U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CURTIS L. THOMPSON and U.S. POSTAL SERVICE,
POST OFFICE, Silsbee, TX

Docket No. 01-338; Submitted on the Record;
Issued October 16, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained more than a 15 percent permanent impairment of the right upper extremity, for which he received a schedule award.

The Office of Workers' Compensation Programs accepted that on December 8, 1997 appellant, then a 56-year-old letter carrier, sustained right rotator cuff syndrome requiring surgical decompression, when he lifted a heavy package. Appellant was off work through January 23, 1998 when he returned to limited duty.

On May 8, 1998 appellant underwent arthroscopic subacromial decompression with "limited debridement of [a] torn glenoid labrum," performed by Dr. Thomas M. Smith, an attending Board-certified orthopedic surgeon. He submitted periodic progress notes dated January through August 1998 and released appellant to full duty as of July 13, 1998.

In a September 23, 1998 report, Dr. Smith evaluated the degree of permanent impairment of appellant's right upper extremity according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4th ed). Referring to Figure 38, page 43, entitled "upper extremity impairments due to lack of flexion and extension of shoulder," Dr. Smith found that appellant's flexion was limited to 135 degrees, equaling a 3 percent impairment, with extension limited to 43 degrees, equaling a 1 percent impairment. According to Figure 41, page 44, entitled "upper extremity impairments due to lack of abduction and adduction of shoulder," Dr. Smith determined that appellant's abduction was limited to 142 degrees, equaling a 2 percent impairment.

According to Figure 44, page 45, entitled "upper extremity impairments due to lack of internal and external rotation of shoulder," Dr. Smith found that the limitation of internal rotation to 67 degrees equaled a 1 percent impairment and limitation of external rotation to 75 degrees equaled a 0 percent impairment. He then added these percentages to equal a seven percent

permanent partial impairment of the right upper extremity due to accepted right rotator cuff syndrome with surgical decompression.

In a November 15, 1998 report, an Office medical adviser reviewed Dr. Smith's September 23, 1998 report, and concurred with his determination of a seven percent permanent impairment of the right upper extremity, as well as his methods of calculation. The Office medical adviser found that appellant had reached maximum medical improvement as of September 23, 1998, the date of Dr. Smith's report.

By decision dated November 24, 1998, the Office awarded appellant a schedule award equivalent to a seven percent permanent impairment of the right upper extremity, with the award running from September 23, 1998 through February 22, 1999.

The Office accepted that appellant sustained a recurrence of disability on March 24, 1999. Dr. Smith prescribed restrictions against overhead reaching and lifting more than 10 pounds with the right arm through April 1999.

An April 14, 1999 magnetic resonance imaging (MRI) scan of appellant's right shoulder showed a rotator cuff tear at the supraspinatus tendon.

On May 4, 1999 Dr. Smith performed an "arthroscopic partial clavicle excision, lysis of adhesion," and arthroscopic debridement of a torn rotator cuff. He released appellant to limited duty on June 10, 1999. Dr. Smith continued to prescribe work restrictions through August 1999, noting that appellant's condition had not improved.

An August 11, 199 MRI scan of the right shoulder showed a torn rotator cuff.

On September 10, 1999 Dr. Smith performed diagnostic arthroscopy and an open repair of a right rotator cuff tear. Appellant was off work until November 16, 1999, when he returned to full-time limited duty, with lifting of fewer than five pounds and no reaching above the shoulder.

In a December 16, 1999 report, Dr. Smith noted appellant's persistent right shoulder pain and weakness. He prescribed physical therapy through March 2000.

A March 8, 2000 functional assessment determined that appellant was unable to elevate his shoulder above 20 degrees, open or close a postal vehicle sliding door, or perform any lifting with his right arm. Appellant accepted a light-duty assignment based on these restrictions, which Dr. Smith characterized as permanent.[1]

In a February 17, 2000 report, Dr. Smith noted that appellant experienced increased right shoulder pain while sorting mail.

On April 19, 2000 appellant claimed an additional schedule award.

[1] The Office accepted these restrictions as permanent in May 2000.

In a June 7, 2000 letter, appellant requested reconsideration of the November 24, 1998 schedule award. He submitted a June 1, 2000 report from Dr. Smith, noting that appellant continued to have constant pain and weakness in his right upper extremity despite three surgeries and extensive physical therapy. Dr. Smith noted that appellant exhibited a "consistent pain pattern that is a reliable and true pain pattern in his right upper extremity," particularly with raising his arm above 20 degrees. On examination, he found disuse atrophy of the right deltoid, supraspinatus, infraspinatus and rotator cuff muscles, "indicating the pain is preventing full functional use of the right upper extremity." Dr. Smith noted a limited range of right shoulder motion, with flexion at 125 degrees, abduction at 97 degrees, external rotation at 40 degrees, internal rotation at 65 degrees and a grip strength of 3 out of 5. Dr. Smith referred generally to the A.M.A., *Guides*, but did not reference a specific table or page, or provide a total percentage of impairment.

