

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EMMA PEARL MORRIS and U.S. POSTAL SERVICE,
SAN FRANCISCO BULK MAIL FACILITY, Richmond, CA

*Docket No. 00-2457; Submitted on the Record;
Issued June 21, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has more than an 18 percent impairment of her left upper extremity; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for a merit review pursuant to 5 U.S.C. § 8128(a).

On March 14, 1997 appellant, then a 53-year-old mailhandler, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained a chronic shoulder strain, rotator cuff tear as a result of her federal employment.

On April 29, 1997 the Office accepted appellant's claim for left rotator cuff tendinitis and appellant underwent a left shoulder arthroscopy on July 22, 1998.

By letter dated February 24, 1999, the Office requested that appellant's treating, Board-certified orthopedic surgeon, Dr. Darrell Hayes, evaluate appellant to determine the extent of the permanent impairment to her left upper extremity.

In a medical report dated March 10, 1999, Dr. Hayes noted that appellant has chronic discomfort at her left shoulder and that her symptoms increase with heavy lifting, reaching overhead or reaching out to the side with the left arm, but that she had no persisting loss or sensation. He listed her range of motion and limitations for her left extremity as follows: forward elevation 160 degrees, backward elevation 45 degrees, abduction 150 degrees, adduction 40 degrees, internal rotation 80 degrees, external rotation 70 degrees and extension 50 degrees. Dr. Hayes noted that it was his impression that appellant suffered from "rotator cuff tend[i]nitis and subacromial impingement left shoulder." He further found that there was no evidence of sympathetic dystrophy or vascular compromise. Dr. Hayes opined that appellant reached a point of being maximally improved as of January 1, 1999, but that "she would continue to require medical care as the natural history of subacromial impingement and rotator cuff pathology is that of reoccurrence (sic) albeit typically at a lower level of intensity."

In a report dated October 3, 1999, the Office medical adviser used the March 10, 1999 report of Dr. Hayes, applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.) and determined appellant's left upper extremity impairment as follows:

“Impairment due to loss of range of motion: for the shoulder, loss of flexion, 1 [percent] and loss of extension, 0 [percent] (Figure 38, page 43); loss of abduction, 1 [percent] and loss of adduction, 0 [percent] (Figure 41, page 44); loss of internal rotation, 0 [percent] and loss of external rotation, 0 [percent] (Figure 44, page 45). Total 2 [percent].

“Impairment due to loss of strength and impairment due to sensory deficit or pain: Level of impairment as Grade 4 and 2, 80 [percent] (Tables 11 and 12, pages 48 and 49). Maximum combined impairment based on the suprascapula nerve is 20 [percent] (Table, page 54). 80 [percent] [times] 20 [percent] [equals] 16 [percent].

The total impairment of the left upper extremity equals 18 [percent].”

By decision dated November 17, 1999, the Office granted appellant a schedule award based on 18 percent impairment to her left upper extremity.

By letter of February 29, 2000, which was mistakenly dated March 29, 2000, appellant requested reconsideration. His request for reconsideration was denied, without merit review, by the Office on March 6, 2000.

Appellant again requested reconsideration by fascimile dated April 6, 2000. In support of her request for reconsideration, appellant submitted a March 10, 2000 medical report by Dr. Donald R. Townsend, a Board-certified orthopedic surgeon, wherein he opined that appellant had subdeltoid bursitis and tendinitis and that he recommended injecting appellant's shoulder. By decision dated June 1, 2000, the Office denied appellant's request for reconsideration without considering the case on the merits.

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

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations 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

¹ 5 U.S.C. § 8107.

Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.²

In a report dated March 10, 1999, Dr. Hayes noted that appellant was “maximally improved as of January 1, 1999.” Accordingly, it was proper for the Office to use the findings in Dr. Hayes’s March 10, 1999 report to rate appellant’s schedule award.³

It was also proper for an Office medical adviser to apply the tables of the A.M.A., *Guides* to the findings reported by Dr. Hayes, as Dr. Hayes did not make any finding under the A.M.A., *Guides* as to the amount of appellant’s impairment. An Office medical adviser properly applied the tables of the A.M.A., *Guides* to rate appellant’s impairment due to loss of motion by assigning 1 percent to the 160 degrees of flexion (forward elevation) reported by Dr. Hayes and 0 percent for loss of extension due to the 45 degrees found by Dr. Hayes for backward elevation.⁴ He also properly applied 1 percent to represent loss of abduction which was measured as 150 degrees, and 0 percent for loss of adduction, which was measured at 40 degrees.⁵ The Office medical adviser also properly noted zero percent for loss of external or internal rotation, based upon the figures set forth by Dr. Hayes.⁶ The Office medical adviser properly added these figures together to amount to two percent.

As pain must be calculated according to the tables of the A.M.A., *Guides*⁷ it was proper for an Office medical adviser to attempt to rate appellant’s permanent impairment by grading the severity of the pain using the classifications of Table 11.⁸ However, because the Office medical adviser did not make any specific reference to Dr. Hayes’ findings in assigning Grade 4 for the severity of the pain, the Board is unable to determine whether appellant’s pain was properly assigned Grade 4, described as “decreased sensibility with or without abnormal sensation or pain, which may prevent activity, and/or minor causalgia”⁹ or grade 5, which is described by Table 11 as “decreased sensibility with abnormal sensations and severe pain, which prevents activity and/or major causalgia.”¹⁰ Accordingly, this case will be remanded to the Office for an Office medical adviser to assign a grade for appellant’s pain using Table 11 of Chapter 3 of the A.M.A., *Guides*, with specific reference to Dr. Hayes’ findings.¹¹

² *Charles A. Sciulli*, 50 ECAB ____ (Docket No. 98-141, issued July 22, 1999).

³ *See Alsine Johnson*, 42 ECAB 619 (1991).

⁴ A.M.A., *Guides*, 43, Figure 38.

⁵ *Id.* at 44, Figure 41.

⁶ *Id.* at 45, Figure 44.

⁷ *Leisa D. Vassar*, 40 ECAB 1287 (1989).

⁸ A.M.A., *Guides* at 48, Table 11.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See Lena P. Huntley*, 46 ECAB 643 (1995).

The decisions of the Office of Workers' Compensation Programs dated June 1 and March 6, 2000 and November 17, 1999 are set aside and the case is remanded to the Office for further action consistent with this decision of the Board.¹²

Dated, Washington, DC
June 21, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

¹² In view of the Board's disposition of the merits of the case, the issue of whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128 is moot.