,  
MIDWEST CITY STATION, Midwest City, OK

*Docket No. 00-233; Submitted on the Record;  
Issued February 5, 2001*

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DECISION and ORDER

Before A. PETER KANJORSKI, PRISCILLA ANNE SCHWAB,  
VALERIE D. EVANS-HARRELL

The issue is whether appellant has no more than a two percent permanent impairment of his right upper extremity for which he received a schedule award.

On February 11, 1997 appellant, then a 39-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 10, 1997 he sustained cervical, neck and right shoulder strains when he extended his arms to place a tray of mail flats in a vehicle. Appellant stopped work on that date and returned on February 11, 1997. On March 2, 1998 appellant accepted a limited-duty job offer. The Office of Workers' Compensation Programs accepted appellant's claim for cervical and right shoulder sprain.<sup>1</sup> Appellant accepted a limited-duty job offer on October 21, 1998 and a permanent position effective March 27, 1999.

On July 29, 1998 appellant underwent authorized C5-6 discectomy and fusion surgery.

On April 27, 1999 appellant filed a claim for a schedule award, and submitted reports from Drs. Emily D. Friedman, a Board-certified neurosurgeon and Thomas P. Janssen, a Board-certified orthopedic surgeon. In his January 28, 1999 report, Dr. Janssen noted appellant's complaints and examination findings. Dr. Janssen opined that appellant's symptoms indicated persistent rotator cuff impingement syndrome and advised that he avoid repetitive reaching and lifting. He also restricted appellant from lifting more than 20 pounds, casing mail and carrying a mailbag.

In his February 24, 1999 report, Dr. Janssen opined that appellant's right shoulder impingement symptoms were causally related to his February 10, 1997 work-related injury rather

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<sup>1</sup> The Board notes that appellant filed a traumatic injury claim on June 17, 1998 alleging that on that date he sustained neck and shoulder pain when his mail vehicle was hit from behind. Appellant did not stop work. The Office accepted appellant's claim for cervical strain and combined the case with appellant's February 11, 1997 traumatic injury claim. The Board further notes that the record shows that a third-party claim related to appellant's June 17, 1998 employment injury was pursued.

than his June 17, 1998 work-related injury. In his July 15, 1999 report, Dr. Janssen opined that appellant's condition was stable but not resolved.

In her reports dated February 12 to May 20, 1999, Dr. Friedman noted appellant's symptoms and her examination findings. X-rays taken on February 12, 1999 showed excellent plate alignment. In her March 12, 1999 report, Dr. Friedman advised the following restrictions: (1) occasional lifting 40 pounds from floor to waist and waist to shoulder; (2) carrying no greater than 35 to 50 pounds with his left arm alone; (3) pushing and pulling no greater than 35 pounds; (4) no continuous neck extension; and (5) no constant repetitive right arm use particularly above the shoulders. She stated:

“A task such as sorting mail that is interrupted by carrying and placing mail would be acceptable for [appellant] to perform. It is important that he move around freely and not be fixed at one desk or in one location continuously for more than two hours. He has reached [maximum medical improvement] and has been released from my care.”

Dr. Friedman noted that appellant reached maximum medical improvement as to his cervical spine but not his right shoulder. Under the American Medical Association (A.M.A.), *Guides to Evaluation of Permanent Impairment*, (4<sup>th</sup> ed. 1993),<sup>2</sup> Table 75, she attributed a 10 percent impairment rating to appellant's two-level disc disease and, using Tables 76 and 77, an additional 6 percent to his ankylosis or fusion. Using the Combined Values Chart on page 322, Dr. Friedman found a 15 percent whole body impairment.

By letter dated April 30, 1999, the Office advised Dr. Friedman of its method for quantifying upper back impairments due to spinal pathology and upper extremity impairments according to the A.M.A., *Guides*. The Office requested that she render impairment ratings according to its procedures.