By decision dated July 3, 2000, the Office denied appellant's June 7, 2000 request for reconsideration as untimely. The Office noted conducting a limited review of appellant's letter and Dr. Smith's June 1, 2000 report, and found that neither established clear evidence of error.[2]

In a July 19, 2000 report, Dr. Smith noted findings on examination of 125 degrees flexion, 30 degrees extension, 90 degrees abduction, 20 degrees adduction, 75 degrees internal rotation, and 65 degrees external rotation. He opined that appellant had reached maximum medical improvement.

In a September 1, 2000 report, an Office medical adviser reviewed Dr. Smith's July 19, 2000 report. Referring to figures 38, 41, and 44 of the A.M.A., *Guides*, the Office medical adviser found that limitation of flexion to 125 degrees and extension to 30 degrees equaled 8 and 1 percent impairments respectively, abduction to 90 degrees and adduction to 20 degrees equaled 4 and 1 percent impairments respectively and that internal rotation of 75 degrees equaled a 1 percent impairment. The Office medical adviser added these to total a 15 percent permanent impairment of the right upper extremity due to loss of range of motion.

By decision dated September 13, 2000, the Office awarded appellant a schedule award for an additional eight percent impairment of the right upper extremity, with the award running from July 19, 2000 to January 9, 2001.

The Board finds that appellant has not established that he sustained more than a 15 percent permanent impairment of the right upper extremity.

The schedule award provisions of the Federal Employees' Compensation Act and its implementing regulations[3] set forth the number of weeks of compensation to be paid for

[2] The Board notes that appellant did not directly appeal the July 3, 2000 decision. Also, the Office's July 3, 2000 denial of appellant's request for reconsideration of the original November 24, 1998 schedule award is, in effect, mooted by the Office's additional development of appellant's schedule award claim in September 2000, which resulted in the additional schedule award issued September 13, 2000.

[3] 20 C.F.R. § 10.404.

permanent loss or loss of use of the members of the body listed in the schedule.[4] However, the Act does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination rests in the sound discretion of the Office.[5] The Board has held, however, that 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 Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, as an appropriate standard for evaluating schedule losses.

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.[6] All factors that prevent a limb from functioning normally should be considered, such as pain and weakness, together with loss of motion, in evaluating the degree of permanent impairment.

In a September 23, 1998 report, Dr. Smith, an attending Board-certified orthopedic surgeon, found limited range of right shoulder motion equaling a 7 percent permanent impairment of the right upper extremity according to Figures 38, 41 and 44 of the A.M.A., *Guides*: flexion of 135 degrees, equaling a 3 percent impairment; extension of 43 degrees, equaling a 1 percent impairment; abduction of 142 degrees, equaling a 2 percent impairment; internal rotation of 67 degrees, equaling a 1 percent impairment. The Office medical adviser concurred with these findings and calculations, resulting in the November 24, 1998 schedule award for a seven percent permanent impairment of the right upper extremity.

In a July 19, 2000 report, Dr. Smith noted findings on examination of 125 degrees flexion, 30 degrees extension, 90 degrees abduction, 20 degrees adduction, 75 degrees internal rotation, and 65 degrees external rotation. He opined that appellant had reached maximum medical improvement. The Office medical adviser then used the A.M.A., *Guides* to determine that appellant had a 15 percent impairment of the right upper extremity, based on Dr. Smith's July 19, 2000 report and awarded an additional 8 percent schedule award.

The Board finds that the Office medical adviser correctly applied the appropriate tables and grading schemes of the A.M.A., *Guides* in determining that appellant had sustained an additional eight percent permanent impairment of the right upper extremity. The Board notes that the Office medical adviser's calculations were based upon the detailed reports of Dr. Smith, appellant's attending orthopedic surgeon. Appellant has not submitted sufficient evidence, referring to specific tables and grading schemes of the A.M.A., *Guides*, indicating that he

[4] 5 U.S.C. §§ 8107-8109.

[5] *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

[6] *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

sustained more than a 15 percent permanent impairment of the right upper extremity.[7] Thus, the Board finds that the September 13, 2000 schedule award is proper under the law and facts of this case.

The decision of the Office of Workers' Compensation Programs dated September 13, 2000 is hereby affirmed.

Dated, Washington, DC
October 16, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

[7] The Board notes that in a June 1, 2000 report, Dr. Smith noted that appellant exhibited a "reliable and true pain pattern in his right upper extremity," grip strength of three out of five, and "disuse atrophy of the right deltoid, supraspinatus, infraspinatus and rotator cuff muscles." However, Dr. Smith did not provide any additional percentage of impairment due to pain, weakness, atrophy or loss of strength, or refer to the sections of the A.M.A., *Guides* applying to such impairments.