

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL D. NIELSEN and U.S. POSTAL SERVICE,
CAMINO MEDIA POST OFFICE, Bakersfield, CA

*Docket No. 01-557; Submitted on the Record;
Issued September 14, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has greater than a 14 percent permanent impairment of the right upper extremity for which he received a schedule award.

On November 30, 1999 appellant, then a 50-year-old building equipment mechanic, was injured in the performance of duty when he tripped over the ledge of a roof hatch and fell on his right shoulder. The Office of Workers' Compensation Programs accepted the claim for right shoulder rotator cuff tear and appellant received appropriate compensation for wage loss.

Following his work injury, appellant was initially treated by Dr. Michael E. Davies, a general practitioner, for a right shoulder contusion and sprain. Dr. Davies prescribed medication and returned appellant to full duty. He subsequently saw appellant for follow-up on December 3 and 10, 1999, at which time appellant still had limited range of motion. In a duty status report dated December 10, 1999, Dr. Davies indicated that appellant should not reach above shoulder level. He also referred appellant for an orthopedic consultation.

Appellant next came under the care of Dr. Brian C. Brenner, a Board-certified orthopedic surgeon, beginning December 16, 1999. Dr. Brenner diagnosed an open rotator cuff tear, confirmed by a magnetic resonance imaging scan. He performed surgery to repair the tear on January 14, 2000.

In a July 20, 2000 report, Dr. Brenner stated that appellant had reached "permanent and stationary status" following surgery, and that he had only subjective complaints of occasional popping and catching in the shoulder with certain movements. On physical examination, Dr. Brenner reported that appellant had full range of motion. He stated as follows:

"In forward flexion [appellant] is somewhat limited bilaterally. He is able to bilaterally forward flex his shoulders to approximately 150 [degrees]. Internal rotation again is somewhat bilaterally diminished. He is able to bilaterally

internally rotate to reach his thumbs to approximately 150 [degrees]. He has a well-healed scar. He has no palpable crepitus on range of motion.”

Dr. Brenner opined that appellant’s only significant objective factor of disability was weakness. He noted that when appellant was “attempting an overhead press he has lost approximately 50 [percent] of normal strength of the right shoulder as compared to the left.” He concluded, however, that appellant could return to full-time, regular duty.

For purposes of issuing a schedule award, the Office forwarded Dr. Brenner’s July 20, 2000 report to Dr. Ellen Pichey, an Office medical adviser. In a report dated November 5, 2000, Dr. Pichey compared appellant’s physical findings to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) and found three percent loss of flexion and zero percent loss of extension at Figure 38, page 43. Loss of abduction was one percent and loss of adduction was zero percent at Figure 41, page 44. Loss of internal rotation was two percent and loss of external rotation was one percent at Figure 44, page 45 for a total of seven percent impairment. Impairment due to loss of strength with level of symptoms, Grade 3 was 50 percent according to Table 12, page 49. Maximum impairment based on the suprascapular nerve was identified as 16 percent at Table 15, page 54, and applying the following formula “50 percent x 16 percent = 8 percent” the Office medical adviser determined that appellant had a total of 8 percent impairment due to loss of strength. The Office medical adviser used the Combined Values Chart at page 322 of the A.M.A., *Guides*, and concluded that appellant had a total impairment of 14 percent for his right upper extremity. The date of maximum medical improvement was listed as July 20, 2000.

In a decision dated November 18, 2000, the Office issued a schedule award for 14 percent permanent impairment of the right arm. The period of the award was listed as July 20 to May 21, 2000.

The schedule award provisions of the Act¹ and its implementing federal regulation² 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 implementing regulation as the appropriate standard for evaluating schedule losses.³

In order to meet his or her burden of proof, a claimant must submit sufficient medical evidence to show a permanent impairment causally related to his or her employment that is ratable under the A.M.A., *Guides*. The Office’s regulations at section 10.333 discuss the type of

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

evidence required to support a schedule award.⁴ The evidence must show that the impairment has reached a permanent and fixed state and indicate the date this occurred, describe the impairment in detail and contain an evaluation of the impairment under the A.M.A., *Guides*.

In this case, Dr. Brenner examined appellant and provided physical findings with respect to appellant's right shoulder injury. Dr. Brenner, however, did not cite references to the A.M.A., *Guides*, nor did he provide an opinion with respect to appellant's permanent impairment rating. The Office therefore forwarded Dr. Brenner's report to an Office medical adviser for review. The Office medical adviser applied Dr. Brenner's physical findings to the A.M.A., *Guides* and determined that appellant had a 14 percent permanent impairment of the right upper extremity.

It is well settled that, when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based on the application of A.M.A., *Guides*, the Office may follow the advise of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*⁵ in rendering their respective impairment ratings. Consequently, the Board finds that appellant has failed to establish that he is entitled to greater than a 14 percent permanent impairment rating of the right upper extremity.

The decision of the Office of Workers' Compensation Programs dated November 14, 2000 is hereby affirmed.

Dated, Washington, DC
September 14, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁴ 20 C.F.R. § 10.333 (1999) provides: "To support a claim for a schedule award, a medical report must contain accurate measurements of the function of the organ or member, in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*." The regulation further states that measurements may include "[t]he actual degree of loss of active or passive motion or deformity; the amount of atrophy; the decrease, if any, in strength; the disturbance of sensation; and pain due to nerve impairment." This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations; see *Noe L. Flores*, 49 ECAB 344 (1998).

⁵ See, e.g., *Roel Santos*, 41 ECAB 1001 (1990); *Luis Chapa, Jr.*, 41 ECAB 159 (1989).