Dr. Friedman's May 30, 1999 report stated that appellant reached maximum medical improvement on March 12, 1999. Regarding appellant's shoulder condition, Dr. Friedman stated:

“At the time of my release, [appellant] was still under the care of Dr. Janssen for treatment of a right shoulder injury causing right upper arm pain and right-sided shoulder and upper back discomfort. At the time of his release [from medical care] on March 12, 1999, he did not have any motor deficit of the right arm, sensory loss related to involvement of the spinal nerve, or reflex loss. [Appellant] did, however, have mild pain, on occasion interfering with activity in the right arm. I believe a portion of this is attributable to his neck disorder, although the majority may be a result of his shoulder disorder. Therefore, in order to appropriately report his impairment from his job-related neck injury, it is fair to give him an impairment rating of the upper extremities to reflect his intermittent pain in the right arm with activity....”

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<sup>2</sup> A.M.A., *Guides*.

Dr. Friedman attributed a 25 percent sensory deficit and an additional 2 percent right upper extremity impairment to appellant's C5-6 and C6-7 injuries equaling a 1 percent whole person impairment. She combined the 1 percent upper extremity impairment with her previously quantified 15 percent impairment rating totaling a 16 percent whole person impairment. Dr. Friedman stated that she relied upon the A.M.A., *Guides* Table 13 on page 51, Table 11 on page 48 and Table 3 on page 20 and the Combined Values Chart on page 322.

In a report dated July 7, 1999, an Office medical adviser Board-certified in internal medicine found that appellant reached maximum medical improvement on March 12, 1999 and that he sustained a two percent right upper extremity impairment. Based on Dr. Friedman's reports and Table 11 on page 48 and Table 13 on page 51 of the A.M.A., *Guides*,<sup>3</sup> the Office medical adviser determined that appellant had a two percent impairment for pain and a two percent total permanent impairment rating. The Office medical adviser found that Dr. Friedman's 15 percent whole person impairment, was not probative because the Office does not grant schedule awards for abnormalities of the spine.

By decision dated July 20, 1999, the Office granted appellant a schedule award for a two percent permanent impairment of his right upper extremity in the amount of \$3,404.79. The period of the award ran for 6.24 weeks from March 12 to April 24, 1999.

The Board finds that appellant sustained no more than a two percent permanent impairment of the right upper extremity for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act<sup>4</sup> and its implementing regulations<sup>5</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified 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 Office and the Board has concurred in such adoption, as an appropriate standard for evaluating scheduled losses.<sup>6</sup>

The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the injury.<sup>7</sup> Thus, an employee is not eligible to receive a schedule award until he has reached maximum medical improvement. Maximum medical improvement means that the physical condition of the injured member of the

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<sup>3</sup> A.M.A., *Guides* 48, 51.

<sup>4</sup> 5 U.S.C. § 8107(c).

<sup>5</sup> 20 C.F.R. § 10.404 (1999).

<sup>6</sup> *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

<sup>7</sup> *Eugenia L. Smith*, 41 ECAB 409, 413 (1990); *Yolanda Librera*, 37 ECAB 388 (1986).

body has stabilized and will not improve further.<sup>8</sup> The question of when maximum medical improvement has been reached is a factual one depending upon the medical findings in the record.<sup>9</sup>

In this case, the Board finds that the Office medical adviser properly rated appellant's impairment under the A.M.A., *Guides*. The Office medical adviser relied upon Dr. Friedman's clinical findings but recommended a two percent permanent impairment rating for appellant's right upper extremity due to pain and subjective complaints. Dr. Meador's two percent total permanent impairment rating conforms to the A.M.A., *Guides*, Tables 11 and 13. The Office medical adviser properly excluded<sup>10</sup> an impairment rating for appellant's spinal condition as the back is specifically excluded from the provisions for payment of a schedule award.<sup>11</sup>

By multiplying appellant's 2 percent permanent impairment rating by 312, the maximum number of weeks for which a schedule award may be paid for loss of use of the arm, the Office determined that appellant was entitled to 6.24 weeks of benefits. Thus, the Office properly granted a schedule award for a two percent permanent impairment of the right upper extremity.

The July 20, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
February 5, 2001

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member

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<sup>8</sup> *Joseph R. Waples*, 44 ECAB 936, 940 (1993); *Marie J. Born*, 27 ECAB 623, 629 (1976).

<sup>9</sup> *Joseph R. Waples*, *supra* note 8 at 940; *Marie J. Born*, *supra* note 8 at 630.

<sup>10</sup> 5 U.S.C. § 8101(20).

<sup>11</sup> *George E. Williams*, 44 ECAB 530 (1993